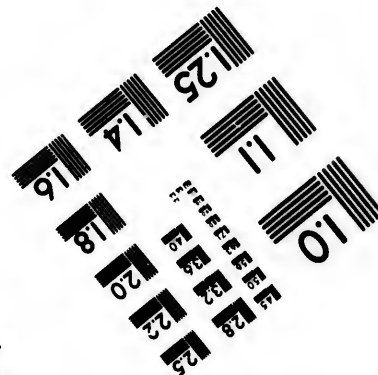
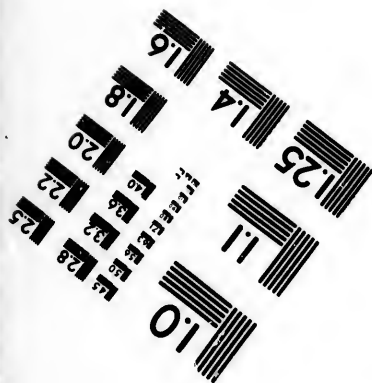
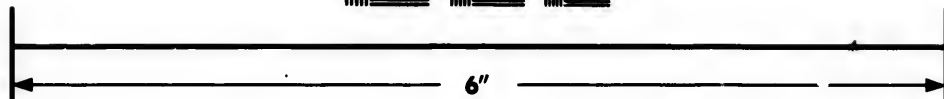
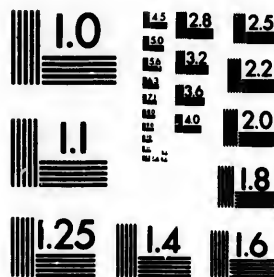


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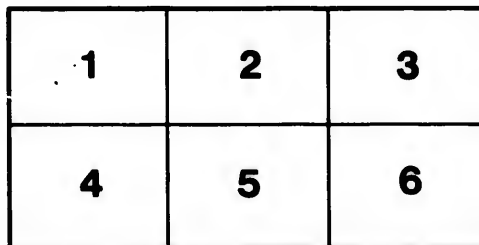
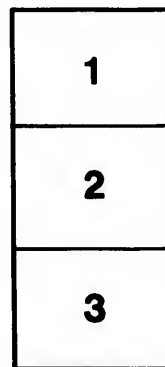
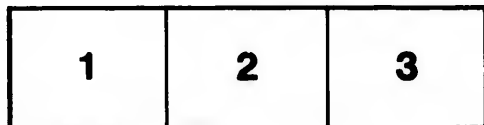
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RULES AND ORDERS
OF
PRACTICE,
FOR THE
COURT OF KING'S BENCH,
DISTRICT OF MONTREAL.
FEBRUARY TERM, 1811.

AMENDED AND AUGMENTED TILL THE 20th JUNE, 1822.

TO WHICH IS ADDED,

THE RULES AND ORDERS OF PRACTICE,

IN THE PROVINCIAL COURT OF APPEALS.



MONTREAL:
PRINTED BY T. A. TURNER,
No. 16, Notre-Dame Street,
FOR JOSEPH NICKLESS, BOOK-SELLER.

1823.

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THE UNITED STATES
DEPARTMENT OF JUSTICE

NOTICE

UNITED STATES DEPARTMENT OF JUSTICE

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COURT OF KING'S BENCH,

Montreal.

FEBRUARY TERM.

1811.



WHEREAS it is expedient to correct, alter, and amend the several Rules of Practice of this Court, made previous to the present Term:

it is therefore ORDERED—That all the said previous Rules of Practice be RESCINDED, and that the several Rules and Orders, hereafter expressed, be strictly observed and conformed to by the several Advocates, Attornies, Officers, and other persons whom it may concern.

SECTION I

Of the Courts

ARTICLE I. THAT the several days herein after mentioned shall, in each Term, respectively be held to be Holy Days, within the intent and meaning of the 7th Section of the Provincial Statute of the 34th of his Majesty George the Third, Chap. 6; That is to say—The first day of January, Circumcision, Epiphany, Annunciation, only when solemnized on the 25th of March, Ascension, Good Friday, His Majesty's Birth Day, Corpus Christi or Fête Dieu, St. Pierre and St. Paul, All Saints, Conception, and Christmas Day: and that on these several Holy Days, this Court shall not sit or be held, but that on every other (Sundays excepted) it shall sit and be held in each Term respectively.

2.—And it is ordered that the office of the Sheriff and of the Prothonotary shall be open, and attendance therein res-

pectively given on every day at the hours by the Rules here
in appointed, except on the above Holy-Days and Sundays.
And that all the several Rules of this Court, wherein an
exception may be contained for the non-service or filing of
pleas on a Holy-Day, shall have relation only to the Holy-
Days above declared.

SECTION II.

Of the Habits of Officers, Barristers and Counsel.

It is ordered, that the several Officers of this Court, in
the exercise of their respective offices in Court, do appear
habited in gowns, such as are worn by like officers in his
Majesty's Courts in England; and that the several Barristers,
and Advocates do appear in Court habited in such gowns
and bands as are worn by Barristers of similar degree at
Westminster-Hall. And that this Court will not hear any
matter moved by any Barrister or Advocate, who shall not
appear so habited when moving the same.

SECTION III.

Of the Sheriff and Prothonotaries Offices.

SHERIFF.—That the Sheriff's Office be by suitable means
publicly notified on the door thereof; and that he do by him-
self, or some proper person by him authorised, attend in his
said office every day in Term time, where free access may be
had, from the hour of eight in the morning to six in the af-
ternoon, from the first of April to the twentieth of October,
inclusive; and from the hour of nine in the morning to five
in the afternoon, in the Terms that may be held from the
twenty-first of October to the first of April. And that dur-
ing the vacation, attendance as aforesaid shall be given in
the said office from the hour of eight in the morning to noon
and from two to six in the afternoon, from the first of April
to the twentieth October, inclusive; and from the hour of

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line in the morning until noon, and from two till half past
our in the afternoon, from the twenty-first of October till
the first of April, Sundays and Holy-Days excepted. And
that the Sheriff do permanently expose in his office a public
notification of the respective periods and times, above direct-
ed, at which his said office will be open for discharge of the
duties thereof.

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2.—That the attendance in the Sheriff's Office, directed
as aforesaid, shall not, in any manner, obstruct or excuse
his personal attendance in Court, and during the continuance
of the Court's sitting in Term time, which is hereby enjoined
and directed:

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PROTHONOTARIES.—1. That the Office of the Prothono-
taries be by suitable means publicly notified on the door
thereof; and that they do by themselves, or proper person
or persons, by them authorised, attend in the said Office or
Offices, whereby free access may be had to the Records of
his Court, and such other business performed as pertain to
the duties of their office, every day during Term time, from
the hour of eight in the morning to six in the afternoon,
from the first of April to the first of November; and from
the hour of nine in the morning to five in the afternoon, in
the Terms that may be held from the first of November to
the first of April. And that during the vacations attendances
as aforesaid shall be given in the said Office or Offices from
the hour of eight in the morning until noon, and from two
till six in the afternoon, from the first of April to the first
of November; and from the hour of nine in the morning
until noon, and from two till half past four in the afternoon,
from the first of November to the first of April; Sundays and
Holy-Days excepted. And that the Prothonotaries do per-
manently expose in their Office, a public notification of the
respective periods and times above directed, at which their
said office will be open for discharge of the duties thereof.

2.—That the attendance in the Prothonotaries Office,
as above directed, shall not in any manner excuse or obstruct
their personal attendance in Court every day, and during the
continuance of the Court's sitting in Term time, nor a like
personal attendance upon any of the Judges of this Court, at

any sitting that may be appointed and held during vacation, which attendance is severally hereby enjoined, and upon the said Prothonotaries respectively directed.

3.—That the proceedings of this Court shall be regularly entered and written in a fair hand, in a register to be kept for this purpose by the Prothonotary, with a proper index thereto, in which register shall be left sufficient spaces for entering the different proceedings in each cause separately, and as they follow in succession, until the final determination thereof.

4.—That all the causes returned into this Court shall be numbered, to commence with number one of the causes of the present term, and be continued progressively for twelve terms, at the expiration of which, and of every subsequent twelve terms, the said numbers shall be again renewed.

5. That all the records in the causes in which final judgment shall have been given, shall be carefully tied up and laid aside in a separate box, on which shall be marked the term in which such judgments were rendered; and all proceedings which may arise by opposition, or otherwise, subsequent to such final judgment, shall be joined to the records in the original cause as connected therewith, and when determined shall be bound up and deposited amongst the causes decided in that term, in which such ulterior proceedings shall have been so determined. And for the greater security and the more ready access thereto.

It is ordered. That a list of the causes, so determined and deposited in each box, shall be made up in the order in which they are so deposited and remain therewith; and when any of the said records shall be at any time removed from their place, either by appeal or by reason of subsequent proceedings to be had thereon, such removal, and the cause thereof, shall be minuted by the Prothonotary upon such list.

6.—That every writ and process, and every copy of any judgment, rule or order, of this Court, or of any other paper or document issuing from the office of the Prothonotary, shall be written in a fair hand, without erasures or interlineations, and without any figures or abbreviations of words therein, other than may be contained in the original, and as are necessarily descriptive thereof; and every suit, process, or copy as aforesaid, issuing from the said office, and not made con-

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during vacation, shall not be considered as authentic, nor shall any fee be charged or allowed therefore.

7.—In order to prevent difficulties touching the payment of the fees and emoluments allowed to the Prothonotaries of this Court for the business of their office, It is ordered, that in every cause in which a bill of costs shall be presented by any Attorney of this Court for taxation, in which there shall be due or charged any fees or disbursements to the said Prothonotaries, there shall be annexed to every such bill of costs the Prothonotaries' receipt, for the payment of such fees and disbursements, before such bill shall be taxed.

8.—It is ordered, That the Prothonotaries do preserve a book or register, to ascertain the filing of copies of declarations in every cause that may be made under the rules of practice, to the end that the said Prothonotaries may at all times certify the exact period of filing such copies, and by whom so filed; and also of the defendant or his Attorney, taking up any such copy, so being filed, for his use, and the period of the same being delivered, and to whom the same may be delivered, and for every such registering the said Prothonotaries shall be entitled to charge the sum of one shilling to the plaintiff's costs against the defendant.

SECTION IV.

Of Service of Process.

1. THAT on all original suits or process, requiring any defendant or person to appear in this Court to answer or defend, and when such person may reside within the town of Montreal, or at the distance of one mile therefrom, due service of such process shall be made two whole days, or forty-eight hours, previous to the return thereof.

2. And the like service of process shall be made at the several periods, and conformably to the distance of the place of residence of such defendant in the several cases following.

3.—And where the defendant may reside out of the city and suburbs of Montreal, and within a distance not exceeding five leagues, due service shall be made three whole days

previous to the return ; and when such residence may be from five to ten leagues, the service shall be made four whole days previous to the return ; and when such residence may be from ten to fifteen leagues, the service shall be made five whole days previous to the return.

4.—And when such residence may be from fifteen to twenty leagues distance, the service shall be made six whole days previous to the return.

5. And where from twenty to thirty leagues, the service shall be made eight whole days previous to the return.

6. And where the defendant's residence may exceed thirty leagues, then such service shall be made conformably to the special order of one of the Judges of this Court, upon due consideration of the season of the year and situation of the defendant's residence.

7. That the Sheriff or Coroner to whom any process or writ may be directed for service, and which may express a declaration to be thereunto annexed, do not make any return into this Court upon such writ, unless the declaration or writing, therein referred to, be annexed to the same. And if any such return be made, the same shall be taken from the Records of this Court, and no proceeding had thereupon.

8. On the service of any writ of *capias ad respondendum*, the plaintiff shall be bound, at the time of serving the defendant with copy of such writ, to serve a notice in writing upon the said defendant, informing him that a copy of the plaintiff's declaration will be left at the Prothonotaries' office for the said defendant in such case, within five days from the service of such writ, and that the plaintiff making due service of a copy of his declaration, conformably to such notice, the same shall be taken and considered as sufficient, unless the defendant, before the expiration of the five days, do notify the plaintiff, or his attorney, of his, the defendant's, elected domicile, within the city of Montreal, where a copy of the plaintiff's declaration may be served upon him, such defendant.

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SECTION V.

Of the Return of Process.

1.—THAT the first business of the Court, at every sitting, be to receive the returns on the service of process, and that the same be entered of record; and the respective defendants, where no appearance may have been entered, be openly called for appearance, and the legal course of proceedings taken thereon.

2. That all returns upon any process *ad respondendum*, shall be made and signed by the officer to whom such writ may be directed, and shall specify the manner, time, and place of such service; and particularly the parish and county, in which such service has been made.

3.—It is ordered, That no writ or process of any kind shall hereafter issue at the office of the Prothonotary of this Court, without a *fiat* signed by the party demanding the same, or by his Attorney, in which shall be expressed the names of the parties to the suit, their place of residence, and addition respectively, the nature of the writ demanded, and the day of the return thereof, which *fiat* shall be filed and preserved by the Prothonotary, who shall be entitled to demand therefore one shilling; and in case the date or day of return of any writ or process so issued in conformity to such *fiat*, or the name of any party in manner as above directed, shall be altered or changed, no return thereon shall be admitted or received by this Court.

SECTION VI.

Of Appearance, Election of Domicile, and Default.

1.—If at the return of any process or rule of this Court, the Defendant thereupon shall personally appear in Court, to defend any action, suit or rule, against him brought, he shall at the time of such appearance make an Election of Domicile in the town of Montreal, and which shall be considered as his place of legal residence to all intents and purposes,

respecting and during the prosecution of the said action, rule or proceeding.

2.—And where any Defendant may fail to elect such domicile, the Plaintiff may proceed in the cause, by a regular service of rules and other legal acts, upon the Defendant, in the Prothonotary's Office, as his legal domicile and place of residence.

3.—The above rule for the Election of domicile shall also extend to all Defendants who may personally take upon them the defence of any suit, in any stage of a cause, after the return of process.

4.—That in all causes where a return of service be made on any process of summons, and the Defendant may not personally, nor by an Attorney, have duly entered an appearance on the return day of such process, and during the sitting of the Court, the Prothonotary do, immediately after the rising of the Court, on the respective days of return, enter on such process a note of such non-appearance or default, and in every case where such default may be so entered, the Plaintiff may, on the third day of the Court, after said return day, move that the Defendant may be called for his appearance; and failing to appear, a judgment of default may conclusively be entered, and the merits of the Plaintiff's demand be examined, heard and adjudged upon *ex parte*, at such day as may be appointed for that purpose.

5.—It is ordered that every Attorney employed to appear for any person, in any suit in this Court, do enter such appearance immediately after the opening of the Court, at the return day of the process, and that in every case where no such appearance may be entered, the Prothonotary do cause the Defendant, or person bound to appear, to be called previous to making the default directed by the Rules of the Court in such case made.

SECTION VII.

Concerning Attornies, and of their Prosecuting and Defending Causes.

1.—It is ordered that no Attorney shall sign any writ, process or declaration, nor appear for, nor defend any per-

in this Court, unless he may be thereto duly authorised.

—That any Attorney who may accept a warrant to appear; shall duly make appearance for such party; and will neglecting so to do, shall be liable to be suspended from Roll and Practice of an Attorney of this Court. Nor shall any Attorney be received to countermand and withdraw such appearance without due notice to his client, and the order of the Court.

—That no person, without a rule of this Court, or an order of a Judge, and after due notice of the same to the adverse party or his Attorney, shall be admitted to change, or withdraw his Attorney in the cause.

—And every Attorney who may be substituted in the place of any other, for the charge and conduct of any party in a cause, shall, at his peril, take notice of, and be bound to observe all rules and proceedings to which the former Attorney or would have been liable, had he continued as Attorney in the cause.

—That an Attorney who shall appear for any party in a cause in this Court, shall be held and taken to be the Attorney for such party, in all matters and proceedings whatsoever, collateral and incidental to such suit, as well after as before judgment. This Rule, however, shall not be held to extend to such proceedings, after judgment, as by special order may require personal notice to a Defendant on a judgment obtained, as rule nisi for renewing a writ of execution, or the like.

—That no Attorney of this Court, upon pain of being excommunicated and struck from the Roll of Attornies, do permit any one to practice in his name.

—That no Barrister, Attorney, Prothonotary, Crier, Sheriff or Sheriff's Officer, shall be Bail in any action or suit brought, or that may be depending in this Court.

—That every Barrister, Advocate or Attorney, who may be in practice in this Court, and not having absented himself for twelve months, and all the several Officers of this Court, shall respectively be held and considered as personally present, to answer every legal claim, suit, and demand that may be preferred against either of them by any

person whomsoever; and shall be bound to answer the same, without the service of process of summons, requiring an appearance to answer any such demand; the course of proceedings being, in every other respect, conformed according to the general rules of practice.

9.—That no Barrister or Attorney, who shall be legally dismissed or suspended from practice, in any of his Majesty's Courts of Law, shall be admitted to practice in this Court until such Barrister or Attorney shall have been readmitted to practice in the Court in which he hath been so dismissed or suspended from practice.

10.—It is ordered that no person who by any contract in writing shall hereafter become bound to serve a Clerkship required by law to entitle him to be admitted as a Barrister or Attorney in his Majesty's Courts of Law in this Province shall be examined upon any reference made to the Judges of this Court, unless the Indenture or other writing containing such contract shall be registered within three months from the date thereof in the office of the Prothonotaries of the Court in a Register to be kept for that purpose, nor shall any person to be examined in consequence of any such reference in order to be admitted as a Barrister or Attorney as aforesaid or as a Notary Public until notice of the time and place of such examination, and the name of the person to be examined, shall have been affixed upon the principal door of the Court House of this district, where public notices are usually affixed, and shall there have remained for and during the space of one week, and that no such examination shall be had until (in the case of an application to be admitted as a Barrister or Attorney) an affidavit of the person to be examined or the Barrister, Attorney, Clerk or Prothonotary to whom he was bound, shall be made and filed to the following effect: viz: that according to the intent and meaning of the Provincial Ordinance, 25th Geo. III, chap. 4th, he hath bona fide served a regular and continued Clerkship for and during the space of five years, under a contract in writing (to which thereunto annexed) for that purpose made and entered in writing with some Advocate or Attorney duly admitted and practising in the Courts of Civil Judicature in this Province or in some other part of his Majesty's dominions or with some

aforesaid shall be filed of record. And every defendant shall be entitled to a copy of such affidavit of record as aforesaid.

2.—That upon every Capias or process *ad respondendum* upon which bail is required, or upon an order of *saisie* or attachment, when the goods attached may be legally claimed and retained, or repossessed, upon giving security, the Attorney or person obtaining such writ, shall indorse upon said writ or process, that the same hath been obtained upon affidavit, and the amount of the sum sworn to, for which bail or security should be required, in the form following:—“issued upon the affidavit of— (*expressing the name,*) “the sum of — (*expressing the same in words.*)” And such indorsement shall be signed by the Attorney, by whose ministry (or Plaintiff, if by him personally obtained,) the writ or process may have issued.

3.—And it is ordered that no such process, requiring personal arrest of the body or an attachment of goods, shall be executed, unless there be thereon the indorsement above mentioned.

4.—That whensoever any person arrested upon a Capias *respondendum* or attachment, may be desirous to enter special bail, the same shall be taken, if in Term time; in open Court, after due notice of two full days, or forty-eight hours to the plaintiff or his Attorney in the cause; in which notice shall be expressed the names of the Bail proposed, their respective occupations and place of abode, to the end that the plaintiff may, at the time of putting in such bail, require persons, so becoming bail to justify upon their sufficiency to answer the debt and costs, in case the defendant shall fail in the action. And that every plaintiff who shall neglect to require such justification, at the time the bail may be so put in under notice as aforesaid, shall not, at any future period, be permitted to require justification.

5.—That any person, under arrest as aforesaid, may be permitted to go on vacation, after the first Term, or during the vacation of any future Term, (if the plaintiff's cause be not ripe for judgment, and under *délibéré* at such period) be permitted to enter special bail, and justify upon the same, before any two of the Judges of this Court, under and conformable to the present rules of practice for notice in putting in and the just

every defendant on of special bail: And upon perfecting special bail as
 record as aforesaid, the defendant so under arrest, may be liberated
 as *ad respondendum* in the same, by the order of any two of the Judges afore-
 an order of *saisie* and *sequestration*.—And whereas, by the rules of practice every defen-
 may be legally claim- it is bound to plead within certain limited periods, it is or-
 ed, that every defendant, arrested on a writ of *Capias ad*
 all indorse upon *respondendum* or attachment, and in custody, shall be bound
 been obtained up- ed, according to the rules of this Court, whether spe-
 sworn to, for wh- bail be put in or not, and that no delay in the cause be
 the form followi- by reason of putting in bail or justification, as above
 (passing the name,) in words.)” A

Attorney, by wh- 7.—That whensoever any person may be arrested upon a
 y obtained,) the want of bail, either for appearance or of special bail to
 process, requiring action, such person so arrested and committed by the
 ment of goods, sh- rief (or Coroner where the Sheriff cannot legally serve
 indorsement abo- process) shall remain in custody until he may find special
 in the action. And where he may not find special bail
 ed upon a *Capias* er such commitment, until two days, exclusively, after the
 desirous to enter s- intiff may legally have and obtain a writ of *Capias ad satis-*
 Term time; in o- *faciendum*, whereupon he may charge the person so commit-
 or forty-eight ho- with such judgment as the plaintiff may obtain.

8.—And it is further ordered, that whensoever any person
 arrested upon *Capias ad respondendum* or attachment, shall
 find special bail, and be afterwards surrendered in discharge
 of the same; the person so surrendered, and in custody, shall
 not remain in prison, under such surrender, longer than two
 terms after judgment shall be recovered against the debtor;
 and upon which a *Capias ad satisfaciendum*, might legally be
 had (of which the Term when judgment may be given shall
 be accounted one) unless the plaintiff shall lodge with the
 Sheriff a writ of *Ca. Sa.* whereby the body of the debtor
 may be charged and detained.

Of surrender of a Debtor in discharge of Bail, &c.

1.—It is ordered that whenever the Sheriff shall take bail
 for the appearance of the party arrested, upon writ of *Capias*
respondendum; his return upon such writ shall specify the

taking of such bail, that the plaintiff may pursue a regular course thereon.

2.—And in case the party so admitted to bail do not appear on the day of the return of the writ, the plaintiff shall be entitled to demand and obtain from the Sheriff an assignment of the bail bound for such course thereon as he may be advised.

3.—That such assignment of the bail bond shall not be considered, as exonerating the Sheriff, if it shall appear that the bail by him taken was not at the time of taking the same sufficient to secure to the plaintiff the rights by him prosecuted, under such writ of *Capias*.

4.—That the defendant arrested under a writ of *Capias ad respondendum*, may surrender himself, or be surrendered by his bail, at any time previous to an assignment of the bail bond, and the bail be thereupon discharged.

5.—That after the assignment of the bail bond, or an action brought thereon, a like surrender may be made at any time before judgment against the bail, on payment of all costs that have arisen by reason of the assignment of the bail bond, or of prosecuting the bail; or at any time previous to a return upon the Sheriff to bring in the body, or pay the debt due to the plaintiff from the person so arrested; and the same upon his neglect, being declared absolute.

6.—That such upon the Sheriff to bring in the body being (by reason of his neglect or other causes) declared absolute shall charge and render the Sheriff liable to pay the debt and costs which the plaintiff may establish against the plaintiff's original debtor arrested and bailed.

7.—That a rule plaintiff may take an assignment of a bail bond and prosecute thereon; but shall not obtain judgment until he may have established his debt against the defendant of the original suit upon which the bail became surety, either upon the *Capias ad respondendum* for appearance, or upon special bail in the action.

8.—That a surrender of a debtor may be made by himself or by his special bail, in vacation before any one of the Judges of this Court, and such debtor be charged to the custody of the Sheriff in discharge of the bail.

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It is ordered that in every case where a plaintiff may
 special circumstances of Tort, Trespass, personal inju
 to him done by the defendant, apply for a Capias *ad*
respondendum to hold such defendant to special bail in the
 course of proceedings thereupon, he shall by his affida
 in that respect to be made over and above swearing to a
 case sum of damages sustained, be bound in the said affi
 dit, fully to state the several grounds and circumstances of
 the Torts or personal injury and damages in order that the
 Judge taking such affidavit may in his discretion make such
 sum for bail as to him may appear reasonable from the cir
 cumstances of facts deposed to or any lesser sum, if any such
 sum for bail may be reasonable to be made thereupon; and
 without such special grounds be stated as aforesaid for Torts
 and personal injuries to be granted as aforesaid.

O.—In as much as it is necessary that a positive Oath to
 the existence of a debt should be made to entitle a party to
 obtain an order for a Capias *ad respondendum*; It is ordered
 that in every case where an Attorney *ad negotia*, for any per
 son absent from this province may make Oath to a debt by
 reference to document upon which any such debt is presu
 med to arise to the constituent and be due at the period of
 application for such suit, the said affidavit shall be accom
 panied by an Oath made by the Creditor, his Book-keeper or
 Clerk before a Judge of some Court of Record competent to
 receive such Oath, and if in Great Britain, such Oath to be
 made in conformity to the Statute in such case made and
 provided, and to the existence of such debt, and without
 which no writ of Capias *ad respondendum* shall be hereafter
 granted on the Oath of an Attorney *ad negotia*, who cannot
 affirmatively swear to the debt due to the Plaintiff at the time of
 taking such Oath as aforesaid.

SECTION IX.

*Security for Costs by persons prosecuting Suits, &c. who are not re
 sident within this Province.*

1.—It is ordered that in every case where any person not
 resident within this province, may prosecute any original or in-

dental demand or claim, by intervention or oppositon, he shall be bound within two days after the same may be entered in Court, to give security for costs, if a motion may be made for that purpose, to answer the opposite party's costs, if such plaintiff or claimant should fail to make good his demand.

2.—And that every party legally entitled so to move, shall obtain as of right, an order for security, being duly entered within two days after such motion; and on failure thereof that the action, claim, demand or opposition aforesaid, shall be dismissed with costs.

3.—And it is further ordered that every person who may be entitled to such security for costs, shall be bound to move therefor, within the period of four days from the entry of the action or claim aforesaid; otherwise he shall be held and considered as having waived and relinquished his right to such security for costs as aforesaid.

SECTION X.

Of Declarations and Pleadings thereto relating.

THAT the respective parties in every suit do state, with clearness and precision, the nature and grounds of the demand or action, and the defence thereto. And that in answers, pleas or replications to be made in the suit, particular attention be given to avoid a departure from the object of the demand or action, as every insufficient declaration or plea to the action, and every departure in pleading that may introduce irregularity in the suit, and in the issue to be joined upon clear and certain points affirmed and denied, will be rejected and dismissed by the Court, with costs, to be taxed against the party failing to conform to this rule and order.

SECTION XI.

of Pleas—Exceptions—Dilatory Pleas—and Inscription en faux.

—It is ordered, that all pleas or exceptions, *declinatoire, dilatoire, or peremptoire, à la forme*, shall be filed the day after the return of the writ or process or appearance of the defendant.

—That in every case where the parties, plaintiff or defendant, may have right and be so advised, every answer to an exception *declinatoire, dilatoire, peremptoire, à la forme*, and also every rejoinder to such answer where permitted to be made, shall respectively be filed within a like period of time as is allowed for filing such exception or declinatory or dilatory plea as aforesaid.

And due service shall be made of a copy of every such exception *declinatoire, dilatoire or peremptoire*, and of every such answer and rejoinder as aforesaid.

—And whereas the practice of filing pleas of general exception hath been frequently used for the purpose of evading and delay: It is ordered that no plea of exception, whether *declinatoire, peremptoire, à la forme, or dilatoire or peremptoire en droit*, or by whatever denomination or term such plea or exception may be described, shall be received or admitted in any cause, unless such plea or exception shall contain special grounds upon which the same may be founded, and upon which the party excepting is to be heard upon argument before the Court; and no general exception or plea of exception as aforesaid, not containing special grounds, shall be received or filed in any cause.

—Nor shall any such plea or exception be amended, after the same hath been filed; nor any such plea, except an exception *peremptoire en droit* be received by the Prothonotary of this Court, unless at the time of presenting the same to be filed, the party shall deposit with the Prothonotary the sum of six shillings and eight pence, on account of the costs that may be adjudged upon such plea if the same should be dismissed.

And it is declared, that no exception *declinatoire, peremptoire à la forme, or dilatoire*, shall require an answer from

the plaintiff in the cause, or any pleading or issue, if the plaintiff sees fit to have the same heard on its merits, without answer. And a verbal motion may be made by the plaintiff immediately after receiving such plea for argument thereupon, without any notice to the defendant for that purpose; and the same shall be heard forthwith, or so soon as the Court may see fit to order the same. It is, however, declared that the plaintiff so moving for hearing without answer, doth thereby confess the matters of fact contained in such declinatory or dilatory plea.

And in every case where the plaintiff shall think fit to answer such declinatory or dilatory plea or exception, and his answer may be general and not containing any special matter to which the defendant shall be bound to reply, the answer aforesaid shall form the issue between the parties upon the matters of such plea to be argued and adjudged, and replication shall be filed thereupon; And the hearing upon such plea and answer may be moved for and had without notice and in the manner before mentioned.

4.—That every defendant who may not plead either of the pleas abovementioned, shall, within three days after his appearance entered, file his defence or plea to the merits of the plaintiff's action, and also file all such writings and documents in his possession, or certified copies thereof, and upon which the plea or defence is made and grounded, with a certified list of the same; And that the defendant at the day of filing such plea do make due service thereof.

The above Rule is not to be construed to debar or prevent a defendant, personally appearing, from making such verbal answer or plea to the plaintiff's demand and declaration as by law is permitted to be done and entered.

5.—It is ordered that every exception *peremptoire*, or plea which respects the right and not the form of the demand, as well as all other matters or ground of plea to the merits of the plaintiff's demand, which might have been in the knowledge of the defendant, at the time of making such exception *peremptoire* or plea, shall be contained and set forth in one and the same pleading, and filed within the period allowed for filing a plea to the merits of the plaintiff's action.

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—That whensoever any defendant may have made a plea exception *declinatoire, dilatoire, or peremptoire à la cause*, or the plaintiff may have made any exception where hearing and judgment may be made, the parties respectively, after the judgment made as aforesaid, shall be bound to file a plea or replication or rejoinder, as the case may require, within the period allowed for pleading to the merits of any action, or replying to any plea to the merits, and without any special motion or order for that purpose.—If the party neglecting so to do may be adjudged as in a case of default for want of a plea. And if such neglect be the part of the plaintiff not filing a replication or other plea which of right he might have filed, he shall be foreclosed, and the cause proceed without the liberty to file a replication or other plea in the action.

—That whensoever a defendant may be committed to prison upon a *Capias ad respondendum*, or under the order of this Court for want of a special bail, being entered in the process, he shall be bound to plead to the plaintiff's action within the periods allowed by the rules of this Court to any other defendant, after the plaintiff may have duly served the writ on the defendant, so in custody, with a notice to plea in the action, conformable to the rules of practice in that behalf made and provided.

Inscription en Faux.

—It is ordered that whensoever any party in a cause may be entitled to make an inscription *de faux* against any act or instrument offered in evidence by the opposite party, he shall be bound to do the same previous to his making his plea or replication as the case may be. And that in any case when a party may plead to a declaration whereon exhibits are offered, he shall thereafter be foreclosed making an inscription *de faux*; and so if the plaintiff shall reply to the defendant's declaration wherein exhibits are filed, he shall be foreclosed as aforesaid. Provided always that this rule shall not deprive any party from making an inscription *en faux*, against any act or instrument offered in evidence subsequent to the plea or replication, as aforesaid, if such inscription be made previous

to setting the cause down for evidence, on the *Role d'Enquête*, or an appointment to be heard on matters of law issue between the parties and not otherwise.

9.—That in all cases when the writ of process *ad respondendum* may not be made returnable and returned on the first day of any term the defendant shall not be bound to file a plea in any such action until fifteen days after the return of the process may be made, and then according to the practice of this Court, as if the said writ, summons or process had been made returnable on the first day of any Term, and in case of any above delay for pleading shall extend beyond the sitting of the Court in term, when the same shall be regulated according to the 19th section of the Rules of Practice.

10.—Whereas the practice of filing general pleas upon plaintiffs demands under an *acte authentique*, which require no evidence on the part of the plaintiff and the defendant under such general plea claiming a right of *Enquête*, or proof has been intended with great delays,—It is ordered that whensoever a plaintiff may prosecute an action upon any *acte authentique* and upon, which action no verbal testimony may be required to support the plaintiff's demand, that every plea to the merits of the plaintiff's action shall contain the specific grounds to be set up in proof to lessen or exonerate and discharge the defendant from such demand, and upon which specific grounds evidence may be legally adduced, and that failing such specific grounds of defence, the plaintiff may of right set down the cause on the Diary or *Role de Droit* for hearing and judgment on the merits without proceeding to set the cause down on the Diary or *Role d'Enquête* for proof previous to such hearing on the merits.

11.—It is ordered that previous to the filing of any plea, exception, replication, demurrer or other pleading, the Attorney or party offering the same do enter and inscribe the same on the list of exhibits as being so filed in such cause and thereon specify the day of such exhibit being so filed and failing so to do that no such plea or pleading shall be received or offered on the record in the cause, but rejected, and proceedings had as if no such plea or pleading as aforesaid had been made or offered on the part of the party moving the same.

in the *Role d'Es* that in case a defendant do not file a plea within the periods
 matters of law ed by the Rules of Practice, he shall be considered to
 e. default, and the plaintiff shall be thereupon entitled to
 process *ad respo* need *ex parte* against him and to fix his cause by motion
 returned on the fi ourt for such day as he shall see fit, either for adduction
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SECTION XII.

Of Replications.

—THAT the plaintiff do, within three days after the de-
 tant may have filed and duly served the plaintiff with
 plea to the merits, or exception *peremptoire au fond*, file
 application, or such other plea as legally he hath right to
 , and do on the same day make due service thereof,
 otherwise he shall be foreclosed from filing any such replica-
 or plea.

—And it is permitted to the plaintiff, at the time of duly
 , and serving a copy of such replication, to file such
 er documents and writings, which the defendant's plea
 have made requisite, and that were not referred to by
 plaintiff's declaration, or incumbent on him to file there-
 , and whereon the said replication may be grounded ; of
 in writings a certified statement shall be made on the
 tiff's list of exhibits, already filed in the cause, conform-
 to the Rules of Practice.

SECTION XIII.

Of Incidental Demands.

—THAT every incidental demand shall be deemed and
 n to be a distinct action from the demand in chief, and
 not be permitted in any respect to delay the proceedings
 the plaintiff on his demand in chief, against which the in-
 dental plaintiff may by his plea set up a cross demand. Pro-

vided always that nothing in this rule shall extend or be construed to extend to any matter of reconvention or compensation which shall amount to, and be pleaded as a defence to the demand in chief.

2.—That when any incidental party may have several grounds of demand, he shall state and prefer the same in one and the same pleading; and at the time of filing the same shall also file all writings, deeds and acts in his possession or copies thereof, duly certified, upon which the said incidental claim or demand may be formed.

SECTION XIV.

Of filing Deeds, &c.—whereon any action may be grounded, and of other corroborative written evidence.

1.—THAT every plaintiff at, and on the day of the return of the writ or process, with a declaration annexed, do in the Prothonotary's office all such deeds, bonds, notes, books, accounts, documents and writings in his possession (or copies thereof by him or his Attorney certified as such) and upon which the suit or action may be grounded, as declared upon to the end that the defendant, under communication of the same, may prepare and make his full defence, and that the plaintiff do file with all such writings a certified list thereof, whereon such documents or exhibits shall be ascertained, a correct reference to the nature and dates thereof, and regularly numbered, and that failing such reference, by which the exhibits aforesaid may be ascertained, they shall not be held and taken as part of the record in the cause, and that the list be offered or filed but when it is to accompany and ascertain papers to be adduced in evidence.—And where copies of any exhibits so certified as aforesaid shall have been filed by a plaintiff with his declaration or replication, or by a defendant with his plea, the original of every such exhibit shall be produced and filed in this cause, and the copy withdrawn previous to the hearing of the cause on the merits or on some point in regard of which such exhibit hath been filed and filed so to do, such originals shall not afterwards be received or permitted to be filed in the cause.

—That on the day of the return of any writ or process, going out of this Court, at the instance and on behalf of any person, not resident within this province, the Attorney suing such writ or process, do file with the Prothonotary of this Court, the power or authority under which such writ and process may have been sued out, and insert and describe such power in the list of exhibits to be filed in the cause; or on the next day aforesaid do move the Court on the special grounds of not being able to file such power or authority, in order to obtain a further day for filing the same. And failing to file sufficient power or authority for prosecuting the action against an absentee, on such day as may be appointed by the Court, that no proceeding shall be had or obtained against the defendant in such action.

—That the plaintiff, in any suit before this Court, who possess any corroborative written evidence relative to the demand or defence thereto, and which were not in his possession at the time of first filing his exhibits, may, upon proof being made, appear at any time previous to setting the cause down for trial, whether on an issue at law or in equity, be permitted to file all such corroborative written documents as may relate to, and be connected with the matter in dispute between the parties. And that a list of such documents and writings be indorsed upon, or annexed to the plaintiff's list of exhibits filed in such cause, and in the manner as is in the first articles of this rule above directed.

SECTION XV.

Of Withdrawing Exhibits.

—It is ordered that the Prothonotaries of this Court do in any case, where final judgment may be made, grant before the Term or sitting of this Court, to any party in such suit, or his Attorney, any exhibit or paper filed as aforesaid therein, unless under the express order of this Court to the contrary; nor shall any party interested obtain any such ex-

hibit in Term time, unless he shall have duly served on the other party or parties concerned in the records of such action, a notice of the intended application, and to shew cause why the same should not be withdrawn from the records of this Court, and delivered to the party so requiring the same.

2.—And if any application be made during the vacation to withdraw any exhibit or paper filed in evidence in any cause, the same shall not be granted, unless by the order of two of the Judges of this Court, and after due notice to the adverse party interested therein, of such application to shew cause to the contrary, if any they may have. And if the application be granted, a true copy of such exhibit or paper, authenticated by the Prothonotary of this Court, shall be filed on record before the paper applied for shall be withdrawn.

3.—That no exhibit shall be withdrawn from a record on which execution may be issued, as directed by the rule in relation to issuing executions.—*Sect. 35, 3.*

SECTION XVI.

Of Communication of Writings filed in any cause to be offered in evidence.

1.—THAT it be clearly understood, and it is hereby ordered, that every party in Court entitled to communication of papers, documents or writings filed conformably to the rules of this Court, do apply to the Prothonotary's office for the same, as a matter of right, and without special motion or application to the Court for that purpose; and that all such parties may receive the said communication of papers as aforesaid, upon lodging a list and receipt at the said office for the writings so filed and taken in communication. And that every party so receiving the same shall be entitled to hold the said writings so long and until the period he may, by the ordinary rules of practice, be bound to file his defence, replication or other plea, and no longer.

2.—It is however, expressly provided and directed, that no act *sous seing privé*, or original paper writings of any description whatsoever, upon which an action or defence may

de or founded, shall be removed or taken possession of communication from the Prothonotary's office, for any or pretence whatsoever.

SECTION XVII.

Of Records.

AS many of the Records of this Court have, at different periods, been taken from the office of the Prothonotary, contrary to the express Rules of Practice and to the repeated orders in that respect, verbal-ly expressed by the Court; and such a practice, if suffered to continue, must be attended, not only with delays, vexations, and of serious consequence to the parties interested, but may, in a highly criminal manner, obstruct the administration of justice:—

It is therefore ordered, that any Attorney or Advocate of this Court, who by himself, or through the ministry of a clerk or other person, shall take or withdraw from the office of the Prothonotary any pleading, exhibit or paper filed in any cause, or any part of a record in any cause, contrary to the 16th Section of the general Rules of Practice for taking and communication of writings, filed and to be offered in evidence, shall be considered as having committed a contempt of this Court, and the same be proceeded upon accordingly.

—And it is further ordered that no Prothonotary of this Court shall do presume to deliver, or suffer or permit the record, or any part of the record in any cause, deposited in his office, to be withdrawn therefrom, either by himself or through the ministry of any clerk or person he may entrust with the custody thereof, except to any of the Judges of this Court, or any of the Attornies thereof, conformable to the 16th Section of the Rules of Practice, in that respect, made for the communication of writings, &c. upon the penalties attached to an open contempt of this Court, and in violation of the Rules proposed in the discharge of his official duties.

SECTION XVIII.

Of Intervention.

It is ordered, that whensoever any person legally has rights to sustain, and who may be desirous to intervene become a party in any suit that may be pending in this Court the same shall be moved in the manner herein after expressed, and previous to the cause being finally heard.—

1.—THAT the party intervenant, shall file a *Requête en intervention*, which shall contain the grounds of the demand and several rights which are intended to be alledged and obtained in the cause, and in respect to the party before Court in suit.

2.—That the said *Requête* shall also contain all such conclusions or claims as the party, plaintiff *en intervention*, have or intend to make in the said cause, to the end that all the legal issues may be taken upon the same, and the original proceedings proceed without delay.

3.—That the said plaintiff *en intervention* shall file in the Prothonotary's office, (on the day ordered upon such *Requête* for the party's appearance to the same,) all such writings and documents in his possession whereon the demand may be made.

4.—That any party intervening as aforesaid, shall, on the day of filing the intervention, give due notice thereof to the several parties in the cause, to the end that due consideration may be taken thereupon, without delay.

5.—That all and every further proceeding upon any intervention, as aforesaid, whether on exception or plea to the merits of the same, and the issues thereon to be taken, the filing of all writings, exhibits or documents, touching the respective interest of the parties, shall be moved, argued and done, conformable to the general Rules of Practice of this Court on original actions.

6.—That whensoever a *Requête en intervention* may be made by the party interested, and not by an Attorney of

such party shall at the time of making such Requête, herein and previous to an order thereon for an appeal, fix and elect a domicile, where course may be taken and judgment may be had respecting the same.

SECTION XIX.

Of Pleas and Issues to be formed during vacation.

ordered, that in all cases where a plaintiff or defendant, by the present Rules of Practice, be bound to appear after appearance, and during the sitting of this Court, the party shall be equally, and in the same manner, bound to appear, during the several vacations and out of Term. But as long as a further time may be allowed for filing such pleadings, respectively, ten days are granted to the respective parties for duly filing any plea or replication, of what nature soever, during the vacations after February and April terms; and twenty days after the vacation of June and October terms. The like delay is granted for filing the several exhibits, and such plea or replication, as are directed or permitted by the Rules of Practice of this Court. And that these rules shall equally extend and be applied to all cases of oppositions and interventions.

SECTION XX.

Of Declarations, &c.—On Evocation of Causes from the inferior Term.

AS it may be necessary, in every case, where the evocation or removal of any cause may be made and admitted from the jurisdiction of the inferior to that of the superior Term of this Court, that the plaintiff should more specially set forth the cause of action than is required by the Rules of Practice, on ordinary process and proceedings before the said inferior Term.

It is therefore granted and ordered, that the plaintiff shall have three days inclusive from the allowance of such evocation.

cation or exception, file with the Prothonotary a declaration containing the special grounds of his case and demand, therewith file all such documents, writings and evidence whereon such declaration may be grounded; and that defendant and plaintiff shall then after conform to the Rules of Practice for filing pleas or exhibits, and bringing the case to issue, hearing and judgment.

SECTION XXI.

Of General Rules for Pleading, and of other Proceedings.

1.—It is ordered that the Rules of this Court, directed the filing of pleadings, writings, or papers of what nature soever, be strictly conformed to, as peremptory rules in every cause in court, and that a neglect of the same shall be considered as a default, and wilful disobedience to the rules of this Court.

2.—That every rule of this Court, made in the presence of the parties, or their Attornies in Court, shall be considered as sufficiently notified, without the service of any rule or order being requisite to enforce the same.

3.—And whereas particular circumstances and cases at times, require an enlargement of the rules of this Court, the same (upon sufficient cause shewn) will only be granted where application may be made, one day at least, previous to the expiration of such rules.

4.—And upon every groundless application for the enlargement of any rule, the party applying shall, at the taxation of costs in the suit, be adjudged upon all such dilatory proceedings, to pay full costs.

5.—That all pleadings, notice, rules, orders and judgments, and all other matters and proceedings, of which notice is or shall be required, upon any party in any suit pending in this Court, shall be served upon the Attorney *littem*, who shall have appeared in this Court for such party. And in default of such appearance by Attorney, shall be served at the elected domicile of such party, if he may have

Prothonotary a declar-
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ed personally; those instances excepted in which perso-
 service upon such party, is by Law or any Rule of Prac-
 or any special order made in the suit, required & directed.

—That all proceedings upon writs of *Certiorari*, *Pro-
 nion*, *Mandamus*, *Quo Warranto* and *Habeas Corpus*,
 upon each of them respectively, be in all things similar
 the proceedings, upon such writs, in his Majesty's Court
 King's Bench in England, in Westminster Hall.

—That all Rules and Orders for the conduct and regu-
 n of any Attorney or Counsel of this Court, in any cause
 in depending, shall extend to the party in such case per-
 ily appearing; and where no appearance by Attorney
 have been entered on behalf of such party, be Rules
 Orders for the conduct and regulation in every respect,
 ch party so personally appearing.

Other Proceedings.

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—That every order of any Judge of this Court, which
 be obtained in vacation, shall be subject to an appeal to
 Court, and the validity thereof impeded, by moving the
 rt to set aside the same, or to set aside the proceedings
 h have been had under it. Provided, that any such or-
 which may be made with consent or otherwise acquiesced
 shall be as valid as any act of this Court.

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 he same.

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—That all order and rules for the conduct and regulation
 e Sheriff in the execution of his duty, or any part thereof
 extend to the Coroner, in all cases in which, from any
 e whatever such duty or any part thereof, shall or ought
 e executed by him.

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0.—That no paper of any description shall be received
 led in any cause, by the Prothonotary of this Court, un-
 the same be regularly docketed, with the title and num-
 of the cause, and the general description of such paper,
 the declaration and pleas, alphabetically marked in their
 lar order.

orders and ju-
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 rty in any suit
 on the Attorney
 ert for such pa-
 rney, shall be
 if he may have

1.—That all writs and process of this Court shall be tes-
 on the day on which such writ or process shall issue.

2.—That a point of practice settled by a judgment of
 Court, and entered on the Prothonotary's book of
 rules of Practice," shall not be reargued.

13.—That no reference to *arbitres*, or reports, or other reference of any description, shall be made by rule or order of this Court, or entered by consent or otherwise, in a case before the issue or issues in such case shall be perfected and then only of the matters to which such issue shall relate.

14.—That no writing or written conclusion be presented to, or received by this Court, upon any Rule *Nisi*, or upon any report of *Arbitres*, *Experts*, or *Practiciens*, nor any issue in writing be raised thereon. The validity of every such report or rule *Nisi* will be verbally heard on the respective motions taken in due course, by the parties interested, unless specially otherwise ordered by this Court.

15.—That on the hearing of any motion, plea or incidental matter, or on the trial or merits of any cause, no more than two Counsel shall be heard in opening or in answer and only one in reply.

And that a witness shall be examined by one Counsel and no more, and cross-examined by one Counsel and no more.

16.—That every affidavit or certificate of a bailiff, of a copy of any pleading, notice, rule, order, interlocutory judgment, subpoena, or other matters, shall particularly describe the manner, place and hour of service; otherwise the same shall not be received or filed. And if from such affidavit or certificate it shall appear, that such service was made upon a Sunday or Holiday, or upon any other day, before the hour of six in the morning or after the hour of eight in the evening, such service shall be held and taken to be null and void to all intents and purposes whatsoever.

17.—That in all computations of time, or delay granted upon the service of any writ, summons, rule, order, notice or judgment of this Court, and generally upon all proceedings whatsoever, not otherwise particularly provided for, the day on which such writ, summons, rule, order or judgment shall be made, or upon which service of any such writ, rule, order, notice, judgment or other proceeding may be perfected, shall not be reckoned or accounted to be one, but every other day to which such computation of time shall refer (Sundays and Holydays not excepted, unless the expiration of time should occasion the rule to expire on a Sunday

or reports, or other day, in which case an enlargement of time shall be made by rule or order (the next day) shall be accounted to be one, and that no other otherwise, in any computation of time shall, in any such computation, be made or shall be perfected. If the day shall be a Sunday, the day shall be accounted to be one, and that no other otherwise, in any computation of time shall, in any such computation, be made or shall be perfected.

—That in every case where, by the Rules of Practice, any business is to be performed at a particular period, with reference to the records of this Court, the same shall be done, in the office of the Prothonotary, within the Office hours appointed, and at no other time.

SECTION XXII.

Of Trial of Causes at Issue.

—THAT a roll and general list of all causes be kept by the Prothonotary, including as well causes continued as newly instituted, expressing the time issuing and of the original writ or process, the number of the parties, the names of the parties, and those of the Attorneys appearing for each party; also that the nature of the demand be expressed, and a blank column left for noting proceedings thereon had.

—That another roll or list of causes shall be made, by the Prothonotary, to be used as a diary in each term for setting down all causes for hearing, whether on matters of law or fact, by Jury, or on *Enquête* and examination of witnesses, the same may be severally appointed. On which list shall be expressed the number of the cause, the names of the parties and of their several Attornies, and the order or intent of the appointment for hearing. And which entry shall be conclusive against the parties and their Attornies.

—That the Prothonotary shall prepare and keep a separate and distinct roll or list of causes for *Enquête* and the examination of witnesses, as well of *Enquête* to be had in Term, as out of Term, and wherein entries may be made of proceedings had thereupon. And the said entries shall be conclusive against the parties and their Attornies.

SECTION XXIII.

Of Motions and hearing thereon.

1.—THAT every motion to be made in any cause, shall be expressed in writing, and signed by the Advocate or the party applying to the Court, and be delivered to the Prothonotary before moving of, or hearing the same; nor shall a motion be heard, unless for a rule to shew cause or motion for judgment, or default of appearance, or neglect to plead or disobedience to any rule or order or interlocutory judgment, until due notice, of at least one day, shall have been first given to the adverse party or his Attorney.

2.—That all motions for enlargement of rules, or to shew cause, shall be made and heard at every sitting of the Court prior to the trial of any cause on issue joined.

3.—That the service of any notice of motion, to be heard at a succeeding day, shall be deemed regularly served if the same be made during the sitting of the Court on the day preceeding the hearing so notified.

4.—That no motion for judgment upon the verdict of a Jury shall be made or received until after the expiration of four days in Term, from the day on which such verdict shall have been recorded.

5.—That if any matter be moved in Court in presence of the Attornies, or Counsel of the parties, and the Court thereupon shall make a rule, the same shall not again be moved contrary to such rule.

6.—That a motion which cannot be decided, unless by a rule or order, by which the merits of the case will be decided, shall not be allowed.

SECTION XXIV.

Of Hearing on Law Issues.

THAT whensoever any law issue may be formed in any cause, as a temporary or perpetual Bar to the plaintiff's

and such cause be regularly inscribed on the diary for *en droit*, the same shall come on to be heard on the appointed, unless good cause be shewn to the contrary. If the plaintiff shall not appear, or not shew good cause by the hearing so appointed, and the defendant be ready to proceed, the plaintiff's action shall be dismissed, with costs to the defendant, if the conclusions taken by the defendant be so made as to warrant such judgment. If the plaintiff shall appear and be ready to proceed, and the defendant raising such issue shall not appear, or not ready to proceed, or not shew good cause to the contrary, the defendant shall obtain a further day to be heard, his plea in Bar to the plaintiff's action, whether temporary or perpetual, shall be allowed with costs to the plaintiff, who may forthwith prosecute due course to judgment on his principal demand. The defendant be entitled to further notice, or to any further proceedings in the cause, until he shall have paid the plaintiff's costs, which may be awarded as before said.

SECTION XXV.

Exception to any Interlocutory, Order or Judgment of this Court.

As by an Ordinance passed in the 27th year of his Majesty's reign, chapter 4. It is enacted that whenever the opinion of any Court of Common Pleas may be pronounced upon any law, usage, or custom of this Province, and that any party may conceive the same to be an injury, he shall be allowed to make an exception to the said opinion to be preserved in the minutes of the said Court, and which said exception that respect is extended to the government and proceedings in the said Court. It is ordered, that, in every case where such exception may legally be admissible, the party making the same shall deliver the same, during the sitting of the Court, or at the Prothonotary's office, in the course of the day on which the opinion or judgment of the Court shall be given, and against which such exception may be raised. And that any exception which may be offered, at any future day, shall not be received nor entered on the Records of this Court.

SECTION XXVI.

Of Exceptions to the regularity of service of Process, and Affidavits on, and of exceptions to the regularity of filing Exhibits on sufficiency.

In order to prevent delays and expences occasioned by issues raised on exceptions to the regularity of suing out process, and of written exceptions or pleading the regularity, or sufficiency of exhibits and matters of record filed of record.

1.—It is ordered that no writing by way of plea or exception shall hereafter be allowed to the form, service, or matters regarding the regularity or sufficiency of any writ or process that may be issued out of this Court nor to any affidavit that may be made for obtaining any writ or process, but that every alledged defect, or irregularity respecting the same, shall be declared, heard, and judged upon motion, and not otherwise.

2.—And that only on the day of the return of such process or at the day allowed by law for taking off a default, or otherwise the supposed defect shall be deemed to be waived. And shall any matter concerning the sufficiency or regularity of any exhibit, filed or to be filed in any cause, be made complained of by a written exception or other pleading, shall be declared, heard and adjudged upon motion, or legal objections at the hearing of the cause, as the party so objecting may consider to be most advisable, and not otherwise.

SECTION XXVII.

Of Witnesses and their Examination, of Evidence and of Enquiry.

1.—The Court having taken into consideration the charges that are liable to be committed by the allowance for the procuring and attendance of any unlimited number of witnesses whatsoever, in causes brought to issue in this Court

red that from and after this day in any cause wherein
 es shall be subpoenaed to appear and give evidence in
 ert, no allowance whatever on the taxation of costs,
 r of the one party against the other, shall be made for
 aining and attendance of more than six witnesses, (if
 y there shall be) for each issue that may be properly
 between the parties, should there be more than one
 cause.

To the end, that all the evidence taken in any cause
 certainly known and established of record.—It is or-
 that in all causes where the sum prosecuted for may be
 twenty pounds sterling, or where an appeal may lie
 the judgment of this Court, and any depositions of wit-
 may be taken, the Prothonotary do enter on the re-
 of this Court, except in causes tried by Jury, a regu-
 of the names of the witnesses so examined, and the
 when their respective depositions were taken, and also
 do file with the proceedings in the cause, a certified
 of the same.

That in every cause brought to issue in Term time,
 n witnesses may be examined, such examination shall
 ved for and appointed in Term, (if there be a day
 n, in which the motion could be made) to be heard
 t succeeding vacation, and not otherwise.

And that in every cause brought to issue during vaca-
 herein witnesses may be examined, such examination
 e moved for hearing the next or succeeding Term, and
 ty failing so to move for the examination of witnesses,
 e bound to give fourteen days notice in Term, on any
 subsequent to the period of which the same might
 een made for the examination of witnesses on such

And in case the party shall after the period aforesaid
 a motion might first have been made after issue joined)
 or the examination of witnesses in vacation, no such
 ation in vacation shall be had until fourteen days after
 g a rule for that purpose.

That no examination of any witness about to depart
 ovince shall be had or taken in any cause, during any
 or sitting of this Court, unless issue be joined on the
 or matters of fact in controversy between the parties;

the examination of a party on *Facts and Articles*, as provided by the Rules of Practice, excepted.

6.—Nor shall any such examination of a witness, about to depart the Province, be had or taken in any cause on the part of the defendant, where by the Rules of Practice, such defendant ought to have pleaded to the merits, and hath done so. Nor shall any such examination of a witness be had or taken on the part of the plaintiff, where by the Rules of Practice he should have replied to the defendant's plea, or taken issue on the merits, and hath not so done previous to his application for the examination of a witness, as aforesaid.

Of written
Evidence in
possession of
an opposite
party.

7.—That any party in suit before this Court who may be in the possession of any original instrument, writing, or document that may relate to any matter in dispute between the parties aforesaid, shall, upon due notice to produce the same, be bound to appear and produce in this Court (subject to its further order respecting the same) such original instrument, writing or document, and failing so to do, the party notifying the possessor as aforesaid may offer legal testimony to adduce a copy of such original instrument, writing or document in evidence in such cause, unless good cause be shewn to the contrary.

And it is ordered that the notice above said be served upon any party, or his Attorney in such cause, to produce any writing as aforesaid, and be served, subject to the delays or periods respectively allowed for the service on instituting the action, according to the place of residence of the party who may possess such writing to be produced as aforesaid. But that in every cause where a party may appear by Attorney, the service of such notice for producing any writing as aforesaid, shall be legally and sufficiently served on the Attorney appearing for the said party in the action, unless such delay for communication to his client, as may appear reasonable.

Articles, as pro

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of Practice, such
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t that may relat
n the parties af
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to his client, as

—It is ordered that after issue may be joined, whether on the merits, or on any collateral point of the cause, for verification of facts alledged, it shall be competent for any party uniting in such cause to obtain an order and set the cause down in the Diary or *Roll d'Enquête* for examination of witnesses. And any party moving for further continuance, or a more distant day for such *Enquête* or examination aforesaid, or the continuance and defence of any *Enquête* already appointed, shall make grounds of such motion upon oath, stating in an affidavit, not only all the causes which have prevented or may prevent the witness or witnesses of such party from attending, at the day moved for setting down the cause and the periods when the witness or witnesses are expected that such witness or witnesses may be able to attend, but also particularly depose to the grounds of such motion, and that the party may be able or expect to prove, by the testimony of such witness or witnesses, and that the party is unable to do so, in addition to all other matters incidental to the cause, in an affidavit for continuance of an *Enquête* or examination. And if any affidavit for such continuance or examination shall not state the above grounds and circumstances, it shall not be received or argued.

And it is ordered that no fee or costs shall be taxed, in taxation of costs, in the cause for such continuance or examination.

—That every cause regularly set down on the *Diary* or *Roll d'Enquête*, for the examination of witnesses, whether on the merits of such cause or on any collateral issue joined therein, the hearing of the examination of the witnesses shall come on, at the day appointed, unless good cause be shewn to the contrary, and so inscribed in the *Diary* or *Roll d'Enquête* by the Court, or the sitting Judge. And on the part of the plaintiff, if no such sufficient cause be shewn, he shall be excluded from a further day, and upon motion in Court by the defendant for that purpose, the plaintiff's action if the examination aforesaid

Of setting down causes for trial or *Enquête*, and of putting off such trial & *Enquête*.

The cause when appointed for *Enquête* shall come on to be heard.

unless cause be shewn to the contrary.

Plaintiff's action shall be dismissed for default in not proceeding on the merits.

& judgment against the party in default upon collateral issues.

If defendant be in default plaintiff may proceed *ex parte*.

No witness shall be examined, who has not been subpoenaed, or appeared on the first day of the *Enquête*, and so inscribed on the Diary.

If a further day be granted, it shall be conclusive, if no cause shewn, —and judgment given as directed by art. 9, & 10, above.

was to have been had on the merits, shall be dismissed, *sauf à se pourvoir*, with costs to the defendant. And if the examination was to have been had on any collateral issue, such issue shall be taken and adjudged against the party first ordering or raising the same with costs, by reason of his default in not proceeding thereon.

10.—And on the part of the defendant if witnesses shall not attend on the day appointed for examination on the merits, or he be not ready to proceed, unless good cause be shewn for the non-attendance, and so inscribed on the Diary, Roll d'*Enquête*, by order of the Court or examining Judges, he shall be precluded from any further day for the examination of witnesses, and the plaintiff may proceed *ex parte*.

11.—That no witness shall be examined on the part of any party in a suit, but such as have been summoned to appear, or do actually appear, and are called at the day first appointed, and (if examined) whose names have been inscribed on the Diary for examination. Nor shall any motion at any future day, be received for the hearing of any witnesses in the cause, who may not have been so called, and whose name may not have been, in order of the Court or examining Judges, inscribed on the Diary, with permission expressed to be examined at a future period, or any in Court given by the said Judges, for hearing on the right to obtain such further examination.

12.—That if reasonable cause be shewn for the non-attendance of witnesses, on the part of any party in a suit, and a further precise day be granted for such purpose by the Court or examining Judges, and no attendance or examination of witnesses should take place at such day, the party failing to bring forward or examine his witnesses shall be precluded from obtaining any further day for such examination, and judgment shall be awarded upon the case, conformable to the issue

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the parties, as is directed by the 9th and 10th
es of these rules.

—Nor shall any motion be received for gran-
ny further day to examine any witness or wit-
g, unless the party so moving shall first offer
e ready to pay the opposite party all the costs
may have accrued to such party from the insti-
a of the action, to the period of such motion.
f under such condition the Court or the exa-
ng Judges shall permit the examination of any
ss or witnesses in the cause, the day to be
ed for that purpose shall be final and conclu-
and judgment pronounced in the cause, ac-
ng to the course of the Court, and its Rules
actice, in such case provided.

—And inasmuch as the partial, as well as
complete examination of witnesses on one side
cause, at one day; and a like examination of
esses on the other side at another day, is at-
ed with great inconvenience and frequent pre-
e. It is ordered that on calling on a cause
the Diary or Roll of *Enquête*, for examina-
of witnesses and proceedings therein, all the
al parties submitting thereto or not opposing
ame, shall be concluded as being fully prepa-
or the complete and entire examination of all
witnesses respectively. And that no motion
elay in closing the *Enquête*, or for further
ination of any witness not attending, shall be
ved or heard, unless made previous to the
ination of any witness upon the opening of
Enquête.

—And that if any party shall move for the
nuance of such *Enquête*, or the particular
ination of any witness to be heard thereupon,
ll be under the several limitations and restric-
directed for the putting off a trial or *En-*

No further
or third day
of *Enquête*
allowed, but
on payment
of all costs, &
the third day
shall be con-
clusive.

The *Enquête*
being open-
ed & begun,
no allegation
shall be re-
ceived of the
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Every mo-
tion for delay,
must be sup-
ported by af-
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taining speci-
al causes, &c.

And it shall be in the discretion of the Court or judges to direct the entire continuance of the *Enquête*.

Subject to payment of costs.

and if no sufficient cause be shewn for delay, and parties do not proceed, action may be dismissed, as by art. 9 & 10

Either party may oppose and prevent a partial examination of witnesses.

And thereupon shall be allowed costs of his witnesses' attendance.

And no further proceedings until costs be paid.

16.—And it shall be in the discretion of the Court or the Judges attending, to make such *Enquête*, under the special circumstances of the case where no examination may have been entered upon, to direct the entire continuance of the *Enquête*, and examination of all the witnesses on a future day; in which case the party moving for such continuance, shall pay to the opposite party or parties, the costs and expences of summoning and the attendance of all the witnesses then attending for examination. Or if no sufficient cause be shewn for granting a delay, and the party moving for the same shall refuse to proceed, the Judges, if the examination were to be had on a future day, may refer to the Court the consideration of the default of any party, refusing to proceed as aforesaid, and thereupon the Court will, upon the reference, or itself, where the examinations were to have been had in open Court, proceed to judgment according to the circumstances of the case and default aforesaid, either in granting a delay, or strictly enforcing the penalties declared by the 9th and 10th articles of these Rules on *Enquête*.

17.—Provided always, that if any motion be made at the opening of any *Enquête*, whether in open Court or before Judges in vacation for a partial examination of a part of the witnesses in the cause, the opposite party shall have the right to oppose the same, and insist on and obtain the entire continuance of the *Enquête*. And the party so opposing shall have and obtain a full allowance of costs of examining, and the attendance of all his or their witnesses, actually attending to be examined.

And no further proceedings shall be had on a future day, or part of the failing party to proceed as above directed for the examination of his witnesses, until all the costs shall have been paid as above directed.

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—And whereas by the Rules of Practice, no party in any cause hath a right to tax costs against the opposite party, for the examination of more than six witnesses upon any issue raised in such cause; yet the opposite party is frequently put to charges and expences in respect to the examination of witnesses above the number allowed; It is therefore ordered, that no further examination of witnesses above the number of six, as aforesaid, shall take place, unless the party moving for the same do first tender and pay to the Attorney of the opposite party six shillings and eight pence upon each witness so to be examined, above the number aforesaid. Nor shall any costs be taxed to any Attorney, as between Attorney and client for the examination of a greater number than six witnesses, on any issue as aforesaid.

9.—And it is understood and directed, that the above rules shall be equally applicable to causes on a cross cause, or wherein the defendant shall constitute himself an incidental plaintiff, and the original plaintiff thereupon becomes the defendant in such incidental demand; and also in cases of intervention or opposition.

10.—And it is declared and ordered, that should the Court or the Judges, examining witnesses on an *Enquête* appointed, adjourn or continue the same over to a future day, that the day to which such adjournment shall be made, shall be taken and considered as making part of the day from which such adjournment or continuance was made, and the several rules abovementioned shall be applied accordingly.

11.—And if on the day of *Enquête* to be taken before any Judges in vacation, any party is not obliged or does not proceed to the examination of his witnesses, or any part thereof, and intends to claim a right for such examination at a future day, no reasons or causes to be offered to the Court for

If more than six witnesses be examined on one issue, the party moving therefor to pay 6s 8d to the opposite party, for costs on each witness above 6; previous to the examination.

No costs taxed as between Attorney and client for examination of witnesses above 6.

The above Rules to apply to incidental plaintiffs.

An *Enquête* adjourned shall be considered a continuation of the same day.

A party not proceeding to examine all or any part of his witnesses, at the day of *Enquête*, in vacation shall be bound to

move on the first day of the ensuing term, for such examination, or be concluded & foreclosed & judgment may be given upon the 9th or 10th rule, or upon the circumstances of the case.

that purpose. It is ordered, that such party be held to move the Court on the first day of sitting, after such Enquête so appointed in rotation, to be admitted to examine such witnesses, could not have attended at the day of Enquête appointed, and to them shew sufficient cause for such examination of witnesses, otherwise the party shall be concluded from any claim or the examination of witnesses in the case. And the above or 10th rule shall be applied to the circumstances of the case for judgment. " And it is ordered that this rule in respect to the further examination of witnesses and diligence to be done to obtain the same, shall be applicable and conformed to upon every reservation to examine any party upon *faits et articles*, or the issuing of any *Commission Rogatoire*, otherwise such reservation shall be held and adjudged to have been abandoned and relinquished; nor shall it be resorted to, upon any motion to be made under the above rules, to give the opposite party notice thereof, but he shall be bound to consider the reservation as sufficient notice in that respect made."

In order to prevent the delays which occur in taking the testimony of witnesses, by reason of the same Attorney being employed in different causes appointed for the examination of witnesses on the same day. It is ordered that the party shall be held to proceed to examine their witnesses in every cause as called in rotation from the Diary or *Rôle d'Enquête*, and it shall not be considered or received as an excuse of delay, if any of the Attornies in such causes are at the time employed in the examination of witnesses or otherwise in any other cause, and on default of the Attorney, or some person on his behalf attending to take the examination of witnesses in every cause so called the adverse party shall be allowed to proceed *ex parte*.

SECTION XXVIII.

Of Commission Rogatoire.

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—It is ordered that whensoever any *Commission Rogatoire* may issue to persons, not being Judges or Judge of any Majesty's Courts of Record in this province, the said Commissioners shall at their first meeting for the purpose of giving the said commission, administer the Oath No. 1, as hereafter mentioned to each other, and also the Oath No. 2, to the clerk or clerks named and appointed by the said Commissioners for the faithful performance of their respective duties in the execution of the said commission. And that there shall be annexed to every such commission a copy of the said Oaths, so to be administered, and of the Oath to be sworn by the Witnesses; which Oaths shall be delivered to the Prothonotary of this Court, with the interrogatories and the instructions directed in the 3d and 4th articles of this rule, for the execution and return of the said commission, to be annexed to the com-

Oath to be administered to each of the several Commissioners themselves respectively.

You swear, that you will according to the best of your power and knowledge, truly, faithfully and without partiality to any or either of the parties in this cause, take the depositions and examinations of all and every witness and deposition, to be produced and examined, by virtue of the commission hereunto annexed, upon the Interrogation hereunto annexed, now produced and left with you, and you will not publish, disclose, or make known to any person, nor to any persons whatsoever, except to the clerk or clerks, to be by you employed and sworn to secrecy in the execution of this commission, the contents of all or any of the depositions of the witnesses or any of them, to be taken by you and the said commissioners, in the said commission named, or any

" of them by virtue of the said commission, until publication shall pass by rule or order of the Court of King's Bench for the District of Montreal."

SO HELP YOU GOD

No. 2. Oath to be administered by the Commissioners to the clerk appointed for taking and transcribing the answers of witnesses, &c.

" You swear that you will truly, faithfully and without partiality to any or either of the parties in this cause, take and write down, transcribe and engross the depositions of every witness and witnesses, produced before and examined by the Commissioners, or any of them named in the commission hereunto annexed, as far forth as you are directed and employed by the said Commissioners or any of them to take, write down, or engross the said depositions or any of them. And you shall not publish, disclose or make known to any person or persons whatsoever the contents of all or any of the depositions of the witnesses or any of them, to be taken, wrote down, transcribed or engrossed by you, or whereto you shall have recourse or be any wise privy until publication shall pass by rule or order of the Court of King's Bench, for the District of Montreal."

SO HELP YOU GOD

2.—It is ordered that whenever there may be any *Commission Rogatoire* to be executed by Commissioners aforesaid, the several interrogatories to be put to a witness produced (after he hath been duly sworn) by the said Commissioners, shall be proposed and declared in their regular order; and that the answer of the witness shall be taken by the clerk, to each interrogatory previous to proposing or making known a second or any further interrogatory, so continued until the whole examination may be closed.

3.—It is ordered that after a witness hath been sworn, examination shall be taken in the manner above said, in the presence of at least two of the Commissioners named in the commission, and if the said Commissioners shall have named the one half on the part of the plaintiff, and the

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of two of such Commissioners, one of whom may have
named on the part of the plaintiff and the other on the
of the defendant, if the said Commissioners on the part
party as aforesaid, shall attend for that purpose; but
of refusal or non-attendance, the examination may be
and taken before the two Commissioners ready to attend
execute the said commission, and that no person or per-
shall be present at the examination of any witness, but
Commissioners so examining the witness and their clerk.
that previous to the examination of any witness, the
Commissioners aforesaid shall administer to each witness the
following:—

*You swear that you will true answers make to all such
questions as shall be asked of you on these interrogatories,
without favour or affection to either party, and therein
you shall speak the truth, the whole truth, and nothing
but the truth."*

SO HELP YOU GOD.

—That after the execution of the commission may have
completed, the Commissioners executing the same shall
and attach to the writ or commission, all the several
depositions of the witnesses, and all writings produced, and
which the said examinations may refer. And also annex
to the commission a list of the witnesses examined (which
shall be signed by the said Commissioners) together with the
several Oaths administered, and instructions transmitted with
the commission previous to executing the same; and after the
same may be inseparably bound together under their seals.
They shall certify on the back of the commission, their re-
sult of the execution of the said writ. The same shall then
be put under a cover and sealed up directed to one of the
Justices of this Court, and the title of the cause and
names of the parties in the suit shall be thereon inscribed,
with these words added, "*A Commission Rogatoire*," execu-
ted and returned by _____ naming the Commissioners
who had executed the same.

5.—It is ordered that previous to the publication of *Commission Rogatoire* that may have been executed within this province, or in the province of Upper-Canada, by Commissioners, not being Judges of his Majesty's Courts of Record in this Province, an affidavit shall be made before one of the Judges of this Court by the person holding the commission and return, of his having received the same from some one of the Commissioners therein named, for the purpose of being returned into this Court to be of Record; and that the said commission is in the same state and condition when such person received the same for return as aforesaid.

6.—That notice shall be given to all the parties concerned in the said commission and return of any motion to be made for the publication thereof, and all objections which can be made to such commission and return, shall be raised and heard prior to such publication.

7.—It is ordered that in any cause where the defendant may have appeared either personally, or by an Attorney at this Court, (except in cases when a defendant may be in default for not pleading, or otherwise) no *Commission Rogatoire* shall be granted until after issue may be joined between the parties on the merits. And that after the issue may be joined as aforesaid, either party who may be desirous of obtaining such commission, shall move for the same, within four days after issue may be joined as aforesaid, if in Term, and if in vacation by application, within the period aforesaid, to two of the Judges of this Court, who may grant the order therefore, to be sued out within such time as may be considered reasonable at the period of applying for the same on the *Requête*, or petition of such party to be filed of Record in the cause.

And that no *Commission Rogatoire* shall be granted in any cause as above, unless moved or applied for within the period aforesaid. And that no Interrogatories or cross-Interrogatories shall be annexed to any *Commission Rogatoire* for the examination of witnesses or of any party upon *faits et articles* unless by the consent of the parties expressed by their signatures or that of their Attornies thereto without the allowance and order of the Court in Term, or of two of the Judges

the publication of the Court in vacation, made upon notice to the adverse party, shall be executed with the same effect.

It is ordered that the Rule of Practice made by this Court on the 20th day of February, 1813, as an addition to this section, be amended in so far as regards the allowance of the cross-Interrogatories or cross-Interrogatories, on *faits et articles*, to be made by one Judge in vacation, and that the allowance of Interrogatories and cross-Interrogatories on *faits et articles*, may be made by one Judge in vacation.

Upon the order being made for issuing any commission as aforesaid, the party obtaining such order shall forthwith, without delay, sue out the said commission, and execute the due execution and return thereof; otherwise it shall be competent for the opposite party to proceed in the case as if no such commission had been moved for, or issued.

SECTION XXIX.

Of Faits et Articles.

WHEREAS parties in suits are entitled to obtain an order for the production of the respective suitors upon *Faits et Articles* which may be deemed relevant (*pertinens*) to the matters in dispute, and provided that the same may be required and had, without *retardation de l'instruction et jugement*, to the end of preventing delays by undue applications for such commissions: It is ordered that *Faits et Articles* may be granted for and had "en tout état de cause," that is to say, at any time after filing the declaration until closing the *Enquête*; and provided that every party who, on the last day appointed for the examination of witnesses may move to examine the opposite party on *Faits et Articles*, do apply for the same to be had in a reasonable delay, "sans retardation de l'instruction et jugement," and that a day be, at the time of such application, appointed for that purpose, and the party so appointed shall be thereby concluded; and that no examination on *Faits et Articles* shall be granted, or had in any cause

after the evidence may be closed, nor after a *venire* may have issued for summoning a Jury in any cause appointed for such trial, unless upon special circumstances that not, or reasonably could not be presumed to be, in the knowledge of the party so applying for any such examination, after the period above mentioned.

2.—That every permission for the examination of any person on *Faits et Articles*, together with a copy of the *Faits et Articles* to which the party is required to answer, shall be personally served on the person enjoined to answer the *Faits et Articles*, unless in cases where the party in question who may be enjoined to answer as aforesaid, may have appeared in the said suit personally, or by an Attorney of the Court, in which case a service of the order and a copy of the *Faits et Articles* as aforesaid, at the actual dwelling and domicile of the party, may be held to be sufficient for the proceedings thereon.

It is ordered that the answers to the Interrogatories of any party to be examined on *Faits et Articles*, shall be reduced to writing and engrossed by one of the Prothonotaries of this Court from the declaration of the examinant, and not in the presence of any Attorney of either of the parties in the suit, and the said answers when so engrossed shall be brought to this Court or before the Judges sitting in vacation, and such examination be appointed to be taken in vacation, and the answers to be received upon the Oath of the party to be examined, and not otherwise.

SECTION XXX.

Of Trial by Jury, and the several proceedings thereon.

WHEREAS trials by Jury in certain Civil actions, upon issue joined by the parties for such trial, may be lawfully had in this Court, and in order to prevent delays in the trial of such actions, and to prevent the expense of sending Juries, and declare a certain regular course of proceeding in such trials,

1.—It is ordered that every suit or action to be instituted where any plaintiff may be desirous of such trial, shall be moved for by the plaintiff on the day of the defendant's appearance.

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And whensoever any defendant may be desirous of a Jury, and entitled to the same by law, he shall at the time of pleading an issuable plea, conclude therein to the country.

That in every case when a plaintiff may on the defendant's appearance, move for, and be entitled to a trial by the defendant in pleading an issuable plea to the merits of the action shall therein conclude to the country, and the defendant shall in applying to the merits; in like manner take the country.

That every defendant who may be desirous of a trial by Jury, shall at the time of filing his plea, and previous to the same, pay into the hands of the Prothonotaries of the Court the fees which the Jury may be entitled to receive for their attendance or verdict when made and ready to be returned. And the plaintiff at the time of and before suing out a *Venire Facias*, shall in like manner pay into the hands of the Prothonotary the fees of the Jury as aforesaid. And every party failing to pay the fees aforesaid, the Prothonotaries are hereby directed not to receive the plea nor issue the *Venire Facias* aforesaid.

Of Striking the Jury.

That whensoever a regular issue may be joined in any cause, where, by law, and under an order of the Court, the trial thereof may be had by Jury, the party applying for the same shall give notice to the adverse party, or his Attorney or Counsel, which notice shall not be less than twenty-four days before the day of striking a Jury, to attend at the office of the Prothonotaries for the purpose of striking a Jury in the cause. And the Prothonotaries, at the time of such attendance, and in the presence of the party applying for the Jury, or their Attornies, shall from the Book of Jurors a list of names made and deposited in his office, and from the list of names of Jurors, as the case may require, make a list of forty-eight names, from which the plaintiff or defendant, or their Attornies, shall alternately strike a Jury of the number of twenty-four, and the remaining twen-

ty-four persons shall form the panel to be annexed to the *venire Facias*, or summons; and upon which writ they be severally summoned to appear for the trial of the issue joined, and a Jury therefrom may be legally impanelled and sworn.

2.—And whensoever the plaintiff's or defendant's Attorney may not attend to strike the Jury as aforesaid, or if attending, refuse to strike the names of Jurors to form a panel upon which a *Venire Facias* may issue, the Prothonotaries shall strike the names of Jurors from the list of Jurors in the place of the Attorney not attending or refusing as aforesaid.

3.—That the issue or issues in any case formed, for the trial and verdict of a Jury, shall not be altered, to be tried by the Court, unless improperly formed to be tried by a Jury.

Of Defendant's Default to proceed.

And in every case where a plaintiff or defendant, applying for and obtaining an order for a trial by Jury, shall during the space of two days after issue joined, neglect to proceed therein, and to give due notice to the opposing party to attend and strike the Jury as above said, or shall not attend to strike the said Jury, or not take out a *Venire Facias* to summon the said Jury, the plaintiff, or his Attorney shall give due notice to the defendant to attend and strike the Jury, and may after duly striking the same, in manner as above said, take out a *Venire Facias* and proceed to obtain a trial in the cause, in the same manner as if the order for such Jury had been obtained at the plaintiff's instance.

Of Notice of Trial.

And after striking the Jury, as aforesaid, due notice of trial shall be given by the party applying for such Jury to the opposing party, by suing out the *Venire Facias* to the opposite party, or by the plaintiff in case of the defendant's neglect, as above, two full days at least, before the trial shall be had.

be annexed to the writ which writ they return at the trial of the cause, and that the writ be legally impanelled

Of the Venire Facias.

The writ of *Venire Facias* shall be issued four days before, and the Jury be summoned twenty-four hours before the return of such writ and trial of the cause, and that the writ be legally impanelled and made returnable for the trial of a cause in any Term after the fifteenth day of the

or defendant's Attorney as aforesaid, or any of Jurors to be sworn, the Prothonotary from the list of Jurors refusing as aforesaid, or the Court be formed, for the trial, to be tried by a Jury

Of Evidence to the Jury.

Each party be admitted to adduce in proof, as well as documents filed in the cause whereon the action may be founded, as all such other written evidence and testimony as legally in the due course of trials may be offered and given in evidence. But no part of written evidence, except such as may be filed agreeable to the Rules of Practice, and whereon the demand or claim may be founded and referred to in the pleadings, shall be filed in the cause, or make part of the record.

proceed. If the defendant, applying to the Jury, shall default or neglect to proceed, the opposing party to the writ shall not attend at a *Venire Facias* return, his Attorney shall attend and strike the same, in manner and proceed to order as if the order were the plaintiff's instance.

In every case, where a plaintiff moving for a trial by Jury, not during the space of two days in same Term, shall be joined move to set down such cause for trial, the defendant shall be at liberty to move for the same, and upon being appointed for such trial; if the plaintiff do not appear and in due course proceed thereupon to bring the cause for trial so appointed, the defendant may move the Court for a judgment of non-suit against the plaintiff, and if the plaintiff shall shew good cause for not proceeding as aforesaid, a judgment of non-suit shall be entered against the plaintiff with costs.

Of Verdict.

In every case, so soon as the Jury may be sworn, the Court shall call the plaintiff and defendant shall be called, and if

as aforesaid, due notice shall be given for such Jury to be sworn, and the Court shall be had.

neither shall appear, the Jury shall forthwith be discharged. But if the plaintiff shall appear, and the defendant shall not appear, his default shall be recorded, and the evidence of the plaintiff shall be heard *ex parte* and the verdict of the Jury taken thereon and judgment entered, as to law and justice may pertain.

Of Non Suit.

1.—And if the defendant being so called shall appear, and the plaintiff being called shall not appear, the default of the plaintiff shall be recorded and judgment of non suit entered upon *instante* entered, dismissing the plaintiff's action, *à se pourvoir*, with costs to the defendant.

2.—That in every case in which a Jury shall be summoned, and the plaintiff shall choose, at any time before the verdict of such Jury shall be given, to become non suit, and for that purpose shall withdraw from the Court, the plaintiff shall be called, and if not appearing, the default shall be recorded and judgment of non suit thereupon entered *instante* dismissing such plaintiff's action, *sauf à se pourvoir*, with costs to the defendant.

SECTION XXXI.

Of New Trials.

THAT all motions for New Trials shall be made upon any motion in arrest of judgment, and within four days exclusive of the day of Trial after verdict had, if so many days remain in the Term; and if not, then on the first day of the next Term, and after two full days notice to the adverse party, or his Attorney in Court; and every such motion shall briefly express the several grounds of, or causes which, such New Trial is to be moved for as aforesaid. And every such motion that may be so made, under notice as aforesaid, and duly entered as herein after directed, shall

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heard without further delay. Provided, that no motion
 cause has been previously made in arrest of judgment;
 motion for a New Trial will be admitted in any cause,
 motion in arrest of judgment.

SECTION XXXII.

Of Arrest of Judgment.

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AT each party in a suit having a right to move any
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 as is above ordered to be observed in all motions for
 trials; and not otherwise.

whenever any party who have moved for a new
 and the same be refused should be desirous after such
 to move in Arrest of Judgment, he shall be bound to
 the same and therein assign the causes therefore on the
 day in Term after such motion for a new Trial may
 been rejected, and if the order upon such motion for a
 trial should be made on the last day of Term, then any
 for Arrest of Judgment as aforesaid shall be made on
 at day of the succeeding Term and not otherwise.

SECTION XXXIII.

Entry of Motions for New Trial, or in Arrest of Judgement.

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 be filed in the cause with the Prothonotaris, three days
 vely, before the day on which the motion isto be heard.
 the Prothonotaries shall enter, or express the same in
 dges' Book, or list of causes, two whole days before
 aring of such motion.

SECTION XXXIV.

Of Peremption, or discontinuance of Actions.

WHEREAS great delays do often arise in the prosecution of suits before this Court, some of which remain pending therein, even after the matters in litigation have been settled by the parties, whereby the number of suits is unnecessarily accumulated.—It is therefore ordered

1.—THAT every suit now pending before this Court, original action, opposition, or intervention, or which hereafter be instituted or made therein, and in which proceedings shall be had in open Court, or upon order of this Court for two succeeding Terms, shall be deemed taken to be deserted by the plaintiff, or party prosecuting the same, or interested therein, and thereupon be dismissed with costs, upon the last day of the second Term, in which no proceedings shall be so had, or any subsequent day of that Term thereafter, upon motion for that purpose of any of the parties concerned. And on default of such motion, the Court will *ex officio*, on the same day, or at any subsequent day, dismiss such suit, opposition, intervention, or claim, but without costs to either party.

2.—And inasmuch as every plaintiff, or demandant, shall be bound to prosecute his claim within a reasonable time to a final conclusion :

It is ordered, that no cause shall remain on the records of this Court, for the purpose of any further proceedings therein being had after twelve Terms from the institution of such action, or demand (of which the Term, in which the cause was instituted shall be counted one) unless sufficient cause can be shewn to the contrary. And that either party interested in the cause may, on the first day of the thirteenth Term, or at any other subsequent period, move for a judgment declaring an absolute peremption in the said cause, and the Court, missing the same as aforesaid, or this Court *ex officio*, upon the certificate of the Prothonotaries that the said cause has been entered in this Court during twelve Terms, as aforesaid, will dismiss such cause, and adjudge an absolute peremption of the same, with costs.

SECTION XXXV.

Of Execution.

THAT no execution shall issue on any judgement of Court, subject to appeal, until after the expiration of days from the date of such judgement. And for the space of twenty days from the date of such judgement, where any party, meaning to appeal therefrom, shall have lodged and sufficient security to prosecute the same with effect. And whereas it is proper, that all the evidence of record, whereon any judgement may have been made, should be kept in the said record, so long as the judgment remains in force, and any execution to be sued out thereupon—It is ordered, that no writ of execution do issue on a writ, in any cause wherein the several exhibits and copies are filed in the said cause; may not remain of record, but the original evidence, or such authenticated copies thereof, as this Court, on hearing the party applying to withdraw the same, shall specially order.

That a separate book and register shall be made and kept by the Prothonotaries, of all executions which may be sued out from this Court, specifying therein the description of the writ, and against what it may be particularly directed, the parties in the cause, the number of such cause, the name of the attorney or person at whose instance the writ may be sued, the amount to be levied by virtue thereof, the cause of the writ, the date of the judgment on which the writ may be sued, the day on which the writ may issue, and the day of the return thereof; and to which Register shall be referred, at the end, and in the same book, an alphabetical list referring to the parties and execution that may have been sued, as aforesaid. And that no execution do issue from this Court, until after an entry thereof shall have been made in the register aforesaid, in the manner above directed. And the Attornies of this Court, or persons having suits pending therein, may, at all times, during office hours, have free access to the said register, *gratis*.

And that no execution, taken out to levy monies from

the chattels of any debtor, shall be made returnable period beyond the next ensuing Term of this Court, which such execution may issue. And on the back of execution shall be indorsed the number of the case, or of the cause, on which such writ shall have issued.

5.—That no executions shall issue to levy monies from *real estate* of any debtor, (not especially assenting thereto) until after a return of an execution to levy the amount of such judgment from the *personal estate* of the debtor.

6.—And whereas inconvenience and hardship may be done to creditors, by a delay for a day in Term to return a writ of *Fi. Fa.* to levy monies from the chattels aforesaid, whereon no chattels have been attached, or such only as in part satisfy the plaintiff's debt; It is permitted that such writ of *Fi. Fa.* may be returned in vacation, after due diligence in the execution thereof, to be certified by the returning officer, and whereupon an execution may issue to levy from the debtor's real estate.

7.—Whereas doubts have arisen on the right of a judgment creditor, who may have caused his debtor to be arrested, according to law, and may lie in prison, under a writ of *Capias ad satisfaciendum*, when the debtor may be charged in execution, for the payment of a judgment obtained.

It is ordered, that, upon every final judgment obtained against any person, who may be in prison under process of *Capias* or attachment, or a surrender of the debtor, who may have been attached or held to bail, the judgment creditor may, after fifteen days from the date of such judgment obtained from the Prothonotaries of this Court, a writ of *Capias* against the debtor, for the amount of the judgment aforesaid, unless the debtor, defendant, shall have lodged good and sufficient security in the Prothonotaries' Office of this Court, to prosecute an appeal from the said judgment; in which case no Writ of *Ca. Sa.* shall issue. And every person who may lie in Gaol under a writ of *Capias ad respondendum* shall be committed after a surrender by the debtor or his surety, and not be charged in execution upon a writ of *Ca. Sa.* until two days after the period at which the plaintiff may legally have had and obtained such a writ, to charge

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every such debtor, held and detained in Gaol, under
of *Capias ad respondendum*, or surrender as aforesaid,
and may be discharged by the order of this Court, or
one of the Judges thereof, in vacation.

SECTION XXXVI.

*Sheriff's Office, Upon the Receipt and Return of Writs, And of
Levies and Sales, under Execution.*

It is ordered, That the Sheriff of this District do
all Writs, Executions and Process to him directed,
return day expressed in such Writ, Process, or Exe-
respectively, which regularly may be done without
ial rule, or order for that purpose.

That whensoever the Sheriff of this District shall, by
of any Writ of Execution, or Executions, sell any
or Real Estate of one and the same debtor, he shall,
return, distinguish, how much he has levied and made
the sale of chattels, or personal property, and how
on the sale of Lands and Tenements, or Real Estate;
Real Estate, to whom sold, and the conditions on
the same may be sold. And shall also state, by his
return, an account of the particular disbursements, as
in the sale of the personal, as upon the Real Estate,
therein specify his several charges for fees allowed by

and whensoever the Sheriff may, in virtue of any
on, or Executions, attach and seize various and dif-
ferent Real Estates, of one and the same person, in order to
satisfy one or more judgments, he shall expose the
same separately, and, when sold, shall, in so far as
possible, keep separate and distinct the several disbursements,
and charges, about the sales thereof, in the manner be-
fore directed.

In the sale of chattels and personal property, he shall
in the same manner expose the same to sale, by so many lots
of chattels, as may be most likely to produce the best price
for the same chattels so to be sold.

4.—That the Sheriff do keep a book of register of all writs of execution that may come to his hands for levy and execution. That therein shall be specified the description of the writ of execution, the names of the parties, the number of the case, the name of the Attorney, or person by whom such writ shall have been sued out, the amount to be levied under and by virtue of the said writ, the date of the writ, whereon such execution issued, the return day of the writ, and the day on which the same shall have been returned into the Prothonotaries' office, the amount levied, the manner by which the same had been levied, the day of sale of the real estates, to whom sold, and as well the amount of the disbursements as of his fees, upon the levy aforesaid.

And upon the sales of all real estates, where any opposition may be made, a separate book of register shall be kept within, in addition to the above entries, he do insert in the said register the nature of the opposition made, and the day of receiving the same, the name of the Attorney, or person by whom such opposition may be made, and, if within the time of withdrawing the same. That he do insert in all oppositions, filed in his office, the period of receiving the same.

And on the return of every execution, whereon there be oppositions filed, he do make a schedule thereof in regular order, according to the time, and in respect to the oppositions in the same case, and if any opposition hath been withdrawn, he do state the same; and alphabetically and state the several oppositions in his return aforesaid.

5.—That all the Attornies and suitors in this Court interested in the levy of monies, under writs of execution, have at office hours, free access, *gratis*, to examine the register of the Sheriff above directed; and more especially to examine all the several oppositions to the levy of any monies on sales of chattels or real estate.

6.—That to each of the said Registers be annexed, at the end thereof, an alphabetical index or reference to the causes and entries therein made.

7.—And that the Sheriff do, on the first day of January every year, return into the Prothonotaries' office, a copy

of register of all
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him signed, of the book of Registers of executions directed.

Whereas the execution of writs of *Saisie revendicatoire* and *Saisie arrêt* in the hands of the Defendant are frequently attended with unreasonable charges upon the Sheriff's duty, and may be highly prejudicial to the rights of persons in the legal possession of chattels and effects so

It is ordered that every plaintiff suing out such writ be bound upon the delivery of any such process to the Sheriff to make and deliver to the said Sheriff sufficient advance in money, for the necessary expences in the execution of such writs, or otherwise satisfy and secure the same for the prompt payment thereof, and failing so to do the Sheriff may refuse to receive the said writ, to proceed in the execution of the same, and that in every case where the Sheriff may execute such writ, his recourse for payment respecting the service of such writ, and the advances to guarantee the same shall be against the plaintiff personally and in the goods which may be attached.

SECTION XXXVII.

Provisions to the Sale of Effects and Estate, seized by Execution, or to the Distribution of the Proceeds of such sales.

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As it is necessary to provide, in so far as may be, such rules and orders as may direct a regular and speedy course of discussing and adjudging upon all oppositions that may be made to the sale of personal and real estate, seized and attached upon writs of execution: And to prevent the delays, expence, and injustice which creditors sustain, through the means of illegal, vexatious and groundless oppositions, made to frustrate the payment of just debts: It is ordered,

ers be annexed,
 reference to the
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 aries' office, a c

That all oppositions which may be made to the levy and sale of any personal or real estate, which may be attached or seized upon any execution issued out of this Court, and by any party, so opposing, may claim a right, either to have such seizure declared null and void, or a right of redemption or incumbrance of what nature soever upon the same,

shall succinctly state, in such his opposition, all and every ground or cause thereof, and to which he may pretend to have right of what nature soever. And the said opposition shall contain a clear description and election of the opposition Domicile.

And to every such opposition there shall be annexed an affidavit taken before one of the Judges of this Court, of the truth of the fact or facts contained in such opposition. And the Sheriff is hereby enjoined and required not to receive any opposition as aforesaid without such affidavit so annexed thereto.

And where the seizure may be of any real estate, an affidavit of opposition be made.

Afin d'annuller, or.

Afin de distraire, or.

Afin de charge—the same shall be made before the Court of the realties, or where the opposition may be against the sale of any chattels, the same shall be made before the Court of any such personal estate.

And where the opposition may be *afin de conserver*, either upon the proceeds of a real or personal estate, the same shall be made either before, or within office hours thereafter, the return of the writ of execution, under which the lands or chattels may be sold, and not otherwise.

And no opposition shall be preferred, or admitted to be made, by the same person, or others in his behalf, for any rights or claims which he may pretend to have, touching the seizure, as aforesaid, and that could have been claimed or made at the period of preferring the original or first opposition, in the manner above directed.

2.—That every person, who may prefer and make an opposition as aforesaid, shall file with the Prothonotary a declaration or state of the several claims, or *moyens d'opposition* to be made, after due notice given to file the same, and in which shall be clearly stated all and every his claim, or *moyens d'opposition* of what nature soever, and where a full answer or plea may be made and issue taken, and no other or further opposition, claim or *moyens* shall be

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received from the same person, to the same levy and

That every person, who may file any such cause or *d'opposition*, shall, at the same time, make an election of domicile in this city, if the first election made, as aforesaid, be not in this city, and failing so to do, the office of Prothonotaries shall be taken as his domicile or place of residence, to every legal intent that may be requisite, touching the proceedings of the Court to be notified to the person being.

That every person, who may file any such declaration of claim, or *moyens d'opposition*, shall, at the same time, deposit in the same office the several deeds, documents and titles, or certified copies thereof, which may be in his possession, or possession, and whereon the several rights, claimed in the said *moyens*, are to be maintained, together with a list of the same.

That the person at whose instance any seizure may have been had, or others interested in any opposition to the same, shall take communication of the said declaration or petition, and the several documents so filed as aforesaid, and answer thereto, within three days from the day of filing the same, and under the like rules that a defendant is bound to observe in the merits of a cause.

And it is further ordered, that all and every the rules of the Court, respecting original suits and the course of procedure therein, in so far as the same may be applicable to proceedings by opposition, shall be strictly adhered to, and the rules for proceeding thereupon.

To the end, that all persons interested in the levy and execution of executions to be issued out of this Court, may be notified when such returns are made.—It is ordered that the Prothonotaries of this Court do, from time to time, on the day when any execution may be returned by the Sheriff, and filed of record, fix and place to public view, in their office, a list of such returns, expressing the names of the parties, plaintiff and defendant. That the rules of this Court respecting oppositions to be made against the return of executions, shall be considered to apply to

the period that the said list was so afixed by the Prothonotaries, in the office aforesaid.

8.—Whereas it frequently happens that in causes where it appears that a defendant is in a state of *deconfiture* and orders are made and orders granted for calling in the several creditors of such debtor to appear in the cause and assert their respective claims upon the effects and estate of the debtor previous to a distribution of the same; it is ordered that the plaintiff or defendant or any one of the creditors of such debtor may object to any claim which may be made in consequence of any advertisement and public notice as aforesaid, and controvert and oppose the same, provided the plaintiff or defendant, or any creditor as aforesaid, shall within the space of ten days after filing such claim file his opposition thereto, and if the opposant may reside in this city or have elected a domicile therein, he shall give notice to the claimant of such opposition, and require the said claimant to support his claim before this Court, by such legal course as is observed in this respect for the support of claims or oppositions; and it is further ordered that every claim made in consequence of any public notice as aforesaid, by any person residing in this city, or who may have elected a domicile therein, and such election of domicile be entered on record with the claim aforesaid, and which may not be opposed as aforesaid, shall be considered and held to be admitted by the parties interested thereupon as legal and just, and so to be judged by this Court upon the distribution of any debtors effects and estate as aforesaid.

And it is further ordered that the above rules shall also be considered as binding wherever creditors of any deceased person may by public notice be called before this Court to assert their respective credit upon the effects and estate of such deceased person.

That the present rule shall be held also to extend to claims made by opposition, *afin de conserver* upon the monies levied and returned by the Sheriff, on any writ of Execution sued out from this Court.

9th—It is ordered that the Prothonotaries of this Court do enter in a separate book or register the returns of the Sheriff, upon every writ of Execution, in which registers

ted as well the oppositions annexed to every such re-
 as all the oppositions which may at any time afterwards
 ed in this Court, touching such return, in the order
 of the time every such opposition shall be so filed ; and
 which register all parties interested shall have free access
 required, and it is further ordered, that the rules of
 Court, respecting oppositions so returned and filed, and
 proceedings to be had thereon, shall be considered to ap-
 and have effect only from the time that every opposition
 have been inscribed on such register, nor shall any op-
 on be admitted or received, nor be considered as regu-
 filed, until the same shall have been so inscribed and
 ed;

SECTION XXXVIII.

Of Proceedings in respect to Appeals.

THAT on the allowance of every writ of Appeal, the
 notaries in making up the record, for a due return to
 writ, do mark numerically and progressively, in the re-
 course of proceedings had in such cause, every paper
 of record in such cause, beginning with the writ of sum-
 and continuing the same mark at the head of each se-
 paper until the whole be concluded. That he do then
 out an Index, or list of reference to the whole, to each
 number, title and description under his signature to be
 ed to such record, previous to the return.
 he do preserve and file in his office a copy of such
 Index of the several papers so to be transmitted with
 record.

That upon the return of the record, so transmitted in
 he do enter on the register of this Court, a copy of
 judgment made in appeal, with a reference to the same
 ing part of the record in such case.

That the Prothonotaries, do keep a book to be entitled
 " *Cases and Judgments in Appeal,*" wherein shall be en-
 the title of the cause, or names of the parties, the Nu.

and Term, at which the suit was prosecuted, the subject of the demand, an abstract of the judgment, and the day it was given, the period of the appeal, and an abstract of the judgment in appeal: To which book shall be annexed an index of alphabetical reference to the parties and causes so judged.

SECTION XXXIX.

Of Saisie Arrêt.

WHEREAS under the present Course of Practice it often happens that upon the service of a *Saisie arrêt* at the domicile of the *Saisi* certified, final judgment may be made against the *Tiers Saisi* for the principal debt due to the Plaintiff, although the *Tiers Saisi*, may never have received the writ of *Saisie* nor have had such reasonable knowledge of the same, as under the peculiar circumstances of his situation, he was unable to appear thereupon and make his declaration conformable to Law. In order therefore to prevent the manifest injustice that may be done by such conclusive judgment, It is ordered, that in future no conclusive final judgment shall be made against the *Tiers Saisi* for payment of the Plaintiff's Debt, by reason of his non-appearance and not answering as aforesaid, unless it shall appear that the service of such *Saisie Arrêt* and notice had been personally made to and upon the *Tiers Saisi*, and that in every other case of legal services at the domicile, the judgment to be awarded against a *Tiers Saisi*, in default of provisional admitting such *Tiers Saisi* to appear at a certain day and take off such default and make answer to the writ or attachment or shew cause upon the irregularity of the service of such writ.

SECTION XL.

Of Costs.

It is ordered that no general rule of this Court shall be made for fees upon certain business to be performed in causes that

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ed shall in any manner be considered to extend to
restrain any judgment or order of this Court upon
atters, before it wherein the Court from the circum-
of such matter or business, shall award and ad-
specific sum to any party thereupon. And any
rticular order or judgment for costs that may be
shall determine and conclude the rights of every person
interested; And it is further ordered that no general
ce of Fees, by any Tariff or Rule of this Court, shall
dered as granting a right to such fees for any busi-
formed whensoever this Court or any Judge thereof,
ization of costs, shall not consider such business to
en regularly and necessarily performed.

SECTION XLI.

Of Debtors in Gaol.

ordered that in future every alimentary pension to
ved to Debtors in Gaol shall be paid each Monday, on
re twelve o'clock in the forenoon, to prevent the dif-
and inconveniencies which frequently arise from the
now following of paying the alimentary allowance to
in Gaol.

ordered therefore that the alimentary allowance to
in the Gaol of this District, shall in future be paid
aoler, who is hereby directed and enjoined to receive
ay the same to such Debtors without delay.

every Debtor claiming a right to be discharged from
y reason of the non payment of such alimentary al-
shall be bound to state upon Oath a demand made
or by some person on his behalf, on the Gaoler for
ment of such allowance, before such Debtor shall be
to his discharge.

the Gaoler shall keep a separate book or register in
he shall regularly and truly inscribe and certify the
receiving and paying such alimentary allowance, to
book access and reference may be had at all times
quired.

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And it is further ordered that copies of the present and orders in the English and French Languages be out and certified by the Prothonotaries of this Court, that the said copies be posted up by the said Gaoler in conspicuous manner in the Debtors' Ward in the said

SECTION XLII.

Of Actions of Assumpsit.

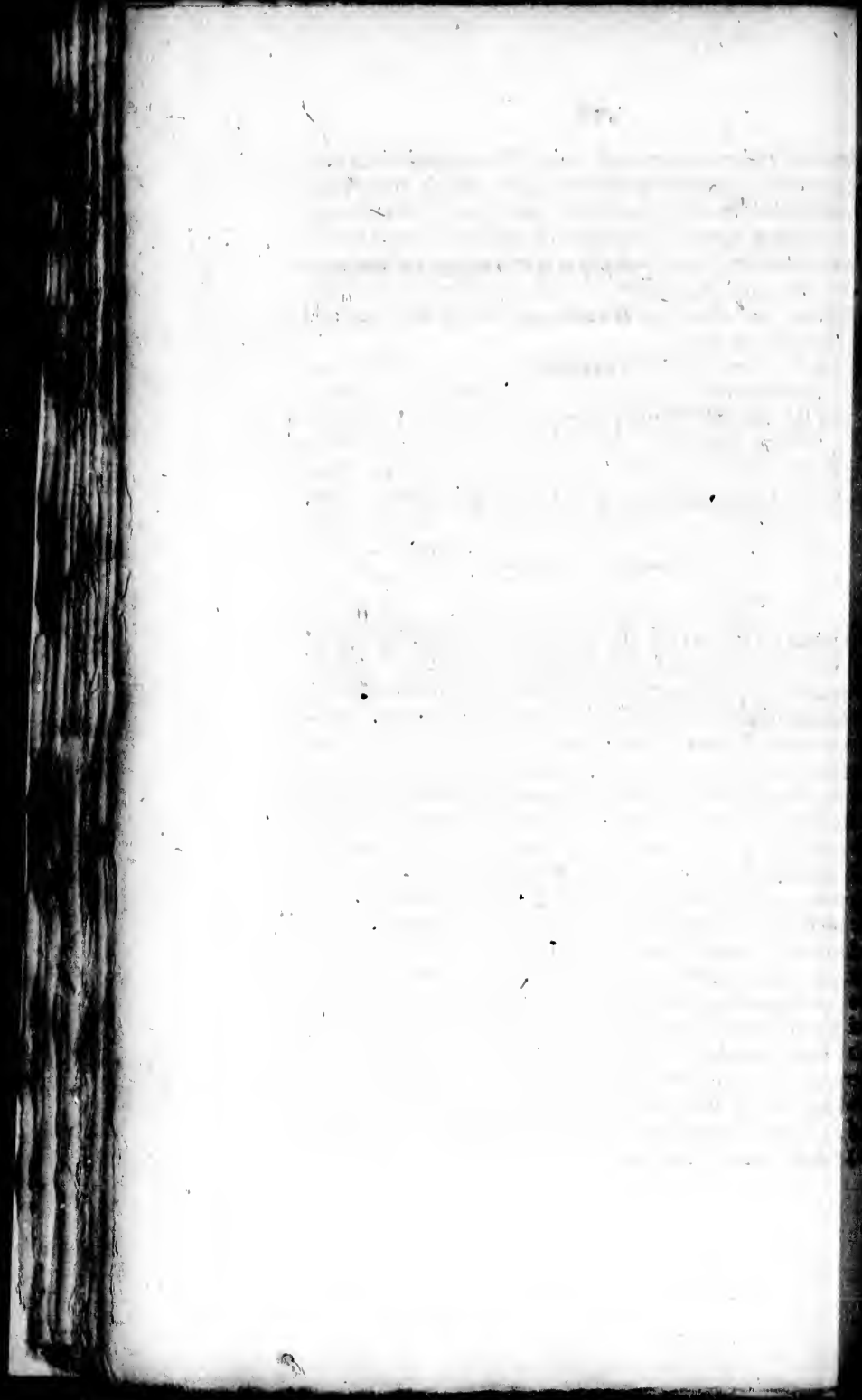
Whereas actions are frequently instituted and declared thereupon framed, conformable to actions, in England, *sumpsit*, with General Counts therein contained, for sums thereby claimed, without stating in such declaration what part thereof may have been paid, or should not really be claimed or adjudged to the plaintiff and to which various general pleas of *non assumpsit*, have been made, and various grounds of defence thereupon raised, and made of evidence to be adduced, that could not have been foreseen by the plaintiff, under such general pleas and may be highly prejudicial to the parties; it is therefore ordered that on any such actions, the plaintiff shall state all such deductions, from the gross sums claimed, may be in his knowledge and shall by his demand declare the precise balance of monies due by reason of *assumpsit*, undertaking or promise as aforesaid, and for recovery of which the defendant may be sued, and at the return day of the writ, in such action the plaintiff file an exhibit stating the precise amount of his demand in such statement shall insert and set down all matters that may have been received, whether in money or other valuable things, which ought to be reduced from the gross amount of such general demand as aforesaid, and upon which shall be written a notice to the defendant, of the precise amount of the plaintiff's claim, and for recovery of which the defendant is prosecuted in the said action, and fail to do the defendant shall not be bound to answer the plaintiff's demand or be adjudged in default in the notice aforesaid.

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every plea to any such action of *assumpsit* shall con-
specific grounds of defence upon which the defen-
y intend to adduce evidence, in support of any mat-
ffered against the plaintiff's demand, and that no
verbal or written shall be received in any such ac-
upon and in support of such special matters alledg-
ence and that may have direct relation thereto, and
aintiff's demand.

It is ordered that on the service of every writ of *Ca-
espondendum*, the plaintiff shall be bound, at the time
g the defendant with copy of such writ, to serve a
writing upon the said defendant informing him that
f the plaintiff's declaration will be left at the Pro-
es' office, for the said Defendant, in such case,
ve days from the service of such writ, and that the
making due service of a copy of his declaration con-
to such notice, the same shall be taken and consi-
sufficient, unless the defendant, before the expiration
d five days, do notify the plaintiff, or his Attorney,
e defendant's elected domicile within the city of Mon-
ere a copy of the plaintiff's declaration may be
on him such defendant.



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COURT OF KING'S BENCH;

Wednesday, 7th June, 1815.

PRESENT,

THE HONORABLE JAMES REID, } *Esquires,*
THE HONORABLE LOUIS C. FOUCHER, } *Judges.*

Table and Establishment of Fees in the Superior Term.



WHEREAS an Act of the Provincial Parliament passed in the 1st year of his Majesty's Reign, intituled, "An Act to amend certain forms of proceedings in the Court of Civil Jurisdiction in this Province, and to facilitate the administration of Justice;" hath authorised this Court to sit and establish such Fees as may be reasonable and just to be taken, by the several officers of this Court, employed in and about the Court at Law. It is therefore ordered that all Rules and Orders of this Court, heretofore made respecting the Fees to be claimed and taken in this Court, by the officers of the Court, be, and the same are thereby rescinded (except the Fees to be claimed to this Bailiffs, by the order of the twentieth of February last, which said order continues to remain in force,) and that the said officers, who may be employed in any civil suit now pending, or hereafter to be prosecuted or defended in the said Court, shall and may claim and take the respective Fees hereafter mentioned to be taxed in any suit for the several duties and services performed in such suits, and no person shall, under the penalty of a contempt of the Court, and be further liable to the party injured for his damages in respect ascertained.

*Fees to be taken by Attornies in all actions where the debt or the
in contest prosecuted for, or for which a Judgment shall be obtained,
be above £10 sterling, and not exceeding £20 currency.*

ART. 1—To the plaintiff's Attorney for all Fees **2** s.
from the Institution of the action, to fi-
nal judgment in contestation. **4** 0

And to the defendant's Attorney for all
Fees in defending such suit unto final
judgment. **3** 0

But if on any exception by motion to the
form for irregularities in the service of
process, or in the declaration, or in the
proceedings, or on any plea of excep-
tion other than plea to the merits, the
action be dismissed, that there be allow-
ed to the defendant's Attorney, for all
his Fees in this cause. **1** 10

2—To the plaintiff's Attorney when the
judgment, is by default without En-
quête. **2** 0

3—To the same on Enquête. **2** 6

4—To the same when the judgment is by
confession. **1** 10

And to the defendant's Attorney. **0** 15

5—To the plaintiff's Attorney, when the
action may be settled before the return. **1** 3

6—To the same when the action may be
settled after the return, but before is-
sue joined. **1** 10

6—And to the defendant's Attorney for all
his Fees in such case, if a plea be filed. **0** 16

But if no plea be filed. **0** 12

7—To the plaintiff's Attorney when the action is settled after issue joined, but before hearing or before judgment. 2 6 8

7—And to the defendant's Attorney for all his Fees in the last mentioned case. 1 6 8

the Actions above £20 currency, and not exceeding £30 currency, above cases.

1—To the plaintiff's Attorney. 5 0 0

To the defendant's Attorney. 3 10 0

To the defendant's Attorney in the second case. 2 0 0

2—To the plaintiff's Attorney. 2 13 4

2—To the plaintiff's Attorney. 3 2 6

2—To the plaintiff's Attorney. 2 0 0

—And to the defendant's Attorney. 1 0 0

—To the plaintiff's Attorney. 1 10 0

—To the plaintiff's Attorney. 2 0 0

To the defendant's Attorney. 1 2 2

To the defendant's Attorney, in the 2d. case. 0 16 8

—To the plaintiff's Attorney. 3 2 2

And to the defendant's Attorney. 2 0 0

Final Fees to the two above tables, when the cases will happen.

—To the plaintiff's Attorney on defendant's taking off a default. 0 6 8

- ART. 9—On suing out a Capias ad respondendum, saisie arrêt, saisie gagerie or entiercement. £ 10
- 10—To the plaintiff's or defendant's Attorney for drawing and engrossing a Bail piece with notice of putting in Bail and service of the same. 0 6
- And to the adverse party on do, 0 3
- 11—To the plaintiff's or defendant's Attorney suing out a commission rogatoire. 0 15
- 12—And to the adverse party's Attorney joining in the same. 0 11
- 13—To the Attorney attending the execution of such commission, when issued from another District. 1 0
- And to the adverse party's Attorney on do. 0 11
- 14—To the plaintiff's or defendant's Attorney suing out a *venire facias* and conducting a cause tried by Jury. 1 6
- And on suing a second or other *venire facias* when diligence has been done on the first. 0 10
- To the adverse party's Attorney who may attend at striking the Jury. 0 5
- And to the same for attending Fees on the trial of the cause. 0 10
- 15—On every Incidental demand to the Incidental plaintiff's Attorney. 1 10
- And to the Incidental defendant's Attorney. 1 3

responden- rie or en-	2 0 10	6—To the plaintiff's or defendant's Attor- ney, on every exception by motion to the form for irregularities in the ser- vice of process, or in the declaration, or in the proceedings.	2 0 10 0
t's Attor- ing a Bail a Bail and	0 6 0 3	7—To the plaintiff's or defendant's Attor- ney on every plea of exception other than plea to the merits.	0 13 4
do,	0 3	—To the defendant's Attorney on obtain- ing the certificate of the Prothonotaries required by the 34th Section of the Rules of Practice.	0 3 4
t's Attor- ogatoire.	0 15	—To the defendant's Attorney suing out execution and motion of the return for orders for the delivery of the money.	0 10 0
Attorney	0 11	“ That no other allowance be gran- “ ted against the defendant on the suing “ out of a second or <i>alias writ</i> of exe- “ cution.”	
the execu- then issued	1 0	—To the plaintiff's Attorney on a rule <i>nisi</i> in the nature of <i>scire facias</i> for all his Fees into final decision.	0 13 0
s Attorney	0 11	—But if the rule is contested.	1 3 4
t's Attor- s and con- y.	1 6	And to the defendant's Attorney if suc- cessfully.	0 16 8
her <i>venire</i> been done	0 10	—To the plaintiff's or defendant's Attor- ney or an inscription <i>en faux</i> for all his Fees.	1 3 4
orney who ury.	0 3	—To the plaintiff's Attorney on <i>saisi</i> <i>arret</i> in the hands of third persons after judgment, in original actions, for all his Fees to final judgment.	1 15 0
ng Fees on	0 10	And to the defendant's Attorney on do.	0 15 0
to the In-	1 10		
ndant's At-	1 3		

ART. 24—To the plaintiff's or defendant's Attorney for drawing and engrossing bill of costs, copy, notice and attending taxation. O 3

And to the adverse party for attending the taxation of cost. O 3

25—On every evocation from the Inferior Term, when the said evocation is dismissed to the plaintiff's Attorney. 1 3

Fees to be taken by Attornies and Advocates on real and mixt actions in actions for sums above £30 currency.

ART. 1—Taking instructions to prosecute or defend. O 15

2—Warrant of Attorney when filed in the cause. O 3

3—Drawing every Declaration. O 13

4—Each copy thereof, O 3

5—Drawing and engrossing any affidavit requisite to be made in such case. O 3

6—For all attendances before the Judges, or other Prothonotaries' or Sheriff's office, including *fiat* to obtain any writ. O 5

7—Attendance at the return of the writ. O 3

8—For drawing lists of exhibits, and attendance filing the same. O 3

9—For drawing an appearance for a defendant, and filing the same. O 2

10—To the plaintiff's Attorney on defendant taking off default. O 6

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Plaintiff's At-	1		
Crossing bill			
ending tax-			
	0	6	8
Attending	0	3	4
Inferior	0	5	0
tion is dis-			
ney.	1		
For every necessary attendance in Court or at the Prothonotaries' Office, for communication of papers, when not otherwise provided,	0	3	4
For every necessary motion, including a motion after Judgment, by the successful party for withdrawing exhibits,	0	3	4
For drawing the same,	0	1	0
For every notice of the same copy and service,	0	3	4
Attending in Court on notice of motion, and opposing the same if successfully,	0	6	8
Ditto, ditto, on consenting thereto,	0	5	0
Attendance and Counsel's fee, on arguing every Law Issue on Pleadings,	0	13	4
For drawing and engrossing every plea, answers, or replication,	0	6	8
For every copy of such plea, answers, or replication,	0	3	4
Fyling and signifying the same to the adverse party,	0	3	4
Fiat for <i>Subpœna</i> or <i>Subpœnas</i> in each cause,	0	1	0

ART. 25—Fee on examination of every witness, allowed by rule of practice,	0 5
26—And for the cross examination of each of them,	0 3
27—For objections to the competency of any witness, or to the pertinancy of any question, and arguing the same, if successfully,	0 3
28—Drawing and engrossing Interrogatories for examining witnesses on a commission rogatoire,	0 10
29—Copy for the adverse party,	0 3
30—And for Cross Interrogatories, one half of the foregoing fees.	
31—Attendance and Counsel's fee, on arguing the merits of the case,	1 3
32—Ditto, ditto, where there is an incidental demand,	1 15
33—Ditto, ditto, in case of an intervention heard along with the merits of the principal cause,	1 15
34—Ditto, ditto, when the intervention is heard separately,	1 3
35—For drawing and engrossing every Petition in judicial proceedings,	0 5
36—For every Copy, when necessary, and service thereof,	0 3
37—Notice to strike a Jury and service,	0 3
38—Attendance striking the same,	0 6
39—On issuing the <i>venire</i> and delivering it to the Sheriff,	0 2

	£	s.	d.
ry witness,	0	5	
on of each	0	3	
petency of ncy of any ame, if suc-	0	3	
rrrogatories a commis-	0	10	
s, one half	0	3	
ee, on ar-	1	3	
an inciden-	1	15	
tervention its of the	1	15	
vention is	1	3	
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ervice,	0	3	
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	0	11	8
	0	6	8
	0	10	0
	0	5	0
	0	10	0
	0	7	6
	0	3	4
	0	15	0

ART. 50—"That no other allowance be made £ s
 "against the Defendant, on the suing
 "out of a second or *alias* writ of ex-
 "ecution."

51—For all fees on a rule nisi, in the nature
 of a *scire facias* to obtain execution, or
alias execution or *contrainte par corps*
 if contested, 1 10

52—To the adverse party's Attorney, if
 successfully, 1 3

But if the rule be not contested, there
 be allowed to the Plaintiff's Attorney, 0 15

53—For all fees, or a *saisie arret* or attach-
 ment in the hands of third persons af-
 ter judgment, 2 6

"The above fee not taxable against
 "the *saisie*, if no money or effects are
 "found and attached."

And the Defendant's Attorney, if suc-
 cessfully, 1 3

*Fees to be taken by the Attornies and Advocates in actions above £50
 rency, on judgment by default or on confession.*

ART. 1—For all Fees from the Institution of the £ s
 action to final judgment by default
 without Enquête. 4 10

2—For do. on do. sur Enquête. 5 0

3—For do. on judgment by confession. 3 10

ART. 2—Do. on a judgment by default without Enquête.	£ s.
	0 15
3—Do. with Enquête.	1 0
4—Do. on a judgment by confession.	0 15
5—When no return for the summons and entry of Fiat only.	0 4
6—On any action entered and settled before issue joined.	0 10
7—On any action entered and settled after issue joined, and before the argument, or before judgment, viz. :	
From plaintiff.	0 15
From defendant.	0 10

And in actions above £20 currency, and not exceeding £30 currency the above cases.

ART. 1—From plaintiff.	1 6
From defendant.	1 0
2— do. do.	1 0
3— do. do.	1 6
4— do. do.	1 0
5— do. do.	0 4
6— do. do.	0 15
7—From plaintiff.	1 0
From defendant.	0 13

without £ s.
 0 15
 1 0
 0 15
 ns and 0 4
 ed be- 0 10
 d after ument, 0 15
 0 10
 ding £30 currency
 1 6
 1 0
 1 0
 1 6
 1 0
 0 4
 0 15
 1 0
 0 13

Additional Fees to the two above tables when the cases will happen.

	£	s.	d.
8—On defendant taking off a default.	0	3	4
9—For a <i>saisi arrêt</i> , <i>saisi gagerie</i> , or <i>intiercement</i> .	0	3	4

(The above charge not to include the sums.)

0—For every bail piece security for costs or recognizance.	0	5	0
1—For a <i>commission rogatoire</i> .	0	5	0
2—When the adverse party joins in do.	0	2	0
3—For the execution and return of any such commission issued from other Districts.	0	5	0
4—For a <i>venire facias</i> and proceedings on the same, when the trial takes place.	0	13	4
But in case the trial goes off then be allowed.	0	6	8

The above charge to include 3s. for the Venire.)

—On every incidental demand <i>videlicet</i>			
From incidental plaintiff,	0	10	0
From incidental defendant,	0	7	6
	0	17	6
—For proceedings and judgment on every exception to the form for irregularities in the service or in the declaration, or writ, or in the proceedings.	0	3	4
—For ditto or plea of exception other than plea on the merits.	0	5	0
—For search and official certificate on default of proceedings in execution of the rule of practice sect. 34.	0	3	0

- ART. 19**—For every execution and for the entries of the orders on the return thereof, for delivery of the money, and for the copy of the said order to be paid on suing out the execution. 0 5
- 20—For the entry of the motion for a rule nisi in the nature of *scire facias* to revive a judgment and to obtain an execution on alias execution or contrainte par corps and copy of the same. 0 5
- 21—And for all proceedings on the said rule from the return thereof to final decision or discontinuance. 0 10
- 22—On an inscription en faux for the entries of all proceedings and copies of rules unto final decision or discontinuance. 0 11
- 23—On every *saisie arret* in the hands of third persons after judgment on an original action for all proceedings to final judgment including 3s. 4d. for the writ. 0 16
- 24—On every bill of costs presented to be taxed there be allowed for the verification of the charges and for the official certificate. 0 2
- 25—On money paid in Court for keeping and paying over the same one per cent.
- 26—For a copy of Judgment not exceeding 400 words. 0 2
- And for every 100 words exceeding the above number, 0 0
- 27—For searching and delivering papers ordered to be delivered in any cause adjudged upon or discontinued, entering and filing the order and receipt for papers, 0 1

e entries £ 4
 reof, for
 the copy
 on suing 0 5
 or a rule
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 e. 0 5
 said rule
 l decision 0 10
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 of rules
 auance. 0 11
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 ted to be
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 e official 0 2
 keeping
 per cent.
 xceeding 0 2
 eding the 0 0
 apers or-
 ause ad-
 entering
 ceipt for 0 1

28—On every evocation from the inferior £ s. d.
 term when the said evocation is dis-
 missed. 0 13 4

29—For every *subpœna* not including more
 than four witnesses and necessary co-
 pies. 0 3 0



be allowed to the Prothonotaries (when not otherwise provided for.)

1—For Office copies of papers, for every £ s. d.
 hundred words. 0 0 6

2—For searching the records or the regis-
 ters for any given year. 0 1 0

And for every other year. 0 1 0

Note—"The above fee is not chargea-
 ble when particular copies of
 any record or judgement are
 requisite, the date being giv-
 en."



ON ACTS OF TUTORSHIP.

3—For every act of tutorship or curator- £ s. d.
 ship including a copy thereof and of the
 petition proceeding the same. 0 7 6

—For every act to emancipate a minor or
 for the sale of property of minors or for
 authorising a tutor to any other parti-
 cular purpose including a copy as above
 mentioned. 0 10 0

—For every act of interdiction, *procès*
verbal d'enquete, depositions of wites-
 ses, copies and certificate. 0 15 0

ART. 6—For the homologation of every act of an *assemblée de parens* drawn by notary authorised by the Judge. 0 2

And for every copy thereof at the rate of six pence every hundred words. 0 0

7—For every entry of an inventory, and closing the same, and the certificate. 0 5

8—For every act of renonciation when done before the Judges. 0 4

ON INSINUATIONS.

9—For every order of the Judges for the registering of any act. 0 1

10—For certificate of registry. 0 1

11—For registering any renonciation to a community or succession any donation between conjoints in their *contract de mariage*, or any *dons mutuels* or any donation whatsoever or will or any other act, for every hundred words. 0 0

12—For drawing and engrossing the order of the Judge on the petition of a testamentary executor or administrator, for the probate of any will, taking and drawing depositions of witnesses, taking the oaths of office (exclusive of the registry as above provided.) 0 15

14—For making up the record in any cause with the lists and returns thereof, and transmitting the same to the Court of Appeals. 1 5

And for engrossing the transcript of the proceedings for every hundred words. 0 0

15—Forevery attendanceat the examination of a candidate for the profession of the law, or as a notary, giving the necessary notice and drawing the certificate of the Judges thereon. £ s. d.
0 10 0

RICT }

REAL. }

THURSDAY, 20th February, 1823.

Present, THE HON. JAMES REID, } Esquires,
THE HON. L. C. FOUCHER, } Judges.

PROTHONOTARIES FEES.

The Court, upon the representations made to them by Prothonotaries, doth hereby rescind the Tarif of fees ed to the said Prothonotaries, as fixed and established e Seventh of June, One Thousand Eight Hundred and n, in causes of and above Thirty Pounds, and in all and mixed actions, where the matters are contested; doth order, that in future the following fees be allowed aid by the parties interested, to the said Prothonotaries:

- 1—That there be paid by the Plaintiff, or Plaintiffs, his, or their Attorney, to the said Prothonotaries, for all their fees in causes of the above description, from the institution of the action until final judgment entered, not including the Writ of Summons or other mesne Process, £ s. d.
2 10 0
- 2—That there be paid by the Defendant, or Defendants, or his Attorney, 1 5 0
- 3—And in case of an incidental demand, there shall be paid by the Plaintiff or Plaintiffs, on such demand, his or their Attorney, a further sum of 6 10 0

- ART. 4—And by the Defendant or Defendants, \$ 4
 on such incidental demand, a further
 sum of 0 5
- 5—That there be paid by the Defendant
 or Defendants, his or their Attorney,
 upon every motion to quash the Writ
 of Process, by reason of the insuffi-
 ciency of service or other irregularity,
 including all the proceedings of such
 motion, when unsuccessful, 0 10
- And when successful, 0 15
- 6—And that there be paid by the plaintiff or
 Plaintiffs, his or their Attorney, in case
 the Writ or Process shall be quashed
 on such motion, 0 15
- 7—And in case the action shall be dismis-
 sed upon any plea of exception, with-
 out enquete or hearing on the merits,
 there shall be paid by the Plaintiff or
 Plaintiffs, his or their Attorney, 1 5
- And by the defendant or defendants,
 his or their Attorney, 1 0
- 8—And in case the action shall be discon-
 tinued before enquete on the merits,
 there shall be paid by the Plaintiff or
 Plaintiffs, his or their Attorney, 1 5
- And if such discontinuance be made
 after enquete, 1 10
- That on such discontinuance before *en-
 quite*, there be paid by the Defendant
 or Defendants, his or their Attorney, 0 15
 But after *enquite*, 1 0
- 9—That there be paid by the Defendant
 or Defendants, his or their Attorney,
 on taking off a default and entering

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appearance when nothing further is
 done by such Defendant or Defendants
 in the cause,

0 3 6
 £ s. d.

10—That there be paid by the party apply-
 ing for and obtaining an order for pro-
 ceeding by *inscription en faux* upon
 any Act, Deed, or Writing, produced
 by the adverse party, for all fees to the
 Prothonotaries, until final Judgment
 rendered on such proceedings, and to
 be paid before any motion made al-
 lowed in his behalf,

1 5 0

And by the Defendant or Defendants,
 on such *inscription en faux*, to be paid
 at the time of filing his or their answer
 to the *moyens de faux*,

0 5 0

1—That in all actions *en garantie*, and
 on demands *en interventions*, in real
 and mixed actions, and in causes of and
 above thirty pounds, there be paid by
 the parties, Plaintiff and Defendant, on
 every such action *en garantie* or *in-
 tervention* when the same is contested
 on half of the fees above allowed in
 original actions and when such action
en garantie or *intervention* is by de-
 faults or not contested, there be paid by
 the party Plaintiff thereon,

0 15 0

2—And when such action *en guarantee* or
intervention is made for a sum or in a
 cause under thirty pound, and the same
 is contested, there be paid by the party
 Plaintiff thereon,

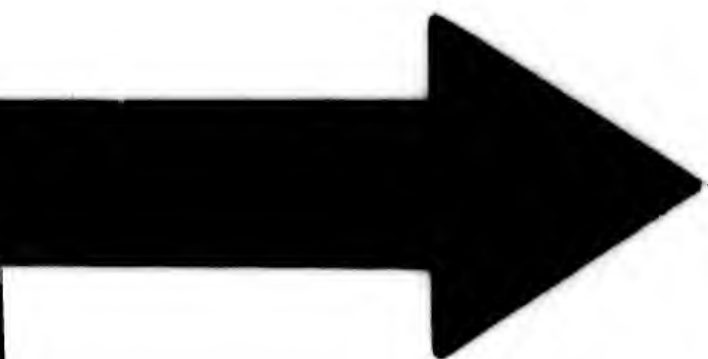
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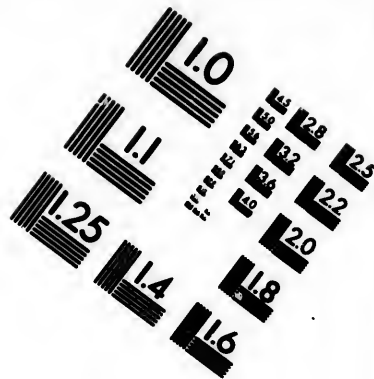
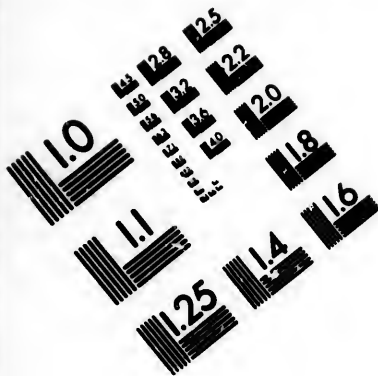
And by the Defendant,

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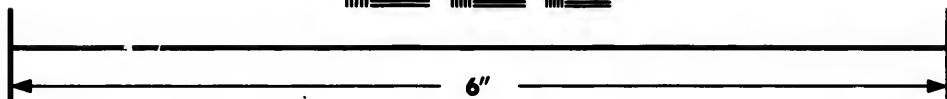
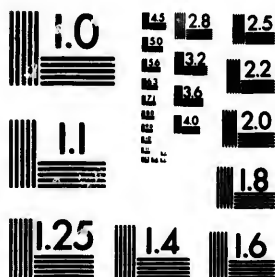
But if such action *en garantie* or *inter-
 vention* be not contested, or be by de-







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(716) 872-4503

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Fault, there shall be paid by the party
Plaintiff, on every such demand, O 10

And it is ordered, that the above fees on actions *en g
antie* and *en intervention*, be paid by the parties respect
ly to the Prothonotaries in the same manner and at
same time as the fees on original actions are herein
directed to be paid.

And it is further ordered, that in the following cases,
fees herein after mentioned shall be allowed and paid to
said Prothonotaries, in lieu of what they might have be
entitled to claim by the aforesaid Tariff of the 7th Ju
1815.

- ART. 1—That there be paid by the Plaintiff or
Plaintiffs, his or their Attorney, in all
cases by default of or above thirty
pounds; when the cause is dismissed
from want of proceedings during two
terms, O 15
- 2—And if the cause be contested, 1 5
- 3—And by the Defendant or Defendants,
his or their Attorney, to be paid be
fore motion made or allowed in this
behalf, O 15
- 4—And by the Plaintiff or his Attorney, in
causes by default, when the cause is
discontinued, O 15
- 1—If the cause be under thirty pounds,
and by default, there be paid by the
Plaintiff or Plaintiffs, his or their At
torney, O 10
- 2—But if the cause be contested, O 15
- 3—And by the defendant or defendants, his
or their Attorney, 10s. when on his
or their motions, to be paid before

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such motion made or allowed. £ s. d.
 0 10 0

And by the plaintiff or plaintiffs, his or
 their Attorney in all causes by default
 when the cause is discontinued. 0 10 0

That in all causes of and above thirty
 pounds, and in all real and mixed ac-
 tions when the judgment is entered by
 default, or on confession, there be paid
 to the Prothonotaries as follows :

In causes by confessions. 1 0 0
 In causes by default where no Enquête
 is had. 1 5 0
 And in causes where an Enquête is had. 2 0 0

*In all cases of opposition, the following be allowed and paid to the
 notaries by the parties interested.*

On every opposition *afin d'annueller*, £ s. d.
afin de distraire, or *afin de charge*, there
 be paid by the opposent on motion for
 the discontinuance of any such opposi-
 tion, and before such motion made or
 allowed. 0 10 0

And before motion made or allowed for
 hearing on the merits of such opposition
 for all Fees until judgment entered
 thereon. 0 15 0

On all oppositions *afin de conserver*
 where motion shall be made for discon-
 tinuing the same, and before such mo-
 tion made or allowed. 0 5 0

On the admission of any such opposition for a sum of or above thirty pounds, and for entering judgment thereon. £ s. d.
0 5 0

And for entering judgment, dismissing such opposition, to be paid by the party making the motion in his behalf, and before the same be received or allowed. 0 10 0

Upon every order or judgment, on motion for the payment of monies levied on Execution 5s. to be allowed in all cases as well below as above thirty pounds, and to be paid by the person demanding such order. 0 5 0

In cases of opposition *afin de conserver* for any sum below thirty pounds, there be paid by the opposant discontinuing the same, and before motion made or allowed in this behalf. 0 5 0

On admission of any such opposition, and entering judgment thereon. 0 5 0

And for entering judgment, dismissing such opposition on motion to be paid as above. 0 7 6

For entering every judgment of distribution, and engrossing a copy thereof, there be paid and allowed as follows :

When the sum levied and to be distributed, exceeds One Hundred Pounds, there be paid to the Prothonotaries. £ s. d.
0 17 6

When the sum levied exceeds Fifty Pounds, and not more than one Hundred there be paid. 0 12 6

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When the sum levied exceeds Thirty \textsterling s. d.
Pounds, but not more than Fifty there
be paid. 0 10 0

And when the sum levied is under Thirty
Pounds there be paid. 0 7 6

To be paid by the person demanding and
receiving the copy of such judgment.

And for all other duties performed or to be performed by
the said Prothonotaries in their office, for the deposit of mo-
ney in their hands, the execution of Commission Rogatoires,
writs of execution, copies of judgment, or rules or orders
of the Court, the said Prothonotaries shall be entitled to de-
mand and receive the allowances made to them by the afore-
said Tarif of the 7th of June, 1815.

And it is ordered that in future all Fees due or to become
due and payable by suitors in this Court, or their Attornies,
for business done or to be done in Court, in any suit, cause
or matter or thing now therein pending, or hereafter to be
therein instituted, prosecuted or made, as well below as above
Thirty Pounds currency, shall be advanced and paid by such
suitors or Attornies in the following manner.

That in every cause by default or on confession, the fees
due to the Prothonotaries shall be paid by the Plaintiff or
Plaintiffs, his or their Attorney, before motion made or al-
lowed for final hearing and Judgment, or before motion
made or allowed for discontinuing the causes whether the
same be by default or contested.

That in all contested causes there shall be paid by the
Plaintiff or Plaintiffs, his or their attorney to the said Protho-
notaries, the amount of their fees until final judgment enter-
ed in the causes, before motion made or allowed for final
hearing thereon—and in case such hearing is to be had upon
any motion or exception upon which the process may be
quashed or the cause dismissed, the fees due to the Protho-
notaries thereon, shall in like manner be paid before motion
for such hearing made or allowed.

That there be paid to the said Prothonotaries by the defendant or defendants, his or their attorney, at the time of making any motion to quash the writ of process or of filing any plea of exception or plea to the merits and before such motion shall be made or allowed or such plea shall be received or filed all such fees as the said Prothonotaries may be entitled to claim from such defendant or defendants until final judgment entered on such motion or plea.

That upon all judgments entered and recorded in this Court during the present term or hereafter to be entered and recorded, the Prothonotaries shall not be held or bound to expedite or deliver any writ of execution thereon, until the fees due to them in the causes by the person or party demanding such writ of execution shall have been first paid.

SHERIFF'S FEES.

- | ART. | | £ | s. | d. |
|------|--|---|----|----|
| 1 | For the service of every Writ of Summons, including a Copy of the same, in personal action, not exceeding 20 <i>l.</i> Currency, | 0 | 5 | 0 |
| 2 | For the like, in actions above 20 <i>l.</i> Currency, and not exceeding 30 <i>l.</i> Currency, | 0 | 6 | 8 |
| 3 | For the like, in actions above 30 <i>l.</i> Currency, and in real and mixed actions, | 0 | 8 | 4 |
| 4 | For every additional Copy, when more than one Defendant, one half more. | | | |
| 5 | For the service of every Writ of attachment, or <i>saisie-arrêt</i> , <i>saisi gagerie</i> or <i>entiercement</i> (writs of Attachment in the hands of third persons after judgment excepted) exclusive of the service of Summons, as above regulated, | 0 | 6 | 8 |

ART. 6.—For the service on *tiers saisie* of every £ s. d.
 writ of attachment after Judgment, (the
 service of summons to the said *tiers*
saisie included) exclusive of the service
 of summons on the Defendant. 0 3 4

7—The same fee for such service on every
 other *tiers saisie* when more than one. 0 3 4

8—Warrant on every such writ and on
 every execution against the chattels,
 the body or real property. 0 2 6

9—For the service of every writ of *Cap.*
ad resp. exclusive of the warrant and
 of the service of summons according to
 the above cases. 0 6 8

10—For drawing and engrossing a bail bond
 and execution thereof. 0 10 0

11—For the assignment of the same. 0 2 6

12—For service of a *venire facias* for a spe-
 cial Jury. 2 0 0

13—Ditto in causes above £50. 2 10 0

(The above to include all the duties on such service together
 with the returns.)

14—For every return of *nulla bona* or *non* £ s. d.
est inventris on every writ of execution. 0 3 4

15—For the execution of every order to re-
 deliver goods attached, or for the dis-
 charge of a person arrested. 0 5 0

16—For the entry of every opposition. 0 5 0

17—For the return of the same. 0 2 6

	£	s.	d.
ART. 18 —For the return of every writ of execution when proceedings have had thereon with the said proceedings.	0	5	0
19—For the service, levy and sales, on every execution whereby chattels or realties have been sold, two and a half per cent on the amount of sale.			
20—For every deed of sale of lands not exceeding £30 currency.	1	0	0
21—For ditto above £30 currency, and not exceeding £100.	1	10	0
22—For ditto above £100.	2	0	0
23—For the service of a writ of possession and return.	1	3	4
24—For ditto with the aid of <i>posse comitatus</i> .	2	6	8
25—For drawing advertisements and copies for the Printer and to publish at the Church door.	0	16	8
26—Ditto condition of sale.	0	6	8

—

Fees to be allowed to the Cryer and Assistant Cryer or Bailiff attending the Court and Judges, and to each of them.

	£	s.	d.
ART. 1 —On every summons, <i>cap. ad resp. saisie arret</i> or <i>gagerie</i> or entiercement in all actions above ten pounds sterling and not exceeding thirty pounds currency.	0	1	6
2—On ditto in all actions of debt above thirty pounds currency and not exceeding fifty pounds.	0	2	6
3—On ditto in all actions of debt above fifty pounds and in all actions of damage above thirty pounds and in real or mixt actions.	0	3	4

ART.

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	£	s.	d.
ART. 4—On every rule of nisi to obtain an execution or <i>cap. ad sat.</i> or <i>contrainte par corps.</i>	0	1	6
5—On every <i>venire</i> for a Jury.	0	1	6
6—And to the person attending and keeping the Jury.	0	5	0

Which above fees the Prothonotaries of this Court are authorised and ordered to demand and receive on delivering the Writs or Copies of Rules, and of which fees they shall render to the said Cryer and Assistant Cryer a true account every Term.

£ s. d.

0 5 0

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1 3 4

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Bailliff attending

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INDEX.

A.

Affidavit.

Sect. Page.

UPON which a *Capias ad resp.* Seizure of goods by attachment, or *Saisie Revendication*, may be applied for under the *fiat* of a Judge, to be filed before the writ issues. 8 11

Appeals.

Of Proceedings in respect to - - - - - 38 63
Directions for making up the Record - - - - - ib ib

Appearance.

Upon every appearance of a Defendant in person, to defend any action, suit, or rule, he shall, at the time, make an Election of Domicile in the Town of Montreal, and where he may fail to elect such domicile, Plaintiff may proceed by a regular service of Rules upon him, in the Prothonotary's Office. - - - - - 6 7

No appearance to be withdrawn by an Attorney, without due notice to his client, and leave of the Court. - - - - - 7 9

Arbitres.

No reference to be made to, by Rule or order, or by consent before issue joined, and then only of the matter to which such Issue shall relate. - - - - - 21 30

No Issue in writing to be raised upon the report of any, unless specially ordered by the Court, but the same to be verbally heard on motion. - - - - - ib ib

Arrest.

Of judgment, Motion for, when and how to be made, Prothonotary to enter the same in the Judges Book. - - - - - 33 53

When and how a motion in arrest of judgment is to be made by a party whose motion for a New Trial has been rejected 32 ib

Attachment:

	Sect.	Page
No writ of, to be issued before affidavit filed.	8	11
How to be indorsed.	ib	12

Attornies.

Every Attorney employed to enter an appearance for any person in any suit shall enter such appearance immediately after the opening of the Court, at the return day of the process.	6	8
No Attorney shall sign any writ or declaration, nor appear for, nor defend any person in this Court, unless he may be duly authorised so to do.	7	ib
Every Attorney who may accept a warrant to appear, and wilfully neglect so to do, shall be suspended from the roll and practice of an Attorney.	ib	9
No Attorney to countermand and withdraw his appearance, without due notice to his client and leave of the Court.	ib	ib
No person shall change, shift, or withdraw his Attorney, in any cause, without a rule of this Court or an order of a Judge, after due notice to the adverse party or his Attorney.	ib	ib
Every Attorney substituted in the place of another shall take notice of and be bound by all rules and proceedings, to which the former Attorney was or would have been liable.	ib	ib
An Attorney who shall appear for any party in a suit shall be held and taken to be the Attorney of such party, in all matters and proceedings collateral and incidental to such suit, as well after as before final judgment. This rule not to extend to such proceedings after judgment as by special rules may require personal notice to a defendant on a judgment obtained, as rules <i>Nisi</i> for renewing a writ of execution, &c.	7	9
No Attorney shall permit any one to practice in his name, upon pain of being interdicted and struck from the roll.	ib	ib
No Attorney, Barrister, or Officer of the Court, to be Bail in any action.	ib	ib

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Sect.	Page	Attornies, Barristers, and other Officers of the Court, to be considered as present, and bound to answer any demand without service of summons.	7	9
-	8	11		
-	ib	12	Attornies when dismissed or suspended from practice in any of His Majesty's Courts shall not be admitted to practice in this Court until readmitted to practice in the Court from which they have been so dismissed or suspended.	ib 10
-	6	8	No candidate for admission to practice at the Bar shall be examined by the judges, unless the contract under which he has served his clerkship shall have been enregistered in the Prothonories Office within three months from the date thereof—nor unless notice of such examination shall have been affixed to and shall have remained on the principal door of the Court-House one week before the same;—nor unless the candidate or the person with whom he shall have studied shall have made an affidavit of his regular and continued clerkship conformably to Law, or of his having already been called to the Bar, or entitled so to be, in some Civil Court in His Majesty's dominions.	ib ib
-	7	ib		
-	ib	9		
-	ib	ib	In case of application to be admitted as a Notary, what affidavit necessary.	ib 11
-	ib	ib	Oath required to be taken by Barrister or Attorney before he be admitted to practice.	ib ib

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Bail.

Special, how taken in Term.	8	12
How taken in vacation.	ib	ib
Bail taken by the Sheriff for the appearance of a party, to be specified in his return upon the writ.	ib	13

Bail Bond.

If the party does not appear on the return day, plaintiff shall be intitled to an assignment of the Bail Bond.	ib	14
Such assignment not to exonerate the Sheriff if the Bail taken is not sufficient to secure the plaintiff's debt.	ib	ib

Defendant may surrender himself, or be surrendered by his Bail, at any time previous to an assignment of the Bail Bond. 8 14

A like surrender may be made at any time before judgment against the Bail, or previous to a Rule upon the Sheriff to bring in the body on payment of all costs. - - - - - ib ib

A Plaintiff may take an Assignment of a Bail Bond, and prosecute thereon, but shall not obtain judgment until he may have established his debt against the Defendant in the original action. - - - - - ib ib

Bailiff.

Every affidavit or certificate of a, respecting the service of any pleading, notice, &c. shall describe the manner, place and hour of such service.—In what cases the service may be deemed insufficient. - - - - - 21 30

C.

Capias ad Respondendum.

May issue without being accompanied by a declaration, which, however, must be filed in the Prothonotaries office within five days after the arrest, or upon the defendant if he elects a domicile in this city within that time. - - - - - 4 6

All returns to any Process *Ad Respondendum*, to be signed by the Officer to whom the writ is directed, and specify the manner, time, and place of such service. - - - - - 5 7

None to issue before affidavit filed. - - - - - 8 11

How to be indorsed. - - - - - ib 12

Bail thereon, how to be taken. - - - - - ib ib

Persons arrested under, when to plead. - - - - - ib 13

To be committed to gaol until special bail given, and where no special bail is found, until two days after Plaintiff may have obtained a Writ of *Cá. Sz.* - - - - - ib ib

When *Cap. ad Resp.* is applied for under special circumstances of Tort, Trespass or personal injury, affidavit must specify such circumstances. - - - - - ib 15

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If an Attorney *ad negotia*, wishing to obtain a *Cap. ad Resp.* cannot swear to a personal knowledge of the debt, he must produce an affidavit of the Creditor, his clerk or book-keeper. 8 15

In all cases where the writ of *Cap. ad Resp.* is not made returnable on the first day of Term, Defendant to have fifteen days to plea. 11 20

Capias ad Satisfaciendum.

Upon every final judgment, obtained against any person, in prison, under a *Capias*, or Attachment, the judgment creditor may, after fifteen days from the date of such judgment, sue out a writ of *Ca. Sa.* against the Debtor, unless he shall have lodged security in the Prothonotary's Office to prosecute an Appeal. 35 56

Every person who may be confined under a Writ of *Capias ad Respondendum*, or be committed after surrender by his Bail, and not charged in execution upon a Writ of *Ca. Sa.* within two days after the Plaintiff might legally have obtained such Writ, shall be dismissed by an order of the Court, or of any one of the judges thereof in vacation. ib ib

Certiorari, Writ of.

All proceedings upon, to be similar to the proceedings upon such Writ, in Westminster Hall. 21 29

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Form of the Oath to be taken by the Commissioners, - ib ib

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Manner of examining the Witnesses, - - - - - ib 44

How the Commission is to be returned, - - - - - ib 45

Not to issue until after issue joined on the merits, except in cases of default, - - - - - ib 46

To be moved for four days after issue joined, if in Term, and if in Vacation by Petition, within the said period, to two of the Judges, for an Order therefore, - - - - - ib ib

Rule 21st. of Sect. 27, to be conformed to in the issuing of
Commissions Rogatoires. 27 42

No interrogatories or cross-interrogatories to be annexed to
Com. Rog. (unless by consent of the parties, expressed by
their signatures or that of their Attorneys thereto,) with-
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On delays granted upon the service of Summonses, Rules,
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Sheriff, in the execution of his duty, to extend to the
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Relative to any demand or defence may be filed before set-
ting down the cause for trial, upon due proof being made
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When and how obtained, 6 8

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Enquête.

Roll to be kept by the Prothonotaries, 22 51

Causes when appointed for Enquête or Examination of witnesses, to be inscribed on the Roll, and come on to be heard, unless cause be shewn to the contrary, 27 37

Plaintiff's action shall be dismissed for default, in not proceeding on the merits, and judgment entered against the party in default ib ib

If Defendant be in default, Plaintiff may proceed Exparte ib 38

No Witness shall be examined who has not been Subpoenaed, or appeared on the first day of the Enquête, ib ib

If a further day be granted, it shall be conclusive, if no cause be shewn, and no further day allowed but on payment of all costs, ib 39

After the Enquête opened and begun, no allegations shall be received of the absence of witnesses. 27 39

Every motion for delay to be supported by Affidavit, and it shall be in the discretion of the Court or Judges, to direct the entire continuation of the Enquête, subject to payment of Costs, and if no sufficient cause be shewn for delay, and the party do not proceed, the action may be dismissed, as by Art. 9 & 10 of this Section. ib 39

Either party may oppose and prevent a partial examination of witnesses, and thereupon be allowed costs of his witnesses' attendance, and no further proceedings until costs be paid. ib 40

Any Enquête adjourned, shall be considered a continuation of the same day, ib 41

A party not proceeding to examine all or any part of his witnesses at the day of Enquête in vacation, shall be bound to move on the first day of the ensuing Term for such examination, or be concluded and foreclosed, judgment may be awarded upon the circumstances of the case ib 41

Witnesses to be examined in every cause as called in rotation—attention of an Attorney to the examination of witnesses in one cause, not to be considered an excuse for non-attention to another—and, in case of non-attendance of the Attorney or some one on his behalf, evidence to be taken ex parte. . . . 17 42

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In possession of an adverse party, how obtained. . . . ib 36

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Exceptions.

Declinatoire, dilatoire, or preceptoire a la forme when to be filed, 11 17

None to be received or filed, unless such exception contain the special grounds, ib ib

Deposit of money on filing thereof, ib ib

To be heard without answer, if moved for by the Plaintiff, ib ib

If a general answer be thereto made, no replication to be filed, 11 18

An exception preceptoire, which respects the right and not the form of the demand, and all other matters or ground of plea to the merits, shall be contained and set forth in one and the same pleading, ib ib

To any interlocutory order or judgment, when to be filed, 25 33

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No Execution to issue on any judgment subject to appeal, until after fifteen days from the date thereof, nor until twenty days from the date of such judgment, where the party, meaning to appeal, shall have given good and sufficient security, to prosecute the same,	35	55
No Execution to issue on a judgment in any cause, wherein the several exhibits and evidence filed, may not remain of record,	ib	ib
Register of writs of, to be kept by the Prothonotary,	ib	ib
Entries therein, how made,	ib	ib
Access thereto allowed gratis.	ib	ib
No Execution to issue to levy monies from the Real Estate, until after a return of the execution to levy from the Personal Estate, unless the debtor shall specially assent thereto,	ib	56
No execution for the levy of monies from chattels to be made returnable at a period beyond the next ensuing Term.	35	55
An execution to levy monies from the sale of chattels, and whereon no chattels have been attached, or such only as may in part satisfy the Plaintiff's debt, may be returned in vacation, and upon the returning officer certifying that due diligence has been made, in the execution thereof, an execution may issue to levy from the Real Estate.	35	56

Exhibits.

Not to be withdrawn from any cause, after final judgment, unless by express order of the Court in Term, or by the order of two Judges in vacation, after due notice to the adverse party.	15	23
Copies of such exhibits to be filed of record, before the originals are withdrawn.	ib	24
Communication of exhibits filed, how obtained and for what length of time.	16	ib
No exhibit or act <i>sous seing privé</i> , or original paper writings, to be taken in communication.	ib	ib
Delay granted for filing of, with a plea, &c. in vacation:	19	27

No exhibit nor paper of any description, shall be received or filed, in any cause unless the same be regularly docketed with the title and number of the cause and the general description of such paper. 21 29

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Vide Arbitres.

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Faits et Articles.

May be moved for at any time, after filing the declaration until closing the *Enquête*, provided a motion be made that the same be had in a reasonable delay, *sans retardation du jugement*. 29 47

No examination to be had after the evidence closed, nor after a *Venire Facias*, issued for summoning a jury, unless upon special circumstances. 29 ib

A copy of the order for the examination on *Faits et Articles*, and a copy of the articles to be personally served on the party enjoined to answer, unless in cases where the said party may have appeared personally or by an Attorney, in which case the service of the order, and copy of the *Faits et Articles* at the actual domicile of the party may be held sufficient for proceedings thereon. ib 48

Rule 21 of Sect. 27, to be conformed to upon every reservation to examine on *faits et articles*. 27 42

No interrogatories or cross-interrogatories to be annexed to *faits et articles* (unless by consent of the parties, expressed by their signatures or that of their attorneys thereto,) without an order of the Court in Term or of one judge in vacation. 28 46

Answers to interrogatories to be taken by one of the Prothonotaries, without the presence of either Attorney; and, when engrossed, to be laid before the Court in Term or one judge in vacation. 29 48

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Not to delay the Plaintiff. ib ib

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The documents or exhibits on which the same may be grounded, to be filed therewith. ib ib

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When to be made. 11 19

Not to be allowed after Plea or Replication filed, except against any act or instrument offered in evidence, subsequent to the plea or replication, if made previous to setting down the cause, on the Roll *d'Enquête* or appointment for hearing on any issue at law. ib ib*Intervention.*

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Prothonotary to place up to public view in his office, a list of the return of executions, on every day as soon as any execution is returned and filed,	- - - -	ib	ib
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Prothonotaries to keep a Register of the Sheriff's returns on Writs of Execution,	- - - -	ib	ib

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Of a Judge in vacation, subject to an Appeal unless made by consent.	- - - -	21	29
For the conduct and regulation of the Sheriff to extend to the Coroner.	- - - -	ib	ib

P.

Peremption or discontinuance of Actions.

All suits pending before the Court, by original opposition or intervention, in which no proceedings shall have been had in open Court for two succeeding Terms, to be deemed and taken as deserted by the party prosecuting the same, and be dismissed with costs, upon the last day of the second Term in which no proceedings shall be so had, on motion for that purpose of any of the parties concerned, and on default of such motion, the Court will *ex officio* dismiss the same, but without costs to either party, - 34 54

No cause shall remain on the records after twelve Terms, unless sufficient cause be shewn to the contrary, and either party may on the first day of the thirteenth Term, move for and obtain a judgment of absolute peremption, with costs. - 34 54

Plea.

When to be filed, - 11 17

Every insufficient plea to an action, and every departure in pleading to be dismissed with costs. - 10 16

Exhibits on which a plea is grounded, to be filed with the plea. - 11 18

Pleas to actions founded solely on an *acte authentique*, to be special, not general; otherwise no *Enquête* allowed the Defendant. - ib 20

Before any plea, exception, replication, demurrer or other pleading be filed, it must be entered on the list of exhibits, and the date of filing be inscribed on such plea, &c. otherwise it will be rejected. - ib ib

If a plea be not filed within the time directed by the Rules of Practice, the Plaintiff may proceed *ex parte*. - ib 21

Delay granted for filing pleas in vacation. - 19 27

Power of Attorney.

When to be produced and filed by the Attorney suing out any writ or process, at the instance of any person not resident within this Province. - 14 23

Plaintiff's Attorney failing to produce such power, at a day given by the Court, the Plaintiff's action to be dismissed. - ib ib

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Practice.

Any point of, settled by judgment and entered on the Prothonotary's "Book of the Rules of Practice" shall not be reargued. 21 29

Practiciens.

No reference to be made to, by rule or order of this Court, or by consent before issue joined; and then only of the matters to which such issue shall relate. No issue in writing to be raised upon the report of any, unless specially ordered by the Court. ib 30

Process.

Service of, delays between service and return how reckoned. 4 5 & 6

No writ or process directed for service, which may express a declaration to be thereunto annexed, to be returned by the Sheriff or Coroner, unless the declaration or writing therein referred to, be annexed to the same. 4 6

On service of any *Cap. ad Resp.* notice to be given to defendant, at the time of serving the writ, that a copy of the declaration will be left for him at the Prothonotaries' office within five days from such service. But Defendant, by notifying, within the said five days, his election of a domicile in this city, to Plaintiff or his Attorney, may require said copy to be served at such domicile. ib ib

The returns of process to be made on the return day and entered of record, and the respective Defendants, where no appearance has been entered, to be openly called. 5 7

All returns of process on *Capias ad Respondendum* to be signed by the officer to whom the writ may be directed, and specify the manner, time, and place of such service. ib ib

No writ or process to issue from Prothonotaries' Office without a *Fiat*:—the form thereof, and consequence of alteration. ib ib

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Hours of attendance in their office during Term time, to be permanently hung up and exposed to public view in the office.	ib	ib
Their attendance in Court particularly enjoined during its sitting in Term, and also upon any of the Judges at any time appointed in vacation.	ib	ib
A fairly written Register of causes, with the proceedings therein, to be kept by them.	ib	4
How causes are to be numbered.	ib	4
Records of causes in which final judgment has been given to be deposited in a box; and a list of such causes in each box to be deposited therein.	ib	ib
All writings issuing from their office to be fairly written, without erasure or interlineation, figures or abbreviation, other than those necessarily descriptive of originals; otherwise, to be not considered authentic nor paid for.	ib	ib
Attornies presenting for taxation Bills of cost wherein there are charged disbursements to Prothonotaries, must produce a receipt for payment from the latter, before such bills shall be taxed.	ib	5
Prothonotaries to keep a register of the copies of declarations filed, the date of their being filed, and the date of their being taken up by the Defendant or his Attorney.	ib	ib
No Prothonotary to be bail in any action pending in Court.	7	9

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Records.

No pleading, exhibit, or paper, filed in any cause, or any part of the record in a cause to be taken or withdrawn from the Prothonotary's office contrary to the sixteenth section of the Rules of Practice.	17	25
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Rules (general) for Pleading, &c.

ib	ib	The rules of this Court, directing the filing of pleadings, writings, or papers, to be considered as peremptory, and a neglect thereof as a default,	21	23
7	9			
		Every rule made in the presence of the parties, or their Attornies in Court, to be considered as sufficiently notified without service thereof,	ib	ib
		How and when enlarged,	ib	ib
21	29	Where service thereof shall be required, the same to be made upon the Attorney <i>ad litem</i> , and if no Attorney shall have appeared, such service shall be made at the elected domicile of the party,	ib	ib
		All rules and orders, for the conduct and regulation of an Attorney, to extend to the party personally appearing,	ib	29
		Every order of a Judge, obtained in vacation, to be subject to an appeal to the Court,	ib	ib
17	25	Unless made with consent or otherwise acquiesied in,	ib	ib

No paper of any description to be received or filed by the Prothonotary, unless the same be docketed, with the title and number of the cause,	21	29
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To express in his return, to whom the lands or real estate were sold, and the conditions of sale,	ib	ib

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ib 59

Surrender.

Persons surrendered in discharge of special bail, not to remain in prison more than two Terms, after judgment recovered, upon which a Ca. Sa. might be obtained, unless a Ca. Sa. is lodged with the Sheriff, whereby the debtor may be charged and detained, 8 12

A defendant may surrender himself, or be surrendered by his bail, at any time previous to an assignment of the Bail Bond, 8 14

A like surrender may be made at any time before judgment against the bail, or previous to a rule upon the Sheriff to bring in the body on payment of all costs, that have arisen by reason of the assignment of the Bail Bond, or of prosecuting the bail, ib ib

A debtor may be surrendered and charged to the custody of the Sheriff in vacation, before one of the Judges, ib ib

T.

Trial by Jury,

Notice to be given by the party applying for a Jury to the adverse party to attend to strike the Jury,	30	49
How the Jury is to be struck,	ib	ib
Proceedings that may be taken if Plaintiff or Defendant, obtaining an order for trial by Jury, neglects to proceed during two days after issue joined,	ib	50
Notice of trial to be given by the party applying for such jury to the opposite party, two full days at least before the trial shall be had,	ib	50
<i>Venire Facias</i> to issue four days inclusive and the jury summoned twenty four hours before the return of the writ and the trial of the cause.	ib	51
No <i>venire facias</i> to issue or be made returnable for the trial of a cause in any term, after the 15th day of the month.	ib	51
No written evidence, except such as may be filed in the cause, and whereon the demand or defence may be founded and referred to in the pleadings, to be given to the jury or make part of the record.	ib	ib
After the jury are sworn, the parties, Plaintiff and Defendant shall be called, and if neither appear the jury shall be forthwith discharged. If the Plaintiff appear, and the Defendant do not appear, his default shall be recorded and the evidence of the Plaintiff shall be heard <i>ex parte</i> , and the verdict of the jury taken and judgment entered thereon.	ib	ib
If the Defendant appears and the Plaintiff do not appear, the Plaintiff's default shall be recorded, and judgment of non suit thereupon entered, dismissing the Plaintiff's action, <i>sauf à se pourvoir</i> , with costs to the Defendant.	30	52
If after the jury sworn, the Plaintiff shall choose at any time before verdict to become nonsuit, and he shall withdraw from the Court, the Plaintiff shall be called and his default recorded, and judgment of nonsuit thereupon entered, dismissing his action <i>sauf à se pourvoir</i> , with costs to the Defendant.	ib	ib

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V.

Venire Facias.

	For summoning a Jury to issue four days inclusive, and the jury summoned twenty four hours before the return of such writ and trial of the cause.	ib	51
30	49		
ib	ib	30	51
	No <i>venire facias</i> to issue or be made returnable for the trial of a cause in any Term after the 15th day of the month.		

W.

Witness.

	To be examined by one Counsel and no more, and cross-examined by one Counsel and no more.	21	30
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Witnesses.

	No allowance to be made for subpoenaing more than six for each issue joined.	27	35
ib	51		
ib	51		
	List of, to be filed in the proceedings.	ib	ib
ib	ib		
	About to depart the Province, not to be examined until issue joined on the merits.	ib	ib
	The examination of, in vacation, to be moved for in Term.	ib	ib

Writs.

ib	ib	21	29
	To be tested on the day they issue.		

ADDITIONAL.

Costs.

30	52		
	No general rule respecting costs shall limit the order of the Court made under special circumstances, and no fees granted by Tariff or Rule for the performance of certain business, shall be demandable when the Court or a Judge shall not consider such business to have been regularly and necessarily performed.	40	65
ib	ib		

Of Debtors in Gaol.

Their alimentary pension to be paid into the hands of the gaoler on Monday on or before twelve o'clock in the forenoon.	41	ib.
Debtors claiming to be discharged in consequence of non-payment thereof, must make oath that a demand had been made, by themselves or some one on their behalf, on the gaoler.	ib	ib
The Gaoler to keep a register containing the hour of receiving and paying the same.	ib	ib
Copies of these three Rules, in both languages and certified by the Prothonotaries, to be conspicuously posted up in the Debtors' Ward in the Gaol.	ib	66

Actions of Assumpsit.

In such actions, the Plaintiff must specify in his declaration all such declarations from the gross amount claimed as may be in his knowledge; and to conclude for the remainder only—And, he also, must file an Exhibit specifying such deductions and containing a notice of the precise amount of his demand.	42	66
Every plea must contain the specific grounds of defence;—and no evidence will be received unless in support of the special matters mentioned in the Plea or Declaration.	ib	67

Saisie Arret.

No final judgment shall be made against a <i>Tiers Saisi</i> in consequence of non attendance, unless it shall be proved that the service has been made on him personally;—and, in every other case of legal services at his domicile, the judgment against the <i>Tiers Saisi</i> in default, shall be provisional, admitting to appear on a future day.	39	64
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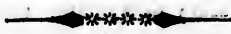
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RULES AND ORDERS OF PRACTICE IN THE PROVINCIAL COURT OF APPEALS.



PROVINCE of LOWER-CANADA.	}	In the Provincial Court of Appeals of the Term of January, in the forty- ninth year of the Reign of Our Sove- reign LORD GEORGE THE THIRD, by the Grace of GOD, of the United Kingdom of <i>Great-Britain and Ire-</i> <i>land</i> , KING, Defender of the Faith.
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THURSDAY, 19th JANUARY.

PRESENT,

The Honorable JONATHAN SEWELL, Chief Justice of the Province,

The Honorable and Rt. Rev. the LORD BISHOP of QUEBEC,

The Honorable JAMES MONK, Chief Justice of the Court of King's Bench for the District of Montreal,

The Hon. THOMAS DUNN, FRANCIS BABY, JAMES M'GILL, JOHN YOUNG,	JENKIN WILLIAMS, P. LOUIS PANET, P. AMABLE DEBONNE, JOHN RICHARDSON.
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WHEREAS in and by the Ordinance made and Preamble.
passed in the twenty-seventh year of the reign of
our said Sovereign Lord GEORGE the THIRD,
intituled " An Ordinance to continue in force for
" a limited time an Ordinance made in the twenty-
" fifth year of his Majesty's reign, intituled " An

“ Ordinance to regulate the proceedings in the
 “ courts of civil Judicature and to establish trials
 “ by Jury in actions of a commercial nature and
 “ personal wrongs to be compensated in damages,
 “ with such additional regulations as are ex-
 “ pedient and necessary. It is amongst other
 “ things enacted and declared, That the provincial
 “ court of appeals shall have authority to make
 “ rules and orders, to regulate, effectuate and ac-
 “ celerate the proceedings in all causes of appeal
 “ for the advancement of Justice and to prevent
 “ unnecessary delays and expence in the same.”
 And whereas also in and by the provincial statute
 made and passed in the forty-first year of the reign
 of our said Sovereign Lord GEORGE the THIRD,
 intituled, “ An Act to amend certain forms of
 “ proceeding in the courts of civil Judicature in
 “ this province and to facilitate the administration
 “ of Justice,” It is amongst other things enacted
 “ and declared, That the different courts of civil
 “ Judicature in this Province shall have power and
 “ authority to make and establish orders and rules
 “ of practice in the said courts in all civil matters,
 “ touching all services of process, execution and
 “ returns of all writs, proceedings for bringing
 “ causes to issue, as well in term time, as out of
 “ term, and other matters of regulation within
 “ the said courts.” It is therefore ordered by
 the court of our Lord the King now here as fol-
 lows, That is to say :—

IT IS ORDERED,

Court to be
 opened at 10
 o'Clock.

King's Coun-
 sel, &c. to be

I.—That on the first day of each term the court
 be opened at the hour of ten in the forenoon, and
 at the same hour of ten in the forenoon of each
 succeeding day in each term, not being a Sunday
 or a holiday.

II.—That the King's Counsel and all Barristers
 who do or shall practice in this court and the

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clerk of this court do appear when in court habit-
ed in black, and in such robes and bands as are
worn by the King's Counsel and Barristers and by
the Clerks of His Majesty's courts in Westminster
Hall respectively, with their hair in bags as hereto-
fore hath been used; and that no King's Counsel
or Barrister be heard in any cause who is not ha-
bited as herein is directed.

III.—That the office of the clerk of this court
be kept in the court house of the district of Quebec
in the room therein assigned and now used for
that purpose. That all records, registers, books
and papers of and belonging to this court be kept
at all times for safe custody in the said court house,
and be not thence removed or taken away, upon
any pretence whatsoever, by any person or per-
sons whomsoever without the order of this court
or some one of the Judges thereof in writing, for
the proper use of this court or of such Judge or
Judges.

IV.—That the office of the clerk of this court
during every subsequent term be open from the
hour of nine in the morning until the hour of
five in the afternoon of every day, Sundays and
Holidays excepted, and during every subsequent
vacation from the hour of ten in the morning until
the hour of two in the afternoon of every day, Sun-
days and Holidays excepted. That during all
such office hours regular and continued attendance
be given in the said office by the clerk of this
court or by some sufficient person on his behalf,
and that the King's Counsel, Barristers and At-
torneys who shall be concerned for any party or
parties appellant or respondent in any suit depen-
ding in this court during all such office hours as
aforesaid, shall have free access to the record and
proceedings in such suit transmitted from the court
below, with free liberty to peruse and examine
such record and proceedings when and so often
as they shall see fit, and to take copies by them-

habited in
black, &c.

Office of the
Clerk to be
kept in the
Court House
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Office hours
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selves or by their clerks of such parts and of so much thereof as they shall think necessary or expedient, without fee or reward of any kind to the clerk of this court; save and except the fee of 11s. 8d. heretofore and now allowed to him for communication of the record.

Schedule of suits to be kept by the Clerk, & laid before the Court on the first day of each Term.

V.—That a schedule of all suits depending in this court specifying in each suit the names of the parties, appellant and respondent, the date of the writ of appeal, the date of the return thereof, if made, and the default of such return, if not made, the names of the Attorneys who shall have fyled appearances for the appellant and respondent, respectively, the dates of such appearances and of each and every of them; and the default of every such appearance if not fyled; the days on which the reasons of appeal and answers thereunto (if fyled) have been fyled respectively; the days on which the cases of the appellant and of the respondent, if fyled, have in like manner been fyled, and the default of such reasons, answers and cases respectively, if not fyled; the day on which such suit, if inscribed upon the roll for hearing hath been so inscribed, and the day which in consequence of such inscription is fixed for the hearing of such suit, shall be made and kept by the clerk and laid before this court upon the first day of each succeeding term, and such schedule shall be deemed and taken to be in all suits therein mentioned an official certificate by the clerk of this court of the state of such suits, and of each of them respectively upon the first day of the term upon which such schedule shall be so laid before this court, and to be complete evidence to all intents and purposes of the several matters therein set forth, and contained, and of each and every of them.

Every Attorney to file an entry of his name & place

VI. That every Attorney of this Court before the first day of March next shall make and file with the clerk of this Court, under his signature

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an entry in writing of his name and place of abode, and every Attorney hereafter to be admitted shall upon his admission make and file a like entry; and as often as any such Attorney shall change his place of abode he shall make and file a like entry of such change, and all Pleadings, Summonses, Orders, Rules and Notices which do not require personal service, shall be deemed and taken to be sufficiently served, on such Attorney, if a copy thereof be left at the place last entered as aforesaid by such Attorney, with any grown person resident at or belonging to such place; and if any Attorney shall neglect to make such entry, he shall be deemed and taken to be resident without the limits of the City of Quebec, and bound to constitute an agent as herein-after is directed.

VII. That every Attorney who not being resident within the limits of the City of Quebec shall intend hereafter to practice in this Court shall, by an appointment in writing, under his signature, constitute some other Attorney of this Court, resident within the limits of the said City of Quebec his agent, which appointment shall specify the place of such agent's abode, shall be subscribed or indorsed with an acceptance of such appointment by such agent under his signature, and shall be filed in the Office of the Clerk of this Court and by him be recorded in the register; and all pleadings, Summonses, Orders, Rules, Judgments and Notices which shall be served, as herein before ordered in cases of service upon Attorneys, upon any agent so appointed shall be deemed and taken to be well and sufficiently served upon the Attorney who shall have so appointed such agent, and upon the party or parties for whom such Attorney in the suit or suits to which such pleadings, Summonses, Orders, Rules, Judgments and Notices respectively relate, shall have appeared, unless the appointment of such agent shall have been superseded by the appointment of another agent made in

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like manner, with leave of the Court upon motion for that purpose, first had and obtained, or the matter be such as shall require a personal service thereof upon such party or parties; and from and after the first day of March next, no Attorney who shall be resident without the limits of the City of Quebec shall sue out any writ of appeal or otherwise practice as an Attorney of this Court in any manner whatsoever, until such appointment of an agent as is herein-before directed shall be made, filed and registered as herein-before is ordered.— And all suits now pending in this Court undetermined, in which any Attorney not resident within the limits of the City of Quebec shall have appeared for any party or parties, appellant or appellants therein, and shall not, on or before the said first day of March next file such appointment of an agent, as herein before directed, shall be deemed and taken to be deserted by such appellant or appellants, and thereupon dismissed with costs accordingly, upon the first or any subsequent day in term thereafter, upon motion for that purpose on the part of the respondent or respondents or either of them or by the Court *Ex Officio*, without such motion as may happen; and all suits now pending in this Court undetermined in which any Attorney not resident within the limits of the City of Quebec shall have appeared for any party or parties, respondent or respondents therein, and shall not on or before the said first day of March next file such appointment of an agent as is herein before directed, shall be deemed and taken to be in the same plight and condition as if no appearance for such respondent or respondents had ever been entered, and such course shall and may be had thereupon as in suits *ex parte* is by law directed.

Postage of
Records to be
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Appeal from

VIII.—That no writ of appeal from any interlocutory or definitive judgment given in the Court of King's Bench for the district of Montreal or in the Court of King's Bench for the district of

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Three-Rivers, shall issue in any suit until the party appellant in such suit shall have deposited in the hands of the Clerk of this Court the sum of four pounds to defray the postage of the record in suit; and the overplus if any there be, shall by the Clerk of this Court be paid to such appellant upon demand.

Montreal and
Three-rivers.

IX.—That every writ of appeal as well from an interlocutory as from a definitive judgment to be hereafter issued, shall be tested upon the date on which the same shall issue; and every such writ shall be returnable in fifteen days from the day of the test thereof.

Writs of Ap-
peals when
to be tested.

X.—That every Prothonotary who without lawful cause shall refuse or neglect to make return of any writ of appeal which shall be issued in any suit and by him be received within the period thereby allowed for the return thereof shall be deemed and taken to be guilty of a contempt of this Court.

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XI.—That no writ of Appeal from any definitive or interlocutory Judgment sued out by an Attorney of this Court shall issue in any suit until an appearance for the appellant or appellants in such suit and a *præcipe* for such writ under the signature of such Attorney or of his agent in his behalf shall be filed in the office of the Clerk of this Court; and no other appearance for such appellant or appellants shall be required or received except in the case of a change of Attorneys upon motion for that purpose, and the order of this Court thereupon.

Writ of Ap-
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XII.—That every writ of appeal as well from an interlocutory as from a definitive Judgment, which shall hereafter be issued shall be signed by the attorney of this court upon whose *præcipe* such writ shall issue or by the agent of such Attorney on his behalf, if such Attorney be not resident within the limits of the City of Quebec.

Every writ
of appeal to
be signed by
the Attorney
for the appel-
lant or his a-
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XIII.—That personal service of any writ of Ap-

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not be so filed, it shall be competent to the respondent's Attorney and to his agent, on his behalf by notice in writing, under his signature directed to the Attorney for the appellant in such suit, to demand the reasons of Appeal; and if the reasons of Appeal within four days after service of such notice and demand, shall not be filed, upon motion of the respondent by his Counsel founded upon due proof of the service of such notice and demand, and a certificate of the Clerk of this Court that such reasons of Appeal were not so filed, such suit and the Appeal therein depending, shall be dismissed with costs.

XVII.—That every Suit and Appeal in which the reasons of Appeal shall not be filed within one Calendar month from the day of the return of the writ of Appeal issued in such suit, shall be deemed and taken to be deserted by the appellant or appellants in such suit so neglecting to file such reason of Appeal, and thereupon dismissed with costs accordingly, upon the first (or any subsequent) day in Term thereafter, upon motion for that purpose on the part of the respondent or respondents, or either of them, or by the Court *Ex Officio* without such motion, as may happen.

XVIII.—That the issue in every suit in Appeal shall be completed by the reasons of Appeal, and the answers to such reasons of Appeal, and that the answers to the reasons of Appeal be filed in every suit within four days from the day on which the reasons of Appeal in such suit shall be filed; and if the answer to such reasons of Appeal shall not be so filed, it shall be competent to the appellant's Attorney, and to his agent, on his behalf, by notice in writing, under his signature, directed to the Attorney for the respondent in such suit, to demand the answers to the reasons of Appeal, and if such answers within two days after service of such notice and demand, shall not be filed, such

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Answers,
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respondent upon motion of the appellant by his Counsel founded upon due proof of the service of such notice and demand, and a certificate of the clerk of this court that such answers were not so filed, shall be wholly precluded from filing answers to such reasons of Appeal and thereupon this court will proceed to hear the matter of such suit and of the Appeal therein depending, *ex parte* on the part of the Appellant only, and proceed to judgment therein, without the intervention of such respondent.

Answers, when to be filed, if not demanded, penalty for neglect.

XIX.—That every suit in which the answers to the reasons of Appeal shall not be filed within ten days from the day on which the reasons of Appeal in such suit shall be filed, shall be deemed and taken to be deserted by the respondent and respondents in such suit so neglecting to file such answers, and such respondent and respondents wholly precluded from filing answers to such reasons of Appeal, and thereupon this court will proceed to hear the matter of such suit and the Appeal therein depending, *ex parte*, on the part of the Appellant only, and proceed to judgment therein without the intervention of such respondent.

Copies of all pleadings to be served, penalty for neglect.

XX.—That a copy of each pleading which shall be filed in any suit depending in this court duly certified under the signature of the Attorney by whom the same shall be filed or his agent, shall be served upon the Attorney of the adverse party in such suit or his agent, upon the day on which such pleading shall be filed, and in default thereof such pleading shall not be deemed or taken to be filed, and such course thereupon shall and may be had in such suit as might be pursued if such pleading had never been filed.

Cases, where and when to be filed, penalty for neglect.

XXI.—That the cases of the Appellant and respondent in each suit and Appeal to the number of six on each side shall from henceforth be filed by the Appellant and respondent respectively in

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the office of the clerk of this court within ten days after the filing of the reasons of Appeal and be by him distributed to the members of this Court who shall sit for hearing of such suit and Appeal, and each suit and Appeal in which the Attorney for the Appellant shall not so file his cases shall be deemed and taken to be deserted by such Appellant, and thereupon dismissed accordingly upon the first or any subsequent day in term thereafter, upon motion for that purpose on the part of the respondent or respondents, in such suit and Appeal, or either of them or by the court *Ex Officio* without such motion, as may happen, with costs when the respondent shall have filed his cases, and without costs to either party when the respondent shall not have filed his cases; and each suit and Appeal in which the Appellant shall have so filed his cases, and in which the respondent shall not have so filed his cases, shall be deemed and taken to be deserted by such respondent and the Appellant heard therein *Ex parte*, without the intervention of the respondent, his Counsel or Attorney, and such order and decree thereupon made, as to law and justice shall appertain, without costs in any such case to such respondent.

XXII.—That when and so soon as the answers to the reasons of Appeal in any suit and Appeal shall be filed, it shall be competent to either party in such suit having filed their cases to set down such suit for hearing upon such day in term as such party shall see fit; by inscribing such suit on a roll for hearing to be kept by the Clerk of this Court for that purpose, in vacation or in term, and two days notice thereof being served upon the adverse party, such suit and Appeal, upon proof of the service of such notice, shall come on to be heard upon the day so fixed or as soon thereafter as Counsel can be heard. And no suit and Appeal so fixed for hearing shall be put off without a special application to the Court to be

Appeals,
when to be set
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made before the day so fixed (if any other than the first day of term) upon some sufficient ground to be authenticated by affidavit after one day's notice to the adverse party and due proof of the service of such last mentioned notice.

Appeals,
when to be set
down for hear-
ing ex parte
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pellant.

XXIII.—That when and so soon as the respondent or respondents in any suit, as the case may be, shall be precluded from appearing or having appeared shall be precluded from filing answers in such suit, it shall be competent to the Appellant or Appellants in such suit having filed his or their reasons of Appeal and cases to set down such suit for hearing upon such day in term as he or they shall see fit, by inscribing such suit on the roll for hearing, without notice thereof to the respondent or respondents so precluded, or to any, or either of them, and no suit so fixed for hearing shall be put off without a special application to the Court to be made before the day so fixed (if any other than the first day of term,) upon some sufficient ground authenticated by affidavit.

Appeals,
when to be set
down for hear-
ing by the
Court.

XXIV.—That all suits and Appeals which shall not be set down for hearing upon the motion of the Appellant or of the respondent in each suit and Appeal respectively, on or before the last day of the term next after the day upon which the reasons of Appeal in such suit and Appeal shall be filed shall forthwith by the Clerk of this Court be inscribed upon the roll for hearing in succession, according to the days upon which the reasons of Appeal in each such suit and Appeal respectively shall be filed, and such suits and Appeals so inscribed and each of them shall thenceforth be and remain, set down for hearing until heard or otherwise disposed of, and if not otherwise disposed of shall be called on and come on to be heard upon the first and subsequent days of the then next ensuing term and terms in the order in which they shall be so inscribed, and no suit or Appeal so inscribed upon the roll for hearing shall be taken

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therefrom, nor shall the hearing thereof be put off without a special application to the Court upon some extraordinary and sufficient ground to be authenticated by affidavit after two days notice to the adverse party, and due proof of the service of such notice.

XXV.—That all suits which by order of the court *ex officio*, or upon motion shall be set down for hearing on any particular day, shall be called on and heard upon such day (or as soon thereafter as Counsel be heard) according to the dates of such orders respectively and such suit so set down being heard, the suits inscribed upon the roll for hearing by the Clerk of this Court under and by virtue of the next preceding rule of practice and not otherwise disposed of, shall then be called on and heard as therein is directed.

XXVI.—That every suit and Appeal fixed for hearing, in which (such suit being called on) the Appellant and respondent do not appear or are not ready to proceed shall be dismissed without costs to either party. That every suit and Appeal fixed for hearing, in which (such suit being called on) the Appellant doth not appear, and the respondent doth appear, shall be dismissed with costs to such respondent, and that every suit and Appeal fixed for hearing in which (such suit being called on) the respondent doth not appear and the Appellant doth appear and be ready to proceed, shall be heard on the behalf of such Appellant so appearing *Ex parte*, and such order and decree thereupon made as to law and justice shall appertain, without costs in such case to such respondent.

XXVII.—That, in all suits which shall hereafter be heard in this Court, no more than two Counsel shall be heard, in opening or in answer, and one only in reply.

XXVIII.—That when and so often as this Court shall be moved in any suit upon any special matter not appearing upon the record or proceedings filed

Orders of hearing for causes set down to be heard.

Course to be pursued when the appellant & respondent respectively, do not appear on the day fixed for the hearing or are not then ready to proceed.

Counsel, how many may be heard.

Motion upon special matters not appearing on the

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in such suit, such special matter, shall previously be authenticated by affidavit duly made before one of the Judges of this Court, and a copy thereof and two days notice of such motion shall be duly served upon the opponent or opponents, if such there be in such suit, of the party making such motion. And no such motion shall be made or received until such affidavit of such special matter and an affidavit of such service of such notice as aforesaid, shall be read and filed.

All facts essential to the support of Motions upon the complaints of diminution, &c. to be authenticated by affidavit, two days notice of such motions to be given, and no such motions to be received after the filing of the reasons or answers respectively, unless the right to make such motion be therein reserved.

XXIX.—That in like manner when and so often as this Court shall be moved in any suit on the part of the appellant or respondent upon any suggestion or complaint of diminution or of an irregular, imperfect or undue return in any respect, or upon any application to dispense with, change or moderate security, all facts essential to the support of such motions or either of them not appearing upon the record or proceedings filed in such suit shall previously be authenticated by affidavit duly made before one of the Judges of this Court, and a copy thereof, and two days notice of such motion shall be duly served upon the opponent (or opponents, if such there be in such suit) of the party making such motion. And no such motion shall be made or received until such affidavit of such facts (if such there be) and an affidavit of such service of such notice as aforesaid, shall be read and filed. Nor shall any such motion be made and received in any suit (in which the records and proceedings in such suit shall have been transmitted by the Court below,) at any time after the filing of the reasons of Appeal, by such appellant or of the answers to the reasons of Appeal, by such respondent respectively, those cases excepted, in which the right of making such motions upon the face of such reasons, or answers respectively shall be expressly saved and reserved.

Every motion for an

XXX.—That when and so often as this Court shall be moved in any suit for an Appeal from any

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interlocutory judgment, such motion shall be accompanied with copies of such interlocutory judgment, and of the pleadings filed in such suit, together with copies of all exhibits filed, and of all proceedings had in such suit in the Court below from the commencement thereof until the entry of such Judgment in any way essential to the support of such motion; And every such motion which shall not be accompanied with such copies duly certified, under the Signature of the Prothonotary of the Court below, shall be dismissed with costs, and no such motion shall be made or received at any time whatever after the first day of the term of this Court next after the day of the date of such interlocutory Judgment, the April term of this Court excepted, during which any such motion shall be received until the sixth day of the term inclusive.

XXXI.—That every writ of appeal which shall be granted or awarded from any interlocutory Judgment shall be sued out within two days after the date of the rule or order of this Court by which such writ shall be so granted or awarded, and in default thereof such writ shall not issue, and such Rule or Order shall no longer operate as a supersedeas of all or any proceedings in such suit, in the Court below.

XXXII.—That all Pleadings, Notices, Summonses, Rules, Orders and Judgments, and all other matters of which service is or shall be required upon any party, in any suit depending in this Court shall be served upon the Attorney who in this Court shall have appeared for such party or his agent, and in default of such appearance, upon the Clerk of this Court at his Office, to be by him filed with the proceedings in such suit, those instances excepted in which personal service upon such party is by law, by some Rule or Order of practice or by some especial Rule or Order made in such suit, expressly directed.

appeal from an interlocutory judgment to be accompanied with copies of the pleadings and of all exhibits and proceedings essential to the support of the motion.

Such motions when to be made.

Every writ of appeal from an interlocutory judgment to be issued within two days after the allowance thereof.

Pleadings, notices, &c. how to be served.

Delays, &c.
how to be
computed.

XXXIII.—That in all computations of time of delay upon any Writ, Summons, Rule, Order or Judgment of this Court, or upon the filing or service of any such Writ, Summons, Rule, Order or Judgment, or of any pleading or notice, and generally upon and in all proceedings whatsoever not otherwise particularly provided for, the day on which such Writ, Summons, Rule, Order or Judgment shall be made, or upon which the filing or service of any such Writ, Rule, Order, Judgment, or of any such Summons, Pleading or Notice shall be had, or upon which such other proceedings aforesaid shall in like manner be had, shall not be reckoned or counted to be one, but every other day to which such computation of time shall refer Sundays and Holidays not excepted, shall be reckoned and counted to be one, and no fractions of time shall in any such computation be made or allowed, it being nevertheless provided that in all cases, in which any period allowed by any Writ, Summons, Rule, Order, Rule of Practice or Judgment of this Court, shall expire upon a Sunday or Holiday, such period shall *ipso facto* stand enlarged until the then next juridical day.

Copies of
judgments in
appeal, to be
transmitted
with the re-
cord to the
Court below.

XXXIV.—That a copy of each and every judgment in consequence or by virtue whereof any record in any suit depending in this Court shall be remitted to any Court below, shall be annexed to such record and therewith remitted under the certificate and signature of the Clerk of this Court.

These rules
extended to
all suits in
Error.

XXXV.—That the rules and orders of practice herein before provided for suits in appeal, shall be deemed and taken respectively to extend to all suits in error.

Fees to be
allowed to
Counsel, &c.

XXXVI.—That the several fees by the Ordinance made and passed in the 20th year of the reign of our present Sovereign Lord GEORGE the THIRD, intituled, "An Ordinance for the regulation and establishment of fees" allowed to the Counsel, Attorneys and Officers of the Court of

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Appeal for services by them done and performed, shall continue and be allowed to the Counsel, Attorneys and Officers of this Court for the like services when done and performed by them respectively until a table of fees shall be made and published.

XXXVII.—That all Rules and Orders of Practice heretofore made by the Provincial Court of Appeals for the late Province of Quebec and adopted by this Court and all Rules and Orders of Practice heretofore made by this Court be and the same and each and every of them are hereby rescinded and annulled.

Former rules
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