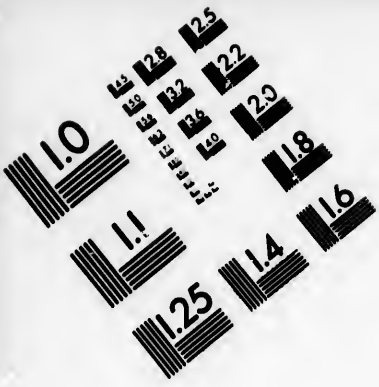


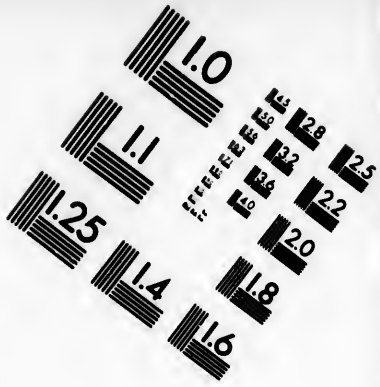
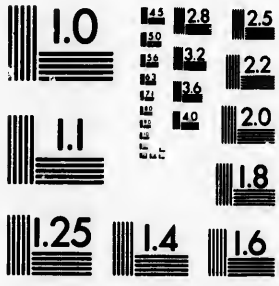
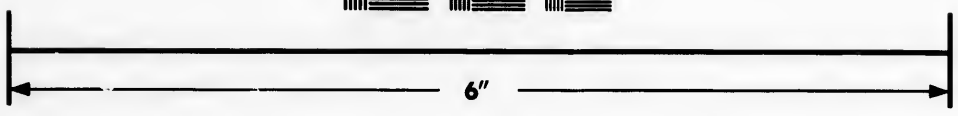


IMAGE EVALUATION TEST TARGET (MT-3)





Photographic Sciences Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

Technical and Bibliographic Notes/Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

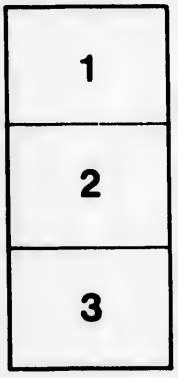
- ☐ Coloured covers/ Couverture de couleur
- ☐ Covers damaged/ Couverture endommagée
- ☐ Covers restored and/or laminated/ Couverture restaurée et/ou pelliculée
- ☐ Cover title missing/ Le titre de couverture manque
- ☐ Coloured maps/ Cartes géographiques en couleur
- ☐ Coloured ink (i.e. other than blue or black)/ Encre de couleur (i.e. autre que bleue ou noire)
- ☐ Coloured plates and/or illustrations/ Planches et/ou illustrations en couleur
- ☑ Bound with other material/ Relié avec d'autres documents
- ☑ Tight binding may cause shadows or distortion along interior margin/ La reliure serrée peut causer de l'ombre ou de la distortion le long de la marge intérieure
- ☐ Blank leaves added during restoration may appear within the text. Whenever possible, these have been omitted from filming/ Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.
- ☐ Additional comments:/ Commentaires supplémentaires:

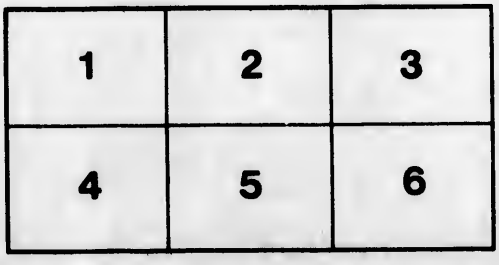
L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- ☐ Coloured pages/ Pages de couleur
- ☐ Pages damaged/ Pages endommagées
- ☑ Pages restored and/or laminated/ Pages restaurées et/ou pelliculées
- ☐ Pages discoloured, stained or foxed/ Pages décolorées, tachetées ou piquées
- ☐ Pages detached/ Pages détachées
- ☑ Showthrough/ Transparence
- ☑ Quality of print varies/ Qualité inégale de l'impression
- ☐ Includes supplementary material/ Comprend du matériel supplémentaire
- ☐ Only edition available/ Seule édition disponible
- ☐ Pages wholly or partially obscured by errata slips, tissues, etc., have been refilmed to ensure the best possible image/ Les pages totalement ou partiellement obscurcies par un feuillet d'errata, une pelure, etc., ont été filmées à nouveau de façon à obtenir la meilleure image possible.

This item is filmed at the reduction ratio checked below/
Ce document est filmé au taux de réduction indiqué ci-dessous.

10X	12X	14X	16X	18X	20X	22X	24X	26X	28X	30X	32X
				✓							





(17

THE

DIVISION COURTS ACT,

RULES AND FORMS;

WITH

NUMEROUS PRACTICAL AND EXPLANATORY NOTES;

TOGETHER WITH

ALL OTHER ACTS AND PORTIONS OF ACTS AFFECTING PROCEEDINGS IN DIVISION COURTS; AND MANY NEW AND USEFUL FORMS; AND

A TABLE

SHEWING ALL THE DIVISION COURTS IN UPPER CANADA, THEIR SEVERAL LIMITS AND NAMES OF OFFICERS.

WITH

A FULL AND COMPLETE INDEX.

BY HENRY O'BRIEN, Esq.,

BARRISTER-AT-LAW,

Joint-Compiler of "Harrison & O'Brien's Digest," and one of the Editors of the *Upper Canada Law Journal* and the *Local Courts' Gazette.*

TORONTO:

W. C. CHEWETT & CO., PUBLISHERS, KING STREET EAST.

1866.

Entered according to Act of the Provincial Legislature, in the year of our Lord one thousand eight hundred and sixty-six, by HENRY O'BRIEN, in the Office of the Registrar of the Province of Canada.

n the year of our Lord
, in the Office of the

TO

HIS HONOR JAMES ROBERT GOWAN,

JUDGE

OF THE COUNTY COURT OF THE COUNTY OF SIMCOE,

THIS VOLUME IS INSCRIBED,

IN APPRECIATION OF THE TALENTS WHICH ADORN HIS POSITION, AND OF HIS EXERTIONS TO FORWARD THE DUE AND SYSTEMATIC ADMINISTRATION OF JUSTICE IN OUR DIVISION COURTS;

AS WELL AS

A SLIGHT ACKNOWLEDGMENT OF HIS INVALUABLE AID IN THE PREPARATION OF THIS LITTLE WORK, AND OF NUMBERLESS OTHER KIND ACTS OF FRIENDSHIP TO

HIS SINCERE FRIEND,

THE EDITOR.

INTRODUCTION.

A sketch of the legislation which has resulted in the present Division Court system may shortly be given as follows:—

In 1792, *Courts of Request* were established by 32 Geo. III., cap. 6, which gave power to two or more justices of the peace to decide matters of debt up to forty shillings. This act was amended in several particulars in 1816 by 56 Geo III., cap. 5, which also increased the jurisdiction of the courts to £5. By the 3 Wm. IV., cap. 1, the jurisdiction was further increased to £10; commissioners were appointed to preside in the courts in the place of justices of the peace; a clerk and bailiff were appointed for each court, and the commissioners, clerks, and bailiffs were all paid by fees.

In course of time, the large majority of the commissioners proved to be utterly unworthy of the confidence of the government or of the people, and the evil was so great that a commission was issued in October, 1839, to investigate the subject generally, and, if possible, suggest a better mode of recovering small debts.

The statute of 4 & 5 Vic., cap. 53, was the result of this enquiry. The Bill was introduced by the then Attorney-General, Mr. Draper, and was based upon the report of the commissioners, of which he was one. To the sagacity and energy, therefore, of the present gifted Chief Justice of Upper Canada do we owe the establishment of our present admirable system of local courts.

This Act abolished the old Courts of Request, and in their stead established what we now call *Division Courts*. The District Court judges, were appointed to preside over these courts in each district, and were authorised to make rules of

practice in their own courts. The jurisdiction was further increased and various other improvements effected.

This Act, however, with others passed from time to time on the subject, was repealed by 13 & 14 Vic., cap. 53, which remodelled the courts, and gave them much more extended jurisdiction, following, in a great measure, the provisions of the Imperial Act of 9 & 10 Vic., cap. 95. The subsequent statutes, 16 Vic., cap. 177, and 18 Vic., cap. 125, gave the courts further powers and remedied some of the defects of the then existing law.

All these last mentioned statutes, together with parts of 16 Vic. cap. 180; 19 Vic. cap. 43; 20 Vic., cap. 3; 20 Vic., cap. 58; 20 Vic., cap. 59; and 22 Vic., cap. 33, (1859) were, with some slight alterations that were necessary to carry out fully the spirit of the various enactments, consolidated by the commissioners appointed for the revision of the statutes. The result of their labors on this subject appears in chapter 19 of the Consolidated Statutes for Upper Canada.

Further powers, referred to in the body of this work, have since been given to the Division Courts, and it would not seem to be going too far to say, that the law, as it stands, is, with a few imperfections, as complete a system for the purposes for which it was intended, as could well be devised.

It was not until 1846 that the system of local courts in England was established in the way in which it now exists. In their general features the English "County Courts" are the same as our Division Courts; and most of the decisions on English acts are more or less applicable here. Many of these cases are noted in their proper places, whilst *all* the decisions in our own courts, which bear on the text, have been referred to at greater or less length as their importance deserved. Many of the provisions of the Act have also been examined by experienced County Judges in cases brought before them—of this the editor has also availed himself.

The object which the editor had in view throughout was *not* to write a theoretical treatise on Division Courts, but to annotate the Division Courts Acts and Rules, by notes which it has been his endeavour to make explanatory of the text, as well as practically useful to professional men and others, and particularly to the officers concerned in the administration of the Courts. In addition to this, many of the notes will be found not only explanatory but critical examinations upon many doubtful points which have not as yet undergone judicial exposition.

With the view of making the work as complete and useful as possible, the editor has collected and brought into *one* book the Division Courts Act,—the Rules and Forms (adding a number of new Forms—over sixty in all),—an Appendix containing all the acts or portions of acts which in any way affect proceedings in Division Courts or the duties of Division Court officers; together with a Table shewing the judicial districts (composed of a county or union of counties) with their sub-divisions into court divisions, with the names of the County Judges, and the names and post-office address of the various Clerks, which, it is thought, will be of much practical assistance to business men, and may be relied on as correct; — the whole being supplemented by a very full index. The editor therefore ventures to think that all the information which could have been given respecting these Courts, (within the scope of the work), has been given; and when we consider that these courts now embrace a large portion of the whole civil business of the country, numbering about 270, and nearly 600 officers being connected therewith, and that an immense number of suitors resort to them, it can scarcely be doubted that even the collection into one book in an accessible form, of information which could only heretofore be obtained from a variety of sources, at considerable trouble and some expense, will be in itself of infinite use to all concerned. As to that part of the work for which the

editor is alone responsible, he leaves it to the indulgent judgment of his readers, with the simple remark that he has spared no pains to make it as correct and as complete as possible.

During the progress of the work through the press, two important decisions affecting procedure on writs of *certiorari* have been given, which it will be advisable to note, — *Barnes et al.* v. *Cox*, 16 U. C. C. P. 236, 2 U. C. L. J. N. S. 67; and *Gallagher* v. *Bathie*, 2 U. C. L. J. N. S. 73, 2 L. C. G. 44. The latter of these particularly refers to Division Courts, and it was there held (in Chambers, by Adam Wilson, J.) that after the hearing of a cause has been proceeded with before the judge, though no jury is sworn, and after a cause has been heard, but judgment postponed to be given at the clerk's office on a future day, it is too late to serve a writ of *certiorari*. The reader is also referred to a correction of the report of the case of *Watt* v. *Van Every*, as given in 23 U. C. Q. B. 196, which will be found in 2 U. C. L. J., N. S., 80.

In conclusion, the editor has to thank many kind friends for valuable information and assistance on various doubtful points —amongst these some of the most experienced County Judges, and especially Judge Gowan; the writer having had, in the first place, such advantage as could be gained from a personal attendance for years in the well-conducted courts of his county, and the free use of his notes and the benefit of his advice, the value of which in the preparation of a work of this kind cannot be too highly estimated, being founded on a large practical experience of the working of the Division Courts of Upper Canada.

MAY, 1866.

TABLE OF CONTENTS.

TABLE OF CASES CITED.

THE

DIVISION COURTS ACT.

(CON. STAT. U. C., CAP. 19.)

An Act respecting the Division Courts.

HER MAJESTY, by and with the advice and consent of the Legislative Council and Assembly of Canada enacts as follows: (*a*)

INTERPRETATION.

Interpretation of certain words.

I. In construing this act, the word "county" shall include any two or more counties united for judicial purposes; and in any form or proceeding, the words "united counties" shall be introduced according to the circumstances rendering the same necessary; the words "judge," "the judge," or "county judge," shall mean the senior or the acting judge (*b*) of the county court of the particular county in which the Division Courts are respectively situated. 13, 14 V. c. 53, s. 111.

THE COURTS.

Continuing clause.

II. The Division Courts, and the limits and extent thereof existing at the time this act takes effect, shall continue until altered by law; all proceedings heretofore duly had shall remain valid, and all suits and proceedings heretofore commenced shall be continued and completed under this act; and all rules and orders made under the provisions of any former

(*a*) The "Act respecting the Consolidated Statutes for Upper Canada," which gives vitality to the consolidation of the statutes affecting Upper Canada was assented to on the 4th May 1859.

(*b*) See notes to secs. 16, 17.

Division Court Act, and in force when this act takes effect, shall continue in force subject to the provisions of this act (*c*). 13, 14 V. c. 53, ss. 1, 2.

Number of courts in counties and cities.

III. There shall not be less than three nor more than twelve Division Courts in each county or union of counties (*d*); of which there shall be one Division Court in each city and county town. 13, 14 V. c. 53, s. 3.

Each court to have a seal.

IV. Every court shall have a seal (*e*), with which every process of the court shall be sealed or stamped, and such seal shall be paid for out of the fee fund. 13, 14 V. c. 53, s. 86.

(*c*) The latter part of this section, and section 70, were introduced by the commissioners and confirmed by the legislature, as being necessary to maintain and protect the general rules and forms framed and approved pursuant to 16 Vic. cap. 177, sec. 10, and no further or other rules or forms have been promulgated under the provisions of the 62nd and following sections of the present act. Reference must therefore now be made not to the sections referred to in the rules and forms, but to the corresponding sections in this consolidated act; and to facilitate this, the rules which refer to the various sections of this act, and *vice versa*, are referred to in notes to such sections and rules.

(*d*) See sec. 8 and note thereto. See also the table at the end of this work, shewing the various Division Courts as at present established throughout Upper Canada, together with the names and post-office addresses of their respective clerks.

(*e*) In olden times, a seal would have been defined as an impression made on paper or parchment with wax; and in fact in those days that was the only kind of seal known. It has, however, been held that it is now unnecessary, in order to constitute a valid sealing, that an impression should be made with wax or wafer, but that an impression in ink with a wooden block will suffice. (*Reg.* v. *St. Paul's, Covent Garden*, 7 Q. B. 232.) It was also considered, in *Foster* v. *Geddes* 14 U. C. Q. B. 239, that an impression on the paper, without any extraneous substance, would be a sufficient sealing. In addition to this, the word "stamped" is used in this section. It would, therefore, seem evident that a stamp or print made with colouring matter, or an impression made on the paper requiring to be sealed, by means of a die or press, without the addition of wax or other matter, would be a sufficient "seal."

The judge of the court should make choice of and appoint the seal for each court.

The seal and process of the court are protected from forgery and abuse by sec. 8. of Con. Stat. U. C. cap. 101, which enacts that "Any person who forges the seal or any process of a Division Court, or serves or enforces any such forged process, knowing the same to be forged; or who delivers or causes to be delivered to any person any paper falsely purporting to be a copy of any summons or

V. The said Division Courts shall not be held to constitute courts of record (*f*). 13, 14 V. c. 53, s. 23. Not courts of record.

VI. A court shall be holden in each division once in every two months (*g*) or oftener, in the discretion of the senior or the acting county judge; and the judge may appoint and from time to time alter (*h*) the times and places (*i*) within such divisions, when and at which such courts shall be holden. 13, 14 V. c. 53, s. 3. Time and place of holding courts.

VII. If the magistrates of any county in Quarter Sessions assembled, certify to the Governor that in any division of the county, from the amount of business, remoteness, or inaccessibility, it is expedient that the court should not be held so often as once in every two months, the Governor in council may order the court to be held at such periods as to him seems meet, and may revoke the order at pleasure, but a court shall be held in the division at least once in every six months. 13, 14 V. c. 53, s. 109. The Governor may, in certain cases, regulate the holding of courts.

---

other process of any such court, knowing the same to be false, or who acts or professes to act under any false colour or pretence of the process of any such court, is guilty of felony."

This section is taken almost verbatim from the English act of 9 & 10 Vic. cap. 95, sec. 57.

(*f*) Judgments, therefore, of these courts are not matters of record which constitute the highest species of evidence. Sec. 42, however, provides a simple means of proving facts therein referred to. The English county courts are made courts of record by statute.

(*g*) Except in cases provided for by the next section. There would therefore be six courts in the year. They need not be held at any regular intervals, in fact it would be impossible to do so; the sound discretion of the judge must decide.

(*h*) See secc. 8 and notes.

(*i*) No provision has been made by statute for providing court room accommodation for these courts. It was a strange oversight on the part of the legislature, and has led to much injustice and mischief. Courts have occasionally to be held in inconvenient and out of the way places, and even in taverns, to the great discredit of justice. Clerks are often put to much trouble and expense in securing a room suitable for the purpose, and the occasional removal of a court-room from one building, and perhaps from one village to another, causes confusion and annoyance to all concerned. Since the passing of 27, 28 Vic. cap. 27, it has become of the greatest importance that the place of holding the courts should not be moved from place to place; for by that act such place of sitting regulates, in certain cases, the venue of a suit. (See section 71, *et seq.*)

Quarter Sessions may alter number and limits of division.

VIII. The justices of the peace in each county in General Quarter Sessions assembled, may, subject to the restrictions in this act contained, appoint, and from time to time alter the number, limits and extent of every division, (*j*) and shall number the divisions, beginning at number one; but a less number of justices shall not alter or rescind any resolution or order made by a greater number at any previous session (*k*). 13, 14 V. c. 53, s. 4.

(*j*) By sec. 3 there cannot be less than three nor more than twelve in each county. There will be found on pages 112 and 146 of the *U. C. Law Journal*, vol. 7, some excellent observations as to how the discretionary power of the magistrates in Quarter Sessions should be used. It there states that the population and extent of the intended divisions should be a leading guide. That they should, if possible, be of such a size that suitors could go to and return from them in one day, and should be of as uniform a size as circumstances permit. No separate division should be formed unless the probable amount of business would give a reasonable remuneration to the officers of the court, nor should divisions be multiplied without an evident necessity. That if possible each division should include some town, village or place of business resort, and the divisions should be fixed with precision, and follow the established territorial division of the county into townships and concessions. The case of a separation of united counties, where a division consists of a part of each, is provided for by sec. 13. It would be well, however, for magistrates to keep that section also in view in appointing the divisions.

(*k*) See note to sec. 15.

A new mode of establishing additional courts has been introduced by the late Act of 29 Vic., which reads as follows:

"Notwithstanding anything in the said Act respecting the Division Courts, it shall and may be lawful for any judge of a County Court, in his discretion, upon the petition of the municipal corporation of any township or united townships in which no Division Court has already been established, praying that a Division Court may be established in and for such township or united townships, to establish and hold a Division Court therein, and the court so established shall be numbered and called the ——— Division Court of the county or united counties in which such township or united townships shall be situated, taking the number next after the highest number of the courts then existing in such county or united counties: and the courts so established shall have the same jurisdiction as Division Courts established under the said act respecting Division Courts, and all and singular the provisions of the said act, not inconsistent with this act, shall apply to all courts established under this Act; provided always, that no business shall be transacted in any such court until after the establishment thereof shall have been certified by the county judge to the Governor in council,

IX. The court in each division shall be called "the first Division Court in the county of ———," (or, *as the case may be*). 13, 14 V. c. 53, s. 6. Designation of court.

X. When a junior county separates from a senior county or union of counties, (*l*) the Division Courts of the united counties which were before the separation wholly within (*m*) the territorial limits of the junior county, shall continue Division Courts of the junior county, and all proceedings and judgments shall be had therein, and shall continue proceedings and judgments of the said Division Courts respectively; and all such Division Courts shall be known as Division Courts of such junior county by the same numbers respectively, as they were before, until the justices of the peace of the junior county in general Quarter Sessions assembled, appoint the number, limits and extent of the divisions for Division Courts within the limits of such junior county, as provided in the eighth section of this Act. 16 V. c. 177, s. 16. On separation of junior from senior county, court to continue same till altered by sessions.

XI. Whenever the justices of the peace of any county, in general Quarter Sessions assembled, alter the number, limits or extent of the Division Courts within such county, all proceedings and judgments had in any Division Court before the day when such alteration takes effect, shall be continued in such Division Court of the county as the judge directs; and shall be considered proceedings and judgments of such court. 16 V. c. 177, s. 17. On alteration of divisions, judge to direct in what court proceedings to be continued.

XII. In case a junior county be separated from a union of counties, or the proceedings of any of the Division Courts of a senior county be transferred to any other Division Court within the county upon the order of the judge, the clerks or other officers of Clerks and officers to deliver papers to such persons as judge directs.

---

together with the petition praying for the same, and the passing of an order by the Governor in council approving thereof."

(*l*) "In every union of counties the county in which the county court house and gaol are situate, shall be the senior county, and the other county or counties of the union shall be the junior county or counties thereof." (Con. Stat. U. C. cap. 54, sec. 36.)

(*m*) See sec. 13.

such Division Courts who hold any writs or documents appertaining to any such courts or the business thereof, shall deliver up the same to such persons as the judge directs, and any person refusing to deliver up the same shall be liable to be proceeded against in the same manner as persons wrongfully holding papers and documents under the provisions of the forty-eighth section of this Act. 16 V. c. 177, s. 18.

After separation of junior from senior county, proceedings in certain cases to be continued in senior county.

XIII. If, after the separation of a junior county from a union of counties, the territorial limits of any of the Division Courts of the former union are partly within the junior and partly within the senior county, all proceedings commenced in such Division Courts of the former union shall be continued to completion in the court where the proceedings were originally commenced, or in such other Division Court of the senior county as the judge thereof directs; and the clerks and other officers of the said Division Courts of such senior county in possession of any writs or documents appertaining to any such court or to the business thereof, shall deliver over the same to the clerk of such Division Court of such county as the judge thereof directs. 16 V. c. 177, s. 19.

Quarter Sessions of senior county to regulate divisions of senior county after separation.

XIV. At the first sittings of the General Quarter Sessions of the Peace for any senior county, after the issue of any proclamation for separating a junior from a senior county, the justices there present shall appoint the number, (not less than three, nor more than twelve,) the limits and extent of the several divisions within such county, and the time when such change of divisions shall take effect; but if the justices do not make such change at the first sittings they may do so at any other sittings of such court, and a less number of justices shall not rescind or alter any resolution or order made by a greater number under the provisions of this section. 16 V. c. 177, s 20.

Clerk of the peace to record time and place

XV. The clerk of the peace, in a book to be by him kept, shall record the divisions declared and appointed, and the time and places of holding the

courts, and the alterations from time to time made therein, and he shall forthwith transmit to the Governor a copy of the record (*n*). 13, 14 V. c. 53, s. 5. For holding courts.

THE JUDGE. (*o*)

XVI. The county court judge (*p*) shall preside over the Division Courts in their respective counties. 13, 14 V. c. 53, s. 7. County court judges to preside.

(*n*) See also Con. Stat. U. C. c. 120, as to the duties and emoluments of the clerk of the peace with respect to these returns.

It has been decided that under the above section and the act referred to, the clerk of the peace is required to record and notify to the government and to the clerks of each Division Court only the acts *of the Quarter Sessions* with with regard to the limits of different divisions, not the orders of the judge as to the times and places of holding the courts; (*In the matter of Poussett and the Court of General Quarter Sessions for the County of Lambton*, 22 U. C. Q. B. 412.)

As under secs. 8, 10 and 14, a less number of magistrates cannot rescind or alter any order as to the appointment of divisions made by a greater number at a previous session, it will be also necessary for the clerk of the peace to keep a record of the magistrates present when such order was made.

(*o*) The various *duties* of the judge with respect to Division Courts will hereafter appear throughout the work. As to his *liabilities*, it may be stated as a general rule, that he incurs no liability for giving a wrong judgment or making a mistake in law, or for being guilty of any mere irregularity, *provided* he acts within his jurisdiction (*Deens* v. *Lord Brougham*, 1 In. & Rol. 309). Nor even when acting without it, if the evidence given before him justifies him in assuming that he had jurisdiction. And the objection to his jurisdiction should be taken at the trial (*Graham* v. *Smart et al.*, 18 U. C. Q. B. 482). But there is a difference, as to his liability, between his judicial and ministerial duties (*Parks* v. *Davis*, 10 U. C. C. P. 229.)

See also notes to sec. 54.

(*p*) The appointment of and other provisions respecting county judges are regulated by Con. Stat. U. C. cap. 15, secs. 2 to 12, inclusive. Section 6 provides, that "In case of the appointment of a junior judge for any county, such junior judge may preside over all or any of the Division Courts within the county, and shall, as regards any such Division Courts, have the same duties, powers and authorities as the judge," &c. But "the appointment of a junior judge shall not prevent or excuse the judge of the county court from presiding at any of the Division Courts within his county when the public interests require it," (s. 7.)

Section 383 of the Municipal Institutions Act (Con. Stat. U. C. cap. 54), empowers the Governor, by letters patent, to appoint the recorder of a city to hold the Division Court of the county

Who to preside in case of illness or absence of judge.

XVII. In case of the illness or unavoidable absence of the county judge, the county judge of the court of any other county may hold the court, or the first mentioned judge may appoint (*q*) some barrister of the bar of Upper Canada to act as his deputy (*r*), and the person so appointed shall, as judge of the Division Court, during the time of his appointment, have all the powers and privileges, and be subject to all the duties vested in or imposed by law on the judge by whom he has been appointed. 13, 14 V. c. 53, s. 8.

Governor to be notified of appointment of deputy.

XVIII. The county judge or the barrister so appointed deputy shall forthwith send to the Governor notice of such appointment, specifying the name, residence and profession of such deputy judge, and the cause of his appointment. 13, 14 V. c. 53, s. 8.

Appointment, how long to continue.

XIX. No such appointment (*s*) shall be continued for more than one month without a renewal of the like notice, and in case the Governor disapproves of such appointment, he may annul the same. 13, 14 V. c. 53, s. 8.

---

which includes the city. In case of the illness or absence of the Recorder the county judge may officiate in his stead, or the Recorder may appoint a barrister for that purpose (sec. 386).

(*q*) The appointment it is said may be made by parol, but the better opinion seems to be that it should be made in writing. (11 Co. Rep. 4.)

(*r*) Con. Stat. U. C. cap. 15, sec. 8, provides for the appointment of deputy judges who shall hold office *during pleasure*, and who shall, in case of the death, illness, or unavoidable absence, or the absence on leave of the judge, perform all the duties of and incident to the office of judge of the County and Division Courts, and all acts required to be done by such judge, as effectually as a junior judge.

Thus the senior judge of the County Court of the particular county, or the junior or deputy judge thereof, the judge's deputy or the judge of the court of another county (as mentioned in above section), are each allowed to act and are included in the interpretation clause (sec. 1).

The distinction between them is this: the senior and junior judge of the county are clothed with the absolute right to hold the courts not dependent upon any contingency, whereas the deputy judge, the judge's deputy, and the judge of another county, act only on certain contingencies.

(*s*) That is, an appointment made by the county judge under sec. 17

XX. In case the judge or the acting judge (*t*) from illness or any casualty, does not arrive in time, or is not able to open the court on the day appointed for that purpose, the clerk or deputy clerk of the court, shall, after eight o'clock in the afternoon, by proclamation adjourn the court to an earlier hour (*u*) on the following day, and so from day to day adjourning over any Sunday or legal holiday (*v*), until the judge or acting judge arrives to open the court, or until he receives other direction from the judge or acting judge. 13, 14 V. c. 53, s. 8. Clerks or deputy clerks may adjourn court if judge does not arrive in time.

THE CLERKS AND BAILIFFS, &c. (*w*)

XXI. For every Division Court there shall be a clerk and one or more bailiffs (*x*), who shall be British subjects. 13, 14 V. c. 53, s. 9. Every court to have clerk and bailiffs.

(*t*) See notes to sec. 17.

(*u*) That is to some hour before eight o'clock in the evening, usually till noon of the following day. All persons having business at the courts are bound to remain up to eight o'clock in the evening of the day appointed for holding the court, and to appear at the hour to which it may be adjourned the following day.

(*v*) By the Interpretation Act (Con. Stat. Can. cap. 5), the word "holiday" shall include Sunday, New Years' Day, the Epiphany, the Annunciation, Good Friday, the Ascension, *Corpus Christi*, St. Peter and St. Paul's Day, All Saints Day, and Christmas Day, and any day appointed by proclamation for a general fast or thanksgiving.

It is to be remarked, that the Queen's Birthday so generally kept as a holiday, and made such in certain cases under other acts, is not a "holiday" within the meaning of this section.

(*w*) The common law requires persons holding any office to be (amongst other things) of sound mind, possessing sufficient skill and ability to perform the duties of the office, and not holding any office incompatible with such duties.

The express disqualifications for office are, not being a British subject; and, as regards a clerk, being a practising barrister or solicitor, as mentioned in the next section.

The power of appointing to these offices was from the first vested in the judges, and it may not be out of place here to say, that the result has been on the whole most satisfactory to all concerned.

(*x*) If two bailiffs are appointed to a court they do not constitute *one officer*. They may therefore act independently of each other, and each may perform all legal acts required of him, by himself and in his own name. (*Corrigal* v. *L. & B. R. Co.*, 5 Man. & Gr. 219.)

Who disqualified.

XXII. No county court clerk, practising barrister or solicitor shall be appointed clerk (*y*). 13 & 14 V. c. 53, ss. 9, 110. *See* 12 V. c. 66, s. 12.

Judge to appoint and remove clerks and bailiffs.

XXIII. The judge shall from time to time appoint (*z*), and may at his pleasure remove any clerk or bailiff. 13, 14 V. c. 53, s. 9.

SECURITIES TO BE GIVEN BY DIVISION COURT CLERKS AND BAILIFFS.

Clerks and bailiffs to give security by bond to the crown.

XXIV. Every Division Court clerk and bailiff shall give security by entering into a bond to Her Majesty, with as many sureties, in such sums, and in such form as the Governor directs (*a*), for the due accounting for and payment of all fees, fines and moneys received by them respectively, by virtue of their respective offices, and also for the due performance of their several duties. 16 V. c. 177, s. 12.

Clerks and bailiffs of Division Courts to give security

XXV. Every clerk and bailiff of a Division Court shall, by a covenant according to the form A. (*b*), or in words to the same effect, give security, with so

---

(*y*) In addition to the disqualifications in this section, it was forbidden by the English Act of 1846, under a heavy penalty, that any clerk, or the partner or servant of such clerk, should be a bailiff of the court. And, although there is no express provision of the kind in our act, it is quite evident that the positions are incompatible, and the principle of such prohibition would apply in this country.

(*z*) These appointments may perhaps be made by parol, but it would seem more correct, and at all events more desirable, to make them in writing.

By section 25 the judge is also to direct the number of sureties who are to join in the covenant with the clerk or bailiff, and the amount of security to be given by them; and it may be found convenient to embody this direction with the act of appointment. The appointment does not, however, become complete till the security is approved of by the judge under sec. 25, and is filed in the office of the clerk of the peace under sec. 26.

(*a*) Forms for these bonds have been given by the Executive, with full directions and particulars respecting them. These forms and directions are given in the Schedule of forms 68 (a).

(*b*) See sec, 220.

There have been several decisions as to the force and effect of this covenant which it will be necessary here briefly to notice:

McArthur v. *Cool et al.*, 19 U. C. Q. B. 476, was an action brought on a covenant in the form given by the act, against a bailiff and his sureties. It was objected that the defendants could not legally be sued in a joint action as upon a a joint undertaking, when bound

many sureties, being freeholders and residents within the county, and in such sums as the county judge may direct, and shall under his hand approve and declare sufficient (*c*). 18, 14 V. c. 53, s. 22, *and Sch. C.*

---

in different sums. *Robinson*, C. J., said, "It is true that the covenant does limit the amount that each of the covenantors can be compelled to pay in all under the deed, but nevertheless in the form given by the legislature the parties are made to enter into a *joint and several* covenant, and this covenant is in fact joint. . . . The proviso at the end of the deed . . . . is not a part of the undertaking of the covenantors, but it makes it the duty of the court to see that none of the parties are compelled to pay under it more in all than the sum set opposite to his name."

In *Miller* v. *Tunis*, 10 U. C. C. P. 423, the covenant sued upon, though it should and was intended to have been executed by both the bailiff and his surety (the defendant), was in fact only executed by the latter. The question that arose was, whether the defendant's position as surety in a limited sum, and being jointly and severally liable according to the form given by the act, was prejudiced in any way by the non-execution by the principal. The court held that it was not so prejudiced, and that the defendant was not thereby relieved from his liability under the covenant.

Where an action has been brought against a bailiff for a tort and *part* of the damages sustained by the plaintiff have been recovered, he cannot afterwards in a suit brought on this covenant for the same cause of action recover against the bailiff and his sureties the balance of his damages. (*Sloan* v. *Creasor et al.*, 22 U. C. Q. B. 127, the plaintiff having elected to take his remedy for the *tort*.)

As to the parties to whom this covenant is available see sec. 27, and note thereto.

(*c*) By endorsement of the covenant after execution. The amount would be regulated by the probable amount of business to be done.

It is the *duty* of the judge to approve of the sureties and to settle the amount of the security, (*Miller* v. *Tunis, ante*,) and a failure of this duty on the part of the judge will, if he permits the officer to enter on the discharge of his duties without giving proper security, render him liable in an action at the suit of a person who has thereby suffered a loss (*Parks* v. *Davis*, 10 U. C. C. P. 229). But still it cannot be supposed that the judge would be liable for a simple error of judgment, and certainly not if he takes the precaution of procuring from the sureties affidavits of justification, such, for example, as would be required in the superior courts for bail, or on giving security for costs.

This section is directory and not mandatory, therefore the fact of the sureties being non-residents of the county in which the bailiffs duties lie does not avoid the covenant; the provisions being merely for the guidance of the judge as to the class and character of the sureties required. (*Pearson* v. *Ruttan*, 15 U. C. C. P. 79; 1 L. C. G. 26.)

It has been suggested, and the

Before clerk or bailiff enters on his duties, covenant to be filed with clerk of the peace

XXVI. Before any such clerk or bailiff enters upon the duties of his office, the covenant of himself and sureties, approved as aforesaid, shall be filed in the office of the clerk of the peace (*d*) in the county in which the Division Court is situate, and for filing and granting a certificate thereof he may demand from such clerk or bailiff the sum of one dollar. 13, 14 V. c. 53, s. 22, *and Sch. C.*

To be available to suitors, &c.

XXVII. Such covenant shall be available to, and may be sued upon in any court of competent jurisdiction by any person suffering damages (*e*) by the default, breach of duty, or misconduct of any such clerk or bailiff. 13, 14 V. c. 53, s. 22, *and Sch. C.*

Certified copy of covenant to be received as evidence.

XXVIII. A copy of every such covenant, certified by the clerk of the peace, shall be received in all courts as sufficient evidence of the due execution and of the contents thereof without further proof. 13, 14 V. c. 53, s. 22, *and Sch. C.*

If surety dies a new surety to be furnished.

XXIX. If any surety in any such covenant dies, becomes resident out of Upper Canada, or insolvent, the county judge shall notify the clerk or bailiff for whom such person became surety, of such death, departure or insolvency, and such clerk or bailiff shall, within one month after being so notified, give

---

suggestion is, in some respects, a good one, that instead of the judge being compelled to undertake the responsible and troublesome duty of looking after these securities, the officers of his courts should be required to furnish the guarantee of some recognized "guarantee company" authorized to grant indisputable policies. The principal objection to this would be the expense that it would entail on clerks already sufficiently taxed.

As to the particulars of claim under this section and the form to be used, see rule 7 and form 5.

(*d*) No duty is imposed on the judge with regard to this filing; and he is not responsible if it is not filed. (*Parks* v. *David* *ante.*)

The non-filing of the covenant will not relieve the sureties of an officer from their responsibility as such sureties. *Ib.*

(*e*) There is nothing in the statute or in the form of the covenant which confines the benefit of it to suitors only, (*Cool* v. *Switzer et al.* 19 U. C. Q. B. 199,) and under this section, taken in connection with secs. 51 to 53, the sureties of a clerk are liable on this covenant to the bailiff for fees on the service of summonses, executions and warrants received by such clerk for the bailiff and not paid over. (*Ib.*; *Middlefield* v. *Gould et al.* 10 U. C. C. P. 9.)

anew the like security, and in the same manner as hereinbefore provided, or forfeit his office of clerk or bailiff. 13, 14 V. c. 53, s. 22, *and Sch. C.*

Securities heretofore given to continue in force.

XXX. Nothing hereinbefore contained shall discharge or exonerate any of the parties to such former covenant from their liability on account of any matter done or omitted before the renewal of the covenant as aforesaid. 13, 14 V. c. 53, s. 22.

Existing securities continued.

XXXI. The bonds and covenants given by clerks and bailiffs, before the passing of this act, shall continue in force and have the same effect as if given under this act. 13, 14 V. c. 53, s, 22; 16 V. c. 177, s. 12.

Clerks and bailiffs to be paid by fees.

XXXII. The clerks and bailiffs shall be paid by fees, as by this act allowed (*f*). 13, 14 V. c. 53, s. 12.

CLERKS' DUTIES. (*g*)

When clerk may appoint deputy.

XXXIII. The clerk may (with the approval of the judge), from time time, when prevented from acting, by illness or other unavoidable accident, appoint a deputy (*h*) to act for him, with all the powers

---

(*f*) See sec. 49 and table of fees at the end of this act.

In the original act as introduced by the present Chief Justice of Upper Canada the clerks were remunerated by salary on a graduated scale, and there is now a growing feeling that the change from salary to fees was not a move in the right directiou. The fee collector of all grades has a direct interest in promoting litigation, and in matters connected with Division Courts, the clerk, if a dishonest man, has peculiar facilities in this way. It is believed that the great body of clerks would willingly be relieved of the odium of the fee system, and accept salaries on a fair scale instead.

(*g*) Besides the duties mentioned in this act and the rules, the clerk has other duties assigned to him by statute, and hereafter referred to.

1. In actions of replevin under 23 Vic. cap. 45.

2. Duties with respect to the debt attachment clauses of the Common Law Procedure Act.

3. Duties with respect to issuing execution on awards made by Fence Viewers under Con. Stat. U. C. cap. 57.

4. Duties under the assessment law (Con. Stat. U. C. cap. 55, sec. 63, &c.), on appeal from the Court of Revision.

5. Duties respecting appeals from Division Courts in matters pertaining to common schools. (Con. Stat. U. C. cap. 64, sec. 108, &c.)

(*h*) For a form of this appointment see form 68 (b).

The *deputy clerk*, being an officer

and privileges, and subject to like duties, and may remove such deputy at his pleasure, and the clerk and his sureties shall be jointly and severally responsible for all the acts and omissions of the deputy. 13, 14 V. c. 53, s. 10.

Clerk to issue summonses and furnish particulars of claims and set-off.

XXXIV. The clerk shall issue all summonses (*i*), which summonses shall be by him filled up and shall be without blanks either in date or otherwise, at the time of delivery for service; he shall also furnish copies of the same with the notice thereon, according to the form prescribed by any rule respecting the practice and proceedings of the Division Courts (*j*). 13, 14 V. c. 53, ss 13, 40.

Parties to furnish their claims to the clerk.

XXXV. The plaintiff or defendant respectively shall furnish the clerk with the particulars of the plaintiff's claim or demand (*k*), or of the defendant's set-off (*l*) (*as the case may be*), and the clerk shall annex the plaintiff's particulars to the summons, and he shall furnish copies thereof, or of the defendant's set-off to the proper person to serve the same. 13, 14 V. c. 53, ss. 13, 40.

Clerks to issue executions, tax costs and keep account of fees, &c.

XXXVI. The clerk shall also issue all warrants, precepts and writs of execution filled up and without blanks,—he shall tax costs (*m*), subject to the revision of the judge,—register all orders and judgments of the court, and keep an account of all court fees and fines payable or paid into court, and of all suitor's moneys paid into and out of court, and shall enter an account of all such fees, fines and moneys in a

---

recognized by the statute, should sign all necessary documents as such.

The act makes no provision for the judge appointing a deputy clerk; in case, therefore, of the inability of the clerk to make the appointment, it would be necessary for the judge to appoint a new clerk to perform the duties of the office.

(*i*) See rules 14 and 18, and form 6.

(*j*) See form 6.

(*k*) See rules 9, 14, 15, 18, and forms 3 and 4, and notes.

(*l*) See sec. 93.

(*m*) The ordinary costs that a clerk is required to tax are: the officers fees (clerks and bailiffs), fees to the fee fund and witness fees provided for by rule 48. It may also be necessary for him to fix the amount of costs to be paid by each party according to any special apportionment of costs by the judge under sec. 114.

book to be kept by him for that purpose (*n*), which book shall be open to all persons desirous of searching the same, and shall at all times be accessible to the judge, who shall examine the same quarterly or oftener, and compare the accounts hereinafter mentioned with such book, and shall certify on each such account that he has examined the same, and believes it to be correct, or if he does not believe it to be correct, he shall state his objections thereto, and the clerk shall thereupon forward the account with such certificate to the county attorney. 13, 14 V. c. 53, ss. 13, 40.

Clerks to submit accounts to county attorney.

XXXVII. The clerk, at the periods from time to time appointed by the governor, shall submit his said accounts to be audited or settled by the county attorney. 13, 14 V. c. 53, s. 13.

Clerks to deliver to county attorney a verified account of Fees.

XXXVIII. The clerk of every Division Court shall, from time to time, as often as required so to do by the county attorney of his county, and at least once in every three months, deliver to him, verified by the affidavit of such clerk, sworn before the judge or a justice of the peace of the county, a full account in writing of the fees received in his court; and a like account of all fines levied by the court, accounting for and deducting the reasonable expenses of levying the same, and any allowance which the judge may make out of any such fine, in pursuance of the power hereinafter given. 13, 14 V. c. 53, s. 15; 20 V. c. 59, s. 13. *See* s. 99, *post.*

Fee fund moneys to be paid to county attorney.

XXXIX. The fees from time to time received by such clerks respectively, and payable to the general fee fund, shall be by them paid over from time to time to the county attorney (*o*), and at least once in

(*n*) Besides the "Fee Fund Book," the clerk must keep the "Procedure Book" and "Cash Book" (rule 4); a book for entering services, &c., from foreign divisions (sec. 73); and the transcript of judgment book (sec. 143).

(*o*) In case of the resignation, removal from office, or death of the clerk, the county attorney for the time being may sue and recover from such clerk, or from his executors and administrators, in case of his death, and from his sureties, all sums of money which may remain in the clerks hands at the time of such resignation,

every three months, and shall form part of a fund, to be called the General Fee Fund, and shall be applied towards the payment of the salaries of the judges of such courts. 13, 14 V. c. 53, s. 15; 20 V. c. 59, s. 13.

Clerk of Division Court to furnish judge with a verified account of moneys paid in and out of court.

XL. The clerk of each Division Court, when required by the judge, shall, from time to time, furnish him with a like account, verified by the oath of the clerk, sworn before the judge or a justice of the peace, of the moneys received into and paid out of the court, by any suitors or other parties under any orders, decrees or process of the court, and of the balance in court, belonging to any such suitors or parties. 13, 14 V. c. 53, s. 15.

Division Court clerks to furnish the judge with semi-annual accounts of fees and emoluments.

XLI. The clerk of every Division Court shall, half yearly at least, furnish to the judge of his court a detailed statement of all fees and emoluments of his court (*p*), which statement shall be sworn to before such judge, and it shall be the duty of such judge to require such statement and to file the same with the county attorney. 13, 14 V. c. 53, s. 110.

Clerks to keep a record of writs and judgment.

XLII. The clerk shall cause a note of all summonses, orders, judgments, executions and returns thereto, to be from time to time fairly entered in a book to be kept in his office; and shall sign his name on every page of such book; and such signed entries, or a copy thereof certified as a true copy by the clerk, shall be admitted in all courts and places as evidence of such entries, and of the proceedings referred to thereby, without any further proof (*q*). 13, 14 V. c. 53, s. 49.

---

removal or death. (Con. Stat. U. C. cap. 20, sec. 10.)

These fees to the fee fund are now payable in stamps under 27 & 28 Vic. cap. 5, hereafter referred to. The returns to county attorneys, are, as to fee fund moneys, virtually done away with.

(*p*) See rule 5, and form 66.

(*q*) It has been held under the English act of 9 & 10 Vic. cap. 95, sec. 111, which is similar to the above enactment, that this entry, or a copy of it, is conclusive evidence of the proceeding to which it relates, and cannot be contradicted by a note or memorandum of the judge. (*Dews* v. *Ryley*, 20 L. J., C. P. 264; 11 C. B. 434.)

Clerk annually to make list of suitors' money in court.

XLIII. The clerk shall, annually, in the month of January, make out a correct list of all sums of money belonging to suitors in the court, which have been paid into court and which have remained unclaimed for six years before the last day of the month of December then last past, specifying the names of the parties for whom or on whose account the same were so paid (*r*). 16 V. c. 177, s. 13.

Copy of list to be put up in court house and in his office.

XLIV. A copy of such list shall be put up and remain at all times in the clerk's office and during court hours, in some conspicuous part of the court house, or place where the court is held. 16 V. c. 177, s. 13.

DISPOSAL OF MONEYS PAID INTO COURT.

Unclaimed moneys to be carried to credit of Fee Fund.

XLV. All sums of money which have been paid into court to the use of any suitor thereof, and which have remained unclaimed for the period of six years after the same were paid into court, or to the officers thereof, and all sums of money when this act takes effect or afterwards in the hands of the clerk or bailiff, paid into court, or to the officers thereof, to the use of any suitor shall, if unclaimed for the period of six years after the same were so paid, be applicable as part of the General Fee Fund of the Division Courts, and be carried to the account of such fund and be paid over by the clerk or officer holding the same to the county attorney of his county, and no person shall be entitled to claim any sum which has remained unclaimed for six years. 16 V. c. 177, s. 13.

Claims of persons under disability not to be prejudiced.

XLVI. No time during which the person entitled to claim such sum was an infant or *feme covert*, or of unsound mind, or out of the Province, shall be taken into account in estimating the six years. 16 V. c. 177, s. 13.

DISPOSAL OF BOOKS AND PAPERS WHEN CLERK CHANGED.

Upon resignation, removal or

XLVII. All accounts, moneys, books, papers, and other matters in the possession of the clerk by virtue

(*r*) See rule 6 and form 67.

death of clerk, county attorney to become possessed of papers.

of or appertaining to his office, shall, upon his resignation, removal or death, immediately become the property of the county attorney of the county in which the division is situate, who shall hold the same for the benefit of the public until the appointment of another clerk, to whom he shall deliver over the same, but not until such clerk and his sureties have executed and filed the covenant hereinbefore mentioned. 13, 14 V. c. 53, s. 13.

Penalty on person wrongfully holding moneys, books or papers.

XLVIII. Any person wrongfully holding or getting possession of such accounts, moneys, books, papers and matters aforesaid, or any of them, shall be guilty of a misdemeanor, and upon the declaration in writing of the judge presiding over the Division Court for the time being, that a person has obtained or holds such wrongful possession thereof, and upon the order of a judge of either of Her Majesty's Superior Courts of Law, founded thereon, such person shall be arrested by the sheriff of any county in which he is found, and shall by such sheriff be committed to the common gaol of his county, there to remain without bail until one of such Superior Courts or a judge thereof be satisfied that such person has not and never had nor held any such matters or moneys, or that he has fully accounted for or delivered up the same to such county attorney, or until he be otherwise discharged by due course of law. 13, 14 V. c. 53, s. 13.

FEES OF CLERKS AND BAILIFFS.

Fees of clerks and bailiffs.

XLIX. The fees of the clerks and bailiffs of the courts shall be those set down in the table of fees, and a table of such fees shall be hung up in some conspicuous place in the offices of the several clerks. 13, 14 V. c. 53, s. 14; 18 V. c. 125, s. 5, *and Sch.*

Fees to be paid by plaintiff or defendant in first instance

L. The fees upon every proceeding shall, on or before such proceeding, be paid in the first instance by the plaintiff, or other party at whose instance the same takes place (*s*). 13, 14 V. c. 53, s. 30; 16 V. c. 177, s. 3.

(*s*) This and the following section are designed for the protection of the clerk. Of course a clerk *may* if he chooses to run the risk

How enforced if not paid

LI. If the fees are not paid in the first instance by the plaintiff or party on whose behalf such proceeding is to be had, the payment thereof may by order of the judge(*t*) be enforced by execution in like manner as a judgment of the court, by such ways and means as any debt or damages ordered to be paid by the court can be recovered. 16 V. c. 177, s. 3.

Bailiff's fees to be paid to clerk before execution issues.

LII. At the time of the issue of the execution, the bailiff's fees thereon shall be paid to the clerk, and shall by him be paid over to the bailiff upon the return of the execution (*u*), and not before, but if the bailiff should not become entitled to any part, or should be entitled to a part only of such fees, the whole or surplus shall, on demand, be by the clerk repaid to the plaintiff or party from whom the fees were received. 13, 14 V. c. 53, s. 14.

Bailiff to forfeit fees if he neglect to return writ.

And such fees to go to Fee Fund.

LIII. If the bailiff neglects to return any process or execution within the time required by law, he shall for each such neglect forfeit his fees thereon, and all fees so forfeited shall be held to have been received by the clerk, who shall keep a special account thereof, and account for and pay over the same to the county attorney of the county, to form part of the General Fee Fund (*v*). 13, 14 V. c. 53, s. 14.

---

commence and carry on a suit without receiving a deposit of the fees, but he cannot be compelled to do so. If he does, and there are many cases in which it would be a hardship on suitors to refuse, the clerk should not suffer for the indulgence, and the next section is designed to prevent, if possible, any loss to him thereby.

It is common in some of the large divisions, for the sake of convenience, to fix a scale of deposits, proportioned to the amount of the claim to be sued, which will be sufficient, in the majority of cases, to cover the costs of the suit, up to the time of judgment, adding something additional for any special circumstance which would increase the costs.

(*t*) But probably the judge would not grant this order without a summons to shew cause.

(*u*) We have already seen (note to sec. 27) that the bailiff can have the benefit of the covenant of the clerk and his sureties to recover the fees here alluded to.

(*v*) As these fees go to the Fee Fund, no discretion can be used by the clerk as to their forfeiture. Such fees as the bailiff would have been entitled to in case he had done his duty as by law required, *must*, in case of his default, be paid to the Fee Fund by means of stamps.

JURISDICTION. (*w*)

Cases in which court has no jurisdiction.

LIV. The Division Courts shall not have jurisdiction in any of the following cases:

(*w*) It may be necessary either to compel judges of inferior courts to perform a duty imposed upon them by statute, and thereby make them act up to their jurisdiction, or, on the other hand, it may be necessary to prevent them from proceeding in a cause which is beyond their jurisdiction. In the former case the remedy would be by writ of mandamus, and in the latter by writ of prohibition.

A mandamus is a high prerogative writ issuing from one of the Superior Courts directed to any person, corporation, or inferior court of judicature within the dominions of the Crown, requiring such persons, &c., to do some particular act therein specified, which appertains to their office and duty, and which is consonant with right and practice, although, in its application, it may be considered as confined, as a general principle, to cases where relief is sought in respect of the infringement of some *public* right or duty, and where no effectual relief can be obtained by an action at law. It is nevertheless granted in a number of particular instances, and, amongst others, it issues to judges of Division Courts "to prevent a failure of justice." (*See* Tapping on Mandamus.)

The court to which application for the writ is made must be assured, before granting the application—

1. That there is no other remedy.
2. That the Division Court has jurisdiction to do the act required to be done.
3. That it has positively refused to do such act.
4. That the act is not *discretionary*, but imperative.
5. That it is not merely a matter of practice, unless it be an illegal practice.
6. That it is required to enforce, not merely aid a jurisdiction.
7. That the applicant has not acquiesced in the proceedings in the Division Court, and makes his application within a reasonable time. (Cox & Lloyd C. C. Prac. 216.)

A mandamus will lie to a County Court judge, commanding him to hear and determine a matter, but not to correct his judgment when given. (*In re Burns* v. *Butterfield*, 12 U. C. Q. B. 140.) And it has been held in England that where a judge hears evidence upon the question whether he has or has not jurisdiction in the case brought before him, and decides in the negative, a mandamus will not be granted to compel him to try the case, he having decided the case within the meaning of the statute and his judgment being final. (*Kernot* v. *Bailey et al.*, 4 W. R. 608.)

Nor can a judge be compelled to try a cause where he is personally interested in it, or is a relative or near connexion of one of the parties to the suit, (*In re the Judge of the County of Elgin*, 20 U. C. Q. B. 588; 7 U. C. L. J. 282,) and for similar reasons such facts would seem sufficient to warrant the removal of the cause by *certiorari* under sec. 61. But under such circumstances it is very possible that terms might be imposed as to costs. It is scarcely necessary, on the other hand, to say

1. Actions for any gambling debt (x); or

2. For spirituous or malt liquors drunk in a tavern or alehouse; or

---

that a judge would be prohibited from trying a cause in which he is personally interested. (*Anon*, Salk. 306.)

For further information on the subject see Mr. Tapping's treatise on Mandamus, and 28 Vic. cap. 18.

A prohibition is an original writ issuing out of a Superior Court, and directed to the judge of an inferior court, or to a party to the suit in such court, commanding that no further proceedings be taken in some particular cause; and it is in many respects the converse of a mandamus. (Cox & Lloyd C. C. Prac. 220.)

If the judge has jurisdiction in a case his proceeding in it will not be restrained by a writ of prohibition, even though he decides against law and good conscience. (*Siddall* v. *Gibson*, 17 U. C. Q. B. 98; 5 U. C. L. J. 84.)

To have held otherwise would, in effect, be allowing an appeal from the judge's decision, which, it is provided, "shall be final and conclusive between the parties." (Sec. 55)

A mere matter of irregularity in practice is no ground for interfering by prohibition. (*Jolly* v. *Baines*, 12 A. & E. 209, cited in *Higginbotham* v. *Moore*, 21 U. C. Q. B. 329.)

A judge sitting in Chambers has power, under 28 Vic. cap. 18, sec. 2, to order a writ of prohibition to issue to restrain a judge of a Division Court from proceeding in a plaint brought before him.

Upon an application for a prohibition it is sufficient that a *primâ facie* case be made out) and if the opposite party do not answer the court will presume that it is not intended to deny the right asserted. (*Macara* v. *Morrish*, 11 U. C. C. P. 74.)

The affidavit on which such a writ is moved for should not be entitled in any cause. (*Siddall* v. *Gibson, ante.*)

See late act respecting Prohibition & Mandamus. (28 Vic. cap. 18.)

The question of jurisdiction will hereafter be noticed, as we proceed, under the following heads:

1. With reference to the *subject matter* of the suit intended to be brought (see secs. 54, 55, 56).

2. With reference to the *amount claimed* (see secs. 55, 216).

3. With reference to *locality* or division in which the suit should be brought (see secs. 71, 72, 73, 216).

4. With reference to the *parties* to the suit (see sec. 54, sub-secs. 7, 57, 58, 81, 83).

5. With reference to other persons *not* parties to the suit (see sec. 99, as to witnesses; secs. 147, 185 and 186, as to clerks and bailiffs; and secs. 182, 183 and 184, as to the public generally).

(x) It was held by *Macdonald*, Co. J., in *Kelly* v. *Gafney*, 8 U. C. L. J. 50, following the English cases on the subject, that an action brought to recover $60 paid to defendant as a stakeholder, to abide the result of a horse race, did not come within the meaning of the words "any gambling debt."

See the next note, and 1 U. C L. J., N. S. 169 & 171.

3. On notes of hand given wholly or partly in consideration thereof. (*y*)

4. Actions of ejectment or actions in which the right or title to any corporeal or incorporeal hereditaments (*z*); or any toll, custom or franchise, comes in question; or

---

(*y*) "The court has no jurisdiction to try an action upon a note of hand, whether brought by the payee or any other person, the consideration, or any part of the consideration of which was any gambling debt, or for spirituous or malt liquors, or other like liquors drunk in a tavern or alehouse." (Rule 69.)

From which it would appear that it is not intended that the general rule of law—that an illegality in the consideration of a note does not affect the rights of a *bona fide* holder for value without notice—should apply, so as to put such a holder in a different position from the payee as to his right to sue in a Division Court.

(*z*) An hereditament is an estate, of whatsoever duration or quality, which is carved out of the inheritance. It is a more comprehensive expression than either *lands* or *tenements*, and includes both of these as well as whatsoever may be inherited. (2 Black. 17.) A corporeal hereditament is something substantial and permanent, and consists of what is generally known as land, including buildings thereon. An incorporeal hereditament is a right issuing out of a thing corporate, whether real or personal, or concerning, or annexed, or exercisable within the same, (Co. Litt. 19, 20,) and includes rents, annuities, commons, ways, dignities, offices and franchises.

The words used in the act of 1850, (13 & 14 Vic. cap. 53, sec. 23,) to limit the jurisdiction of Division Courts with respect to land, were, "No action shall be brought or tried, &c., for any cause involving the right or title to real estate." The words of the Division Courts Extension Act of 1853, (16 Vic. cap. 177, sec. 1,) were, "or of any action of ejectment, or in which the title to any corporeal or incorporeal hereditaments, &c., shall be brought in question," the same as the words used in the English County Courts Act. The words used in our County Court Act are, "where the title to land shall be brought in questio..."

In the case of *Overholt* v. *Paris and Dundas Road Co.* 7 U. C. C. P. 293, the phrases, "When the title to land shall be brought in question," and "in which the title to any corporeal hereditament shall be in question," were treated as having the same meaning. The section before us, however, uses the word "right" in addition to "title." The introduction of this word would seem to point to something more than a pure question of title. *Quære*, would it include *possession*.

Latham v. *Spedding* 17 Q. B. 440; 15 Jur. 576, establishes, that the plea of "not possessed," in an action of trespass, *q. c. f.*, does not *necessarily* raise a question of title within the meaning of the Imperial Statute of 9 & 10 Vic. cap. 95, sec. 58; and Lord Campbell intimated, that a question of simple possession could be tried in a County [Division] Court.

5. In which the validity of any devise, bequest, or limitation, under any will or settlement, may be disputed (*a*); or

6. For malicious prosecution, libel, slander, criminal conversation, seduction, or breach of promise of marriage;

7. Actions against a justice of the peace for any thing done by him in the execution of his office if

---

(See also *Caghey* v. *McCoy*, 1 Cr. & Dix., C. C. 290.) If the word "right," which is not used in the English act, can be said, as one of its meanings within the section, to signify *possession*, it would follow that Division Courts have no jurisdiction in any action where the possession of lands comes in question. There does not appear to be any decision with reference to this.

In order to deprive a court of jurisdiction it must be proved affirmatively that the title does *bonâ fide* come in question at the trial, and the judge has power to take evidence on this point. It is not sufficient that the title *may* come in question, or that the party objecting to the jurisdiction asserts that it will. (*Lilley* v. *Harvey*, 17 L. J., N. S, 357, Q. B.; 5 D. & L. 648; *Lloyd* v. *Jones*, 17 L. J., N. S. 206, C. P.; 6 C. B. 81; *Latham* v. *Spedding*, *ante*; *Overholt* v. *Paris & Dundas Road Co.*, *ante*.) And the rule is the same even when the question of title comes up incidentally during the progress of the cause. (*Trainor* v. *Holcombe*, 7 U. C. Q. B. 548.)

But the rule is different in the trial of interpleader issues, for it has been decided that in such cases a judge may decide upon the question of property in goods, even though the enquiry may involve the title to land. (*Munsie* v. *McKinley*, 15 U. C. C. P. 50; 1 L. C. G. 8.)

In an action by a landlord against his tenant the latter is estopped from denying his landlord's title, and cannot, as against him, set up any claim of title. If the defendant let another into possession of the premises voluntarily he is still estopped; but if he is evicted by title paramount he is not, (*Emery* v. *Barnet*, 4 U. C. L. J. 212; 4 Jur. N. S. 634; *Macara* v. *Morrish*, 11 U. C. C. P. 74,) and so if a third party becomes entitled to the reversion and agrees to release the tenant upon receiving, and does receive, possession from him. (*Campbell* v. *Davidson*, 19 U. C. Q. B. 222.)

Want of space prevents any more extended reference to the cases decided under this and analagous statutes. Many of them will be found collected in Vol. VI. p. 145, of the *Upper Canada Law Journal*, and in books on the English County Courts Act.

(*a*) From the use of the words "may be disputed," and comparing them with the words "comes in question," as used with reference to title to land, it may be inferred that the court will not have jurisdiction in any case so soon as it appears that the cause of action *may* depend upon the validity of a devise, without any proof that it *does* so depend.

he objects thereto (*b*). 13, 14 V. c. 53, s. 23; 16 V. c. 177, s. 1; 16 V. c. 180, s. 9.

Cases in which the court has jurisdict

LV. The judge of every Division Court may hold plea of, and may hear and determine in a summary way, for or against persons, bodies corporate or otherwise:

1. All personal actions (*c*) where the debt or damages claimed do not exceed forty dollars (*d*); and

---

(*b*) Sec. 12. of Consol. Stat. U. C. cap. 126, points out the time and manner in which the objection is to be made, viz., "if within six days after being served with a notice of any such action, such justice, or his attorney or agent, gives a written notice to the plaintiff in the intended action, that he objects to being sued in such [County or] Division Court for such cause of action, no proceedings shall afterwards be had in any such court in an such action," &c.

(*c*) "Personal actions are those whereby a man either claims the specific recovery of a debt or personal chattel, or satisfaction in damages for some injury done to his person or property. (Ins. 4, 6, 15.)

The forms of personal actions in use are *debt*, *covenant*, and *assumpsit*, founded on contract; and *detinue*, *trover*, *trespass*, *trespass on the case*, and *replevin* founded on *tort*, *i. e.*, such wrongs as do not fall within breaches of contract.

Debt lies for the recovery of a sum of money certain.

Covenant, when redress in damages is sought for the breach of an agreement by deed.

Assumpsit is the remedy assigned by law for the breach of a contract not under seal.

Detinue lies when the object is to recover a chattel unlawfully detained. It seems to be the better opinion that an action of this nature may be brought in a Division Court. (See *Wickam* v. *Lee*, 12 Q. B. 521; 1 Cox. & Mac. 119; *Taylor* v. *Addyman*, 22 L. J., C. P. 94; *Lucas* v. *Elliott*, 9 U. C. L. J. 147.)

Trover lies to recover damages for the wrongful conversion of plaintiff's goods.

In *Ginn* v. *Scott*, 11 U. C. Q. B. 542, the court inclined to the opinion that trover for a deed would not lie in a Division Court. But would it not lie for the paper or parchment upon which the deed was written?

Trespass lies when the plaintiff claims damages for an injury accompanied with actual or implied force. It may be either trespass *vi et armis*, with force and arms, as a battery or imprisonment; *quare clausum fregit*, breaking into an enclosed place; or, *de bonis asportatis*, seizing and taking away goods.

Trespass on the case lies in every case of damage to person or property not included in *trespass*.

Replevin is the re-delivery by the sheriff or bailiff, as the case may be, to the owner, of goods unlawfully detained, or unlawfully taken and detained, or distrained. Jurisdiction was not given to Division Courts in replevin until the recent statute 23 Vic. cap. 45. The act is given in full hereafter.

(*d*) A diversity exists in the ruling of the different county

2. All claims and demands of debt, account or breach of contract, or covenant, or money demand, whether payable in money or otherwise, where the

judges, as to the interpretation to be placed upon this section; some holding that it is only actions brought purely and simply to recover uncertain damages on matters of opinion, whether for tort or breach of contract, which are restricted to $40. (See *Hyland* v. *Warren*, 6 U. C. L. J. 116.) Others that no action for mere damages can be brought for more than that amount, and others again that the first sub-section applies solely for all practical purposes to actions for torts.

It will be seen that under 13 & 14 Vic. cap. 53, sec. 23, the Division Courts had jurisdiction over all claims and demands whatsoever of debt, account, breach of contract, covenant, or money demand up to £25, "and in all torts to personal chattels to and including the amount of ten pounds." 16 Vic. cap. 177, sec. 1, recites the expediency of extending the provisions of the former act to all personal actions (with certain exceptions) not exceeding £10, and gives jurisdiction in "all personal actions when the debt or damages claimed is not more than £10." Sec. 55 is compiled from the sections above referred to.

It is difficult to say what class of actions besides actions for torts to personal property, or personal wrongs, the legislature intended to include in the first division of this section. The words used are so comprehensive that they include all the causes of action specified in the second division. But in determining this point it is to be borne in mind that the object of the 16 Vic. cap. 177, was to increase and not to diminish the jurisdiction of the courts, and to give them jurisdiction in certain cases, where before they had none; and it may fairly be presumed that any case which before that statute could have been brought up to the amount of £25 can still be so brought. The test, therefore, as to whether $40 or $100 would in any particular case be the limit, would not be whether it would come within the first sub-section, but whether it could not reasonably be placed under one of the classes of cases mentioned in the second sub-section.

There appears to be but one authoritative judicial decision on the question, that of *Morris* v. *Cameron*, 12 U. C. C. P. 422. This was an action brought for the recovery of the costs of a suit brought by the same plaintiff against a different defendant in the County Court of the United Counties of York and Peel. The defendant subsequently promised, on behalf of the defendant in the County Court suit, to pay to the plaintiff his costs of that suit. The declaration set out the promise, the breach, and averred that the County Court suit was not of the proper competency of the Division Court. The plea set out the fact of the action having been brought for the breach of a warranty of a horse, and that only fifty dollars were recovered, and alleged that the action could have been brought in the Division Court. The plaintiff demurred to this on the ground that the action was of the proper competency of the County Court. *Draper*, C. J., said, "I think the 54th sec. of the Division Courts Act has nothing to do with this

amount or balance claimed (*e*) does not exceed one hundred dollars, and except in cases in which a

---

case, for that points out the cases where the courts have no jurisdiction at all. Here the jurisdiction, as to the mere cause of the action, is undeniable, provided the amount is not too large, and therefore the question arises whether it comes within the first or second sub-sections of sec. 55. If the former, as a personal action, where the *debt* or *damage* do not exceed $40, then the action is properly brought in the County Court. If the latter, as a claim and demand of debt account or breach of contract, &c., then defendant is entitled to judgment. But for the word 'debt' in the first sub-section it might be argued that the words personal actions there used meant that class of actions to which the old maxim *actio personalis moritur cum persond* applied. It is not easy to point out a personal action of debt to which the second sub-section would not apply. The English County Courts Act enacts, that 'All pleas of personal actions when the debt or damage is not more than £20, (afterwards extended to £50,) whether on the balance of account or otherwise may be holden in the County Court,' and then follow certain exceptions. I take it that there is no doubt an action for breach of warranty, within the limited amount, would lie in the County Court in England. The case of *Aris* v. *Orchard*, 30 L. J., Ex. 21; 3 L. T., N. S. 443, seems conclusive on this point. In my opinion as to this point the defendant is entitled to judgment."

This decision confirmed the opinion expressed on the same point by the learned judge of the County Court, and may be said practically to decide that Division Courts have jurisdiction in all personal actions, within the scope of the act, where the amount does not exceed $100, except in actions for *torts*, which appears to be the only class of actions, within the statute, not covered by the second sub-section.

(*e*) That is, when the parties have themselves struck a balance, or where there have been payments on account, or what is equivalent in law to a payment (*Woodhams* v. *Newman*, 7 C. B. 654; *Cameron* v. *Thompson*, 1 U. C. L. J, 9), and anything received by a binding agreement between the parties in reduction of plaintiff's claim is equivalent to payment. (*Hart* v. *Nash*, 2 C. M. & R. 337; *Turner* v. *Berry*, 5 Ex. 858; *Wilson* v. *Franklin*, 1 Cox. & Mac. 497.)

Sec. 59 provides, that no action for the balance of an unsettled account shall be sustained where the unsettled account in the whole exceeds two hundred dollars. This provision is necessary to prevent the trial in these courts of long complicated accounts amounting altogether to large sums.

An account reduced by payments (or what is equivalent to payments) is not an "unsettled account" within the meaning of this section or of section 59, but a reduction of the plaintiff's claim by set off, which is in the nature of a cross action, and is a defence that the plaintiff cannot be assured the defendant will set up, has not the same effect as if it were reduced by payment, "for the reduction of the plaintiff's demand by set off is no satisfaction until the verdict of the jury has pronounced it to be such," and this distinction must be

jury (*f*) is legally demanded by a party as hereinafter provided, he shall be sole judge in all actions brought in such Division Courts, and shall determine all questions of law and fact in relation thereto, and he may make such orders, judgments or decrees thereupon as appear to him just and agreeable to equity and good conscience (*g*), and every such order,

---

carefully considered in determining the matter of jurisdiction. (See *McMurtry* v. *Munro*, 14 U. C. Q. B. 171, and the cases there cited; *Cameron* v. *Thompson*, *ante*; *Halford* v. *Hunt*, 2 U. C. L. J. 39; *Woodhams* v. *Newman*, 7 C. B. 654; *Turner* v. *Berry*, 5 Ex. 858; *Avards and wife* v. *Rhodes*, 8 Ex. 312; 20 L. T. Rep. 251, and *Geroux* v. *Yager*, in note (*l*) to sec. 59.)

(*f*) See section 119.

(*g*) The principles of equity are thus incorporated with Division Court administration.

How are we to interpret the words "just and agreeable to equity and good conscience?" Have they reference merely to the (practically) limited equity administered by the Court of Chancery, or do they refer to something more than that, and signify what has been termed "natural equity," or that which is morally just between man and man in each particular case, irrespective of the probable or possible results logically consequent upon a broad application of the principles deducible from the supposed equities of such case, according to the view taken of them by a judge of average capacity.

The case of *Siddal* v. *Gibson*, 17 U. C. Q. B. 98; 5 U. C. L. J. 84, favors the more extended interpretation of the words. A prohibition was asked to a Division Court, because a plaintiff was there permitted to recover in an action on a promissory note against an endorser without being required to give evidence of the presentment of the note for payment or notice of non-payment. The court considered that the judge had jurisdiction to dispose of the case according to his ideas of equity and good conscience, and so would not grant the writ, but at the same time intimated that he should *at least* have insisted upon evidence of presentment of the note.

The Court of Chancery in England was originally *purely* a court of conscience. That it is not so at the present day is evident, for it holds itself bound by statutes that often operate harshly in individual cases, and has laid down many rules for its guidance which are applied with greater or less rigour according to circumstances. That any rules are in existence is an argument that they are necessary,—and if necessary in a court which was *originally* a court of good conscience only, why are they not necessary in a lately constituted court of "equity and good conscience."

But however this may be, it may safely be said that there is nothing in the term, "according to equity and good conscience," that would warrant a judge in violating any positive enactment, and that the more closely he adheres to the principles of equity as administered in the Court of Chancery, the more likely is he to be correct, and certainly, as a consequence, judgments will be more

judgment and decree, shall be final and conclusive between the parties (*h*). 13, 14 V. c. 53, ss. 30, 84.

Judge may order payment in money although contract not for payment in money.

LVI. Upon any contract for the payment of a sum certain in labour or in any kind of goods or commodities, or in any other manner than in money, the judge, after the day has passed on which the goods or commodities ought to have been delivered, or the labour or other thing performed, may give judgment for the amount in money as if the contract had been so originally expressed. 16 V. c. 177, s. 1; 13, 14 V. c. 53, s. 23.

No privilege to exempt parties from jurisdiction of court.

LVII. No privilege shall be allowed to any person to exempt him from suing and being sued in a Division Court, and any executor or administrator may

---

uniform and therefore more generally satisfactory and beneficial.

After all, certainty and uniformity in the administration of the laws are practically matters of primary importance, and cannot be too strongly insisted upon. The too numerous complaints on this head shew that something is wrong somewhere. To obtain certainty and uniformity, an intimate knowledge of, and strict adherence to *first principles* on the part of the judge is indispensable, and this must be combined with the salutary maxims of equity, which are of universal application. Cases often occur in Division Courts where it is difficult to decide upon which side the equities lie, and in such cases the maxim, "when the equities are equal, the law must prevail," would be a safe guide. With reference generally to this equitable jurisdiction in Division Courts as compared with County Courts it must be very perplexing to an uninitiated suitor to find that the judge who decides in his favor on a claim for one hundred dollars, on an exactly similar state of facts decides against him in an action for one hundred and one dollars. But so it must be in a greater or less degree, according to the views of the judge, until such time as there is a fusion of law and equity.

(*h*) It would be quite foreign to the object of this little work to discuss the advisability of an appeal in certain cases from these courts, or the wisdom of preventing litigation by withholding such a provision. The great desideratum of all laws, and one which can scarcely be expected in these courts under the present system, is expressly recognized in the "Upper Canada Common School Act," section 108, which says, "It being highly desirable that uniformity of decision should exist in cases within the cognizance of the Division Courts, and tried in such courts, in which superintendents, &c., acting under the provisions of this act are parties," &c. But the practical objections to an appeal are so cogent, that those most conversant with the working of the system are entirely opposed to it.

sue or be sued therein (*i*), and the judgment and execution shall be such as in like cases would be given or issued in the Superior Courts. 13, 14 V. c. 53, ss. 28, 80.

Minors may prosecute for wages.

LVIII. A minor may sue in a Division Court for any sum not exceeding one hundred dollars, due to him for wages, in the same manner as if he were of full age (*j*). 13, 14 V. c. 53, s. 27.

Causes of action not to be divided.

LIX. A cause of action shall not be divided into two or more suits for the purpose of bringing the same within the jurisdiction of a Division Court (*k*),

---

(*i*) The rules of practice, 56 to 66 inclusive, and forms 33 to 51 inclusive, make full provision as to proceedings against executors and administrators.

(*j*) "This clause does not appear to be by any means intended as a restriction upon the right of infants to sue in the Division Courts, but rather the contrary,—the object being to enable an infant to sue for his labor, contrary to the principle of the common law, which would give his earnings to his father. The clause leaves the right of infants to sue upon other causes of action as it stood before, and no doubt an infant may well recover any demand that h may have for goods sold, money lent, &c.; his infancy being a protection to himself, not to his debtor. We find nothing in the statute respecting the mode in which infants may sue, no means being given of appointing a next friend, nor any necessity imposed of doing so, or of giving security for costs."—(*Robinson*, C. J., in *Ferris* v. *Fox*, 11 U. C. Q. B. 312; 1 U. C. L. J. 227.)

The provision of the 69th section would doubtless come into operation in such cases. In the Superior Court an infant usually sues by "next friend," who is liable for costs. In like manner, an infant suing in a Division Court for other claims than wages should sue by "next friend" thus: "*A. B.*, an infant by C. D. his next friend, v. *E. F.*" The rules under the English County Courts Act provide for the bringing the next friend to the clerks office when the plaint is entered, where he signs an undertaking to become responsible for any costs that the infant may be ordered to pay.

(*k*) There has been much litigation in England, as to what is to be considered as a splitting of the plaintiff's demand, under an enactment similar to the above. The leading cases on the subject will be found collected, and the matter fully discussed, in the *Upper Canada Law Journal*, Vol. VII. pp. 75, 95, 282; and Vol. VIII. pp. 66, 91, 231; see also *Grace* v. *Walsh*, 10 U. C. L. J. 65.

The apparent result of the cases on this subject may be briefly stated as follows:

1. A cause of action or contract, and one for a tort, are in their natures distinct, and need never be joined together in the same plaint.

2. Causes of action for work and labor, money lent, goods sold and

and no greater sum than one hundred dollars shall be recovered in any action for the balance of an unsettled account (*l*), nor shall any action for any such balance be sustained where the unsettled account in the whole exceeds two hundred dollars. 13, 14 V. c. 53, s. 26.

Judgment to be full discharge.

LX. A judgment of the court upon a suit brought for the balance of an account shall be a full discharge

---

delivered, and the like, are *primâ facie* distinct, and need not in general be joined together in the same plaint.

3. A tradesman's bill, in which one item is connected with another in the sense that the dealing is not intended to terminate with one contract but to be continuous, so that one item, if not paid, shall be united with another and form one entire demand, forms one cause of action, and can only be the subject of one plaint.

4. Causes of action, originally separate, may, by act of the parties, (treating them as one demand) become so connected together as to form but one cause of action.

5. Where a bill or note is given for a portion of an account, such bill or note and the balance of the account form distinct causes of action. (See *Lloyd's County Court Practice*, p. 114.)

(*l*) It is somewhat remarkable that the plaintiff's right of abandoning the excess is nowhere expressly given except in section 205, which appears to refer exclusively to proceedings against absconding debtors. This is an alteration of the original enactment of 13 & 14 Vic., and it is difficult to see the reason of it. It is, however, generally admitted that this privilege is impliedly given by the present section. It follows, moreover, that the abandonment of the excess in any suit in which judgment is given, is by the next section a discharge of all demands with respect to such excess so abandoned, for that section makes the judgment a discharge in respect *of the account* of which such suit was for the balance, and therefore of that part of the account which is abandoned. Section 205, already referred to, is more explicit by speaking of the cause of action. All the cases therefore with reference to abandoning the excess, though decided on the statutes, before altered by the Consolidated Statutes, or under English enactments similar to them, are still in point.

Draper, C. J., in *Geroux* v. *Yager*, 8 U. C. L. J. 19, uses the following language: "The jurisdiction of the Division Courts extends to all cases of debt, account, &c., when the amount or balance claimed does not exceed £25; but any plaintiff having a cause of action above £25, on which a suit might be brought in the Division Court if the demand were not above £25, whenever he shall claim or demand only the balance or sum of £25, may, on proving his case, recover to that amount only. I regard this as a privilege conferred on a plaintiff and not a right granted to defendant to insist that the plaintiff shall give credit for any set off which the defendant may

of all demands in respect of the account of which such suit was for the balance (*m*), and the entry of judgment shall be made accordingly. 13, 14 V. c. 53, s. 26.

Causes may be removed to Superior Court by *certiorari* in certain cases

LXI. In case the debt or damages claimed in any suit brought in a Division Court amounts to forty dollars and upwards, and in case it appears to any of the judges of the Superior Courts of Common Law, that the case is a fit one to be tried in one of the said Superior Courts, and in case any judge thereof grants leave for that purpose, such suit may, by writ of *certiorari* (*n*), be removed from the Division Court

---

or may not choose to advance and to submit to the judgment of the court."

Where the excess is abandoned it must be done in the first instance on the claim or set off (Rule 69). An offer therefore at the hearing would be too late. But, according to the decisions in England, it seems that if the summons or particulars state a demand not exceeding $100, and the excess appears in proof at the trial, such excess may then be abandoned. The abandonment must be a positive act done, and would appear to be an abandonment for all purposes, irrespective of whether the plaintiff recovers all his claim up to the extent of the jurisdiction or not, and must be made by the plaintiff himself, or of some person authorized by him for that purpose, and the entry of judgment should be made accordingly.

(*m*) See note (*l*) to preceding section.

(*n*) A *certiorari* is an original writ issuing out of Chancery or the King's Bench (but is under this section confined to the Superior Courts of Common Law), directed in the King's name to the judges or officers of inferior courts, commanding them to return the records of a cause pending before them, to the end the party may have the more sure and speedy justice before him, or such other justices as he shall assign to determine the cause. (Bacon's abr.)

The application should be made to a judge in Chambers and not to the full court. (*Re Bowen* v. *Evans*, 18 L. J., Ex. 38; *Solomon* v. *London C. & D. R. W. Co.* 10 W. R., Ex. 59.)

To entitle a suitor to this writ it must be shewn that,

1. The amount claimed is $40 and upwards.

2. That the cause is a fit one to be tried in one of the Superior Courts, that it will, in all probability, bring up difficult points of law at the trial, or that it presents some other circumstance which would render a trial in the court above advisable, and,

3. The leave of a judge must be obtained.

As a general rule a *certiorari* only lies before judgment with a view to a trial of the cause in a Superior Court (*Siddall* v. *Gibson*, 17 U. C. Q. B. 98); and *Robinson*, C. J., in *McKenzie* v. *Keene*, 5 U. C. L. J. 225, refused an order after judgment and execution regularly issued and money made and paid

into either of the said Superior Courts upon such terms as to payment of costs or other terms as the judge making the order thinks fit. 13, 14 V. c. 53, s. 85.

---

over, although a new trial was subsequently granted by the county judge. But generally when a new trial has been ordered, and the case is again coming on for trial, a writ may issue. (See *Help* v. *Lucas*, 8 U. C. L. J. 184; *Corley* v. *Roblin*, 5 U. C. L. J. 225.)

The 43 Eliz. cap. 5, provides that no such writ shall be received or allowed by the judge except it be delivered to him, before the jury, which is to try the question, has been sworn. "The mischief," said *Richards*, C. J., in *Black* v. *Wesley*, 8 U. C. L. J. 277, "intended to be cured by the statute arises when the cause is gone into before the judge alone, as before a jury; for it enables the defendant, in the language of the statute, to 'know what proofs the plaintiffs can make for proving their issue, whereby the defendants that sued forth the writ may have longer time to furnish themselves with some false witnesses to impugn these proofs, which the plaintiffs have openly made by their witnesses, which is a great cause of perjury and subornation of perjury.' I think the act in spirit applies to cases where plaintiff's witnesses are sworn although no jury is called."

The removal of a cause under this section is entirely in the discretion of the judge to whom the application is made, upon its being shewn to him that difficult questions of law are likely to arise, and he may impose such terms as he thinks fit. Each case must therefore depend on its own merits, and the circumstances attending it. With reference to the English cases as to the *discretion* of the judge, it is to be noticed that the wording of the analogous section of the English act is different from that before us.

It is the practice in England to grant orders for writs of *certiorari* on *ex parte* applications. The practice was formerly the same in this country, but of late years the practice has usually been to grant only a summons to shew cause, in the first instance; and, as our Division Courts are constituted, this seems the more correct course, as it certainly is the most advisable. The writer is not aware of any authority on the point.

Nor has it yet been decided in the full court whether the *plaintiff* can, as a matter of right, remove a cause from a Division Court by *certiorari*. Some of our judges grant such orders whilst others refuse to do so. In *Dennison* v. *Knox*, 9 U. C. L. J. 241; 3 U. C. Prac. R. 151, Chief Justice *Draper* said, that a removal of a case from a County Court by a plaintiff was open to grave objections, and that he should not facilitate it. But there were circumstances in that case, which would not apply to a similar application in a Division Court suit, such for example as the right of appeal from a County Court.

The plaintiff makes his election with full knowledge in most cases as to what points will come up at the trial. He can discontinue if he chooses in the Division Court, and commence *de novo* in a Superior Court at a trifling expense.

PROCESS AND PROCEDURE.

Board of judges to frame rules continued.

LXII. The existing appointments of County Judges (*o*), with authority to frame general rules respecting the practice and proceedings of the Division Courts, shall continue until superseded or revoked by the Governor. 16 V. c. 177, s. 10; 20 V. c. 58, s. 8.

The Govern or may appoint five county judges to frame rules, &c.

LXIII. The Governor may from time to time appoint and authorize five of the County Judges to frame general rules and forms concerning the practice and proceedings of the Division Courts, and the execution of the process of such courts, with power also to frame rules and orders in relation to the provisions of this act, or of any future act respecting such courts, as to which doubts have arisen or may arise, or as to which there have been, or may be, conflicting decisions in any of such courts.

Who shall certify rules to the Chief

LXIV. The County Judges appointed as in the last section provided, or any three of them, shall,

---

But even if leave is granted to a plaintiff to remove his own suit, the difficulty still remains of forcing the defendant to appear in the court above. There would be more show of reason for the removal when the defendant pleads a set off, which is likely to bring up difficult questions of law, as a set off is in the nature of a cross action, but an application of that nature was refused by *Morrison*, J., in *Prudhomme* v. *Lazure*, 10 U. C. L. J. 330. It was subsequently expressly held by Mr. Justice *Adam Wilson*, in Chambers, in *Maney* v. *Hollinrake* (not reported), that a plaintiff cannot remove his cause by *certiorari*.

The plaintiff cannot be compelled, when a cause is removed by a defendant, to follow his plaint into a Superior Court, nor is the defendant entitled in such case to his costs of removing it from the inferior court (*Garton* v. *Great Western R. W. Co.* 5 Jur. N. S. 595; 28 L. J., Q. B. 103); though he is entitled to his full costs of suit without a certificate if successful in the Superior Court. (*Corley* v. *Roblin*, 5 U. C. L. J. 225.)

An interpleader issue has been held not to be within this section, and cannot be removed by *certiorari*. (*Russell* v. *Williams*, 8 U. C. L. J. 277; und see *Jones* v. *Harris*, 6 U. C. L. J. 16.)

The affidavits to be used on applications of this kind must be entitled in the court to which it is desired to remove the suit. (*Smyth et al.* v. *Nicholls*, 1 U. C. Prac. R. 355.)

(*o*) The judges appointed were, The Hon. S. B. Harrison, Geo. Malloch, J. R. Gowan, E. C. Campbell, and Miles O'Reilly. Of these, Judge Campbell is dead, and Judge O'Reilly has resigned.

Justice to be laid before the judges.

under their hands, certify to the Chief Justice of Upper Canada, all rules and forms made after this act takes effect, and the Chief Justice shall submit the same to the judges of the Superior Courts of Common Law at Toronto, or to any four of them.

Such rules to be approved of by the judges.

LXV. The judges of the Superior Courts (of whom the said Chief Justice, or the Chief Justice of the Court of Common Pleas shall be one) may approve of, disallow, or amend any such rules or forms.

And have force of a statute.

LXVI. The rules and forms so approved of shall have the same force and effect as if they had been made and included in this act.

The judges to transmit copies to the Governor, &c.

LXVII. The judges who make any rules and forms approved of as aforesaid, shall forward copies thereof to the Governor, and the Governor shall lay the same before each House of the Legislature.

Expenses of provided for.

LXVIII. The Governor may by warrant direct the Receiver General to pay out of the General Fee Fund, the contingent expenses connected with the framing, approval and printing of such rules.

Practice of the Superior Courts to be followed in unprovided cases.

LXIX. In any case not expressly provided for by this act or by existing rules, or by rules made under this act, the county judges may, in their discretion, adopt and apply the general principles of practice in the Superior Courts of Common Law, to actions and proceedings in the Division Courts.

Former rules continued.

LXX. All rules and forms legally made and approved under the former "Upper Canada Division Court Acts," and in force when this act takes effect, shall, as far as applicable, remain in force until otherwise ordered (*p*). 16 V. c. 177, s. 10; 20 V. c. 58, s. 8.

(*p*) See section 2.

The rules now in force bear date the 28th June, 1854, and were approved on the 8th July, 1854, by the (then) Chief Justice of Upper Canada, the Chief Justice of the Court of Common Pleas, and three of the Puisne Judges. The rules and forms are subject to the provisions of the act, and the modifications necessary in using them are noticed in the proper places

LXXI. Any suit may be entered and tried in the court holden for the division in which the cause of action arose (*q*) or in which the defendant or any one of several defendants resides or carries on business at the time the action is brought, notwithstanding that the defendant or defendants may at such time reside in a county or division or counties or divisions different from the one in which the cause of action arose. 16 V. c. 177, s. 8; 18 V. c. 125, s. 1.

In what courts suits may be entered and tried.

(*q*) There has been and still is considerable difference of opinion as to the court in which an action may be brought under these words. The case of *In re Watt* v. *Vanevery*, 23 U. C. Q. B. 196, (decided before the late act of 27, 28 Vic. cap. 27,) though only the judgment of the court on an *ex parte* application for a rule *nisi*, is an important judicial decision on the subject. The defendants, residing at Goderich, made a contract at Brantford with plaintiff to deliver to him certain goods at Goderich. The plaintiff alleged that the defendant failed to perform his contract, and commenced an action against him in the Division Court at Brantford. The defendant then applied for a rule *nisi* for a prohibition. *Draper*, C. J., in granting the rule, said: "The words, 'cause of action,' have, in the English County Court Act, been repeatedly determined in England to mean the *whole cause of action:* in other words, whatever the plaintiff must prove to entitle him to recover. (See *Borthwick* v. *Walton*, 15 C. B. 501; *Hernaman* v. *Smith*, 10 Ex. 659.) Now, what is the cause of action in this case? Not the contract only, but the contract and the breach, for which the plaintiff claims damages. The first was made at Brantford, but the fish were to be and were delivered to the plaintiff at the railway station at Goderich. The breach of contract alleged is, that the fish there delivered were unsound, &c., and if true, this breach occurred at the place of delivery stipulated for by the contract. The cause of action therefore arose partly at Brantford and partly at Goderich, and the plaintiff must bring his action according to the second alternative [as given in the statute, namely, where the defendant resides or carries on business]. The rule *nisi* must issue."

Where the defendant resided at G., at which place a bargain was made for the delivery of certain goods at W., and the bargain was fulfilled by such delivery and acceptance, it was held that the cause of action arose partly at G. and partly at W., and that the judge of the county in which W. is situate had no authority in respect of the cause of action. (*In re Kemp* v. *Owen*, 1 U. C. L. J., N. S. 71; 1 L. C. G. 41; 14 U. C. C. P. 432.)

It is difficult to give a definition of the word "residence." A learned judge in England doubted if a general definition could be found anywhere, and said he never could find or frame one satisfactory to his mind. *Robinson*, C. J., in *Mellish* v. *VanNorman*, 13 U. C. Q. B. 455 says, "The term 'resident' is differently construed in courts of justice, according to the purposes for which

Act of 27, 28 V. c. 27, amending Division Cts. Act as to locality of jurisdiction.

[Whereas (*r*) it is desirable to lessen the expenses of proceedings in Division Courts in Upper Canada, and to provide, as far as may be, for the convenience of parties having suits in these courts: Therefore, Her Majesty, by and with the consent of the Legislative Council and Assembly of Canada, enacts as follows:—

1. Any suit cognizable in a Division Court may be entered, and tried, and determined in the court, the place of sitting whereof is the nearest to the defendant or defendants (*s*), and such suit may be

---

enquiry is made into the meaning of the term. The sense in which it should be used is controlled by reference to the object."

Residence is said to mean a domicile or home, (*Lamb* v. *Smith*, 15 L. J. Ex. 267,) and a man's home is where his wife and family reside. (*Rex.* v. *Duke of Richmond*, 6 T. R. 561.) But this is only the case *generally*, because a man may reside in one place and his family in another. There is a difference between *domicile* and *residence*. The latter is more transient in its nature than the former,—and the cases shew that a person may have in fact two places of residence at the same time (*Withorn* v. *Thomas*, 7 M. & G. 1,) though he can have but one domicile. Practically, however, the points which will generally be necessary to establish are, that the "residence" (which may here be considered synonymous with "dwelling") is *bona fide*, and that, although it may be constructive, as by a family or servants, or even the possession of a domicile, which is not actually used, there must be a reasonable intention to reside whilst there, and a clear intention to return whilst absent.

A public company is said to "dwell" where they have their office for the transaction of their business. (*Aberystwith Pier Co.* v. *Cooper*, 14 W. R. 28.)

"Carrying on business" refers to a man's "calling" and not to an accidental occupation, and the words do not apply to a mere clerk in the employment of another.

(*r*) The late Act of 27, 28 Vic cap. 27 (assented to 30th June, 1864), is here inserted within brackets, for the reasons to be found in its third section.

(*s*) The two alternatives given to a plaintiff by section 71 have been already noticed. This act gives him a third, namely, that he may bring his suit in the Division Court, the place of sitting whereof is nearest the residence of the defendant, and generally therefore the most convenient court, and this without reference to where the cause of action arose, and no matter in what county or division the defendant may live. It is a provision of great benefit and importance to suitors; for in the majority of cases the plaintiff lives in the immediate neighbourhood of the defendant, as also the witnesses likely to be called, and the expense of suing a defendant increases with the distance he may live from the court.

entered, and tried, and determined irrespective of where the cause of action arose, and notwithstanding that the defendant or defendants may at such time reside in a county or division other than the county or division in which such Division Court is situate, and such suit entered.

2. It shall be sufficient if the summons in such case be served by a bailiff of the court out of which it issues (*t*) in the manner provided in the seventy-fifth section of the Division Courts Act; and upon judgment recovered in any such suit a writ of *fieri facias* against the goods and chattels of the defendant, and all other writs, process, and proceedings to enforce the payment of the said judgment, may be issued to the bailiff of the court, and be executed and enforced by him in the county in which the defendant resides, as well as in the county in which the judgment was recovered.

3. This act shall be read as incorporated with and as part of the said Division Courts Act, and the foregoing sections shall be considered as inserted next after section seventy-one in the said act, and the authority from time to time to make rules and to

---

Section 72 will, in a great measure, be superseded by this provision, although there may be cases where it will be necessary to obtain an order under that section, as, for instance, where there are two or more defendants, whose residences are not all nearest to one and the same place of holding a court, this act only speaking of "the defendant or defendants," without adding the words "or one of several defendants," as in section 72. The judge can, under that section, exercise his discretion as to the court where the suit is to be entered, according to the facts of each particular case.

It has been questioned whether proceedings by replevin or attachment, which are not for the purpose of *enforcing payment of a judgment* come within the meaning of the act. It may also be argued that a judgment summons does not come within the statute, as the means of enforcing the attendance of a debtor to be examined, namely by commitment, is in the nature of a punishment for contempt of court or fraud, as the case may be, and cannot therefore be called a proceeding to enforce payment of a judgment, but at the same time that it *is* such a proceeding, and an effectual one too, cannot be denied; and much benefit to be derived from the statute would be lost if the narrow view of it is to be taken. No decision has yet been reported on the points spoken of.

(*t*) See section 79 and notes.

alter and amend the same (given under the sixty-third of the said act) shall extend to the provisions in this act contained. 27, 28 V. c. 27.]

When suits may be brought in other than the regular divisions.

LXXII. The places fixed for holding the sittings of the courts and the offices of the clerks thereof, being in some instances situated at an inconvenient distance from the place of residence of certain parties residing in such divisions, while a court is held in an adjacent division, in the same, or in an adjoining county more convenient for such parties, and it being desirable that procedure in the Division Courts should be made easy and inexpensive to suitors; therefore, in case any person desires to bring an action in a division other than that in which the cause of action has arisen, or in which the defendant resides, any county judge may by special order (*u*) authorize a suit to be entered and tried in the court of any division in his county adjacent to the division in which the defendant or one of several defendants resides, whether such defendant or defendants reside in the county of the judge granting the order or in an adjoining county. 13, 14 V. c. 53, s. 25; 16 V. c. 177, ss. 8, 9; 18 V. c. 125, s. 1.

Where no special order, clerk to forward summonses.

LXXIII. In case where no such special order has been obtained, the clerk of any Division Court shall, when required, forward all summonses to the clerk of any other Division Court for service, and the clerk of any Division Court shall receive any summonses sent to him by any other Division Court clerk for service, and he shall hand the same to the bailiff for service, and when returned, shall receive the same from the bailiff and return them to the clerk from whom he received them, and every clerk shall enter all such proceedings in a book to be by him kept for

(*u*) Under 16 Vic. cap. 177, sec. 9, it was held that the application should be made to the judge who would ordinarily have cognizance of the cause, and not to the judge of the division to which it was desired to transfer it (*McWhirter* v. *Bongard*, 14 U. C. Q. B. 84), but under this section the order must be made by the judge of the county in one of the divisions of which the suit is to be brought.

See rule 20 as to the mode of proceeding to obtain leave under this section and the form of affidavit required.

that purpose (*v*). 13, 14 V. c. 53, s. 25; 16 V. c. 177, s. 29; 18 V. c. 125, s. 3.

Plaintiff to enter copy of his claims with clerk.

LXXIV. The plaintiff shall enter with the clerk a copy, and if necessary, copies of his account, claim or demand in writing in detail (and in cases of tort, particulars of his demand) (*w*), which shall be numbered according to the order in which the same are entered, and thereupon a summons shall be issued, bearing the number of the account, claim or demand on the margin thereof (*x*), and corresponding in substance with the form or in such other form as may be prescribed by any rule respecting the practice and proceedings of the Division Courts, according to the nature of the account, claim or demand, and on the trial of the cause no evidence shall be given by the plaintiff of any cause of action except

---

(*v*) See rule 21, which enlarges upon the mode of procedure under this section.

The book here spoken of may be called the "foreign procedure book," and be in a form analagous to that of the "procedure book," required by rule 4 and form 64.

It would seldom be possible and often inconvenient for the transmitting clerk to know and send the exact sums that would be required to pay for services in a foreign division; it is therefore usual for each clerk to keep an account with other clerks, that he sends summonses or other papers to, in which to credit them the charges that they make against him, and which are endorsed on the papers returned. If he also keeps in his foreign procedure book, besides the index of the names of the suits, an alphabetical index of the names of the clerks sending him these suits, referring to each as it comes to him and is numbered, he can at any moment see what any such clerk owes him, and so make out his account with him accordingly. This is the course pursued by the clerk in Toronto, and answers all purposes. But where there is no such understanding between clerks, a sum should be sent on account of service, &c.

(*w*) See section 35, note (*k*).

Rule 15 provides that the account, claim, or demand, shall, whenever possible, contain detailed particulars. It would be unreasonable to require less than this. The plaintiff, moreover, is bound by his own particulars, though he may in certain cases obtain leave to amend on terms. Suitors would do well to be very careful about the manner in which they put their claims into court, and thereby save much valuable time to the court and delay and expense to themselves.

See forms 3 and 4, for particulars of demand.

(*x*) See rule 18.

such as is contained in the account, claim or demand so entered (*y*). 13, 14 V. c. 53, ss. 24, 42.

Service of summons to be ten days.

LXXV. The summons with a copy of the account or of the particulars of the claim or demand attached, shall be served ten days at least (*z*) before the return day thereof.

When service to be 15 days and when 20 days.

LXXVI. In case none of the defendants reside in the county in which the action is brought, but one of them resides in an adjoining county, the summons shall be served fifteen days, and in case none of the defendants reside in the county within which the action is brought, or in an adjoining county, the summons shall be served twenty days at least before the return day thereof. 16 V. c. 177, s. 29; 18 V. c. 125, s. 1.

When service to be personal or otherwise.

LXXVII. In case the amount of the account, claim or demand exceeds eight dollars, the service shall be personal on the defendant (*a*), and in case the amount does not exceed eight dollars, the service may be on the defendant, his wife or servant, or some grown person being an inmate of the defendant's dwelling house, or usual place of abode, trading or dealing (*b*). 13, 14 V. c. 53, s. 24.

(*y*) The judge may, however, in his discretion, adjourn the hearing of the cause to enable a party to furnish particulars or further particulars (rule 15).

(*z*) That is, ten days exclusive of the day of service and the court day (rule 22).

It is laid down in the books of practice in the Superior Courts, that when practicable, the defendant, or each of them if more than one, should be served personally with a true copy of the writ. It is not necessary to leave the copy in his actual corporeal possession, and whether the party touches him or puts it into his hand is immaterial. Personal service may be where you see a person and bring the process to his notice, and if, after informing him of the nature of it and tendering a copy, he refuses to receive it, then, placing it on his person, or throwing it down in his presence, would be sufficient service. But each particular case must depend upon its peculiar facts. Where a writ was put through the crevice of a door to a defendant, who had locked himself in, the service was deemed insufficient.

If the defendant conceals himself to avoid service of process the plaintiff's course is to proceed against him by attachment under section 199.

(*a*) See sec. 75 (note).

(*b*) See sec. 71 (note).

Postages.

LXXVIII. The postages of papers required to be served out of the division, and sent by mail for service, shall be costs in the cause. 13, 14 V. c. 53, s. 88, *middle part.*

Bailiffs to serve writs.

LXXIX. The bailiffs shall serve and execute all summonses, orders, warrants, precepts and writs delivered to them by the clerk for service, whether bailiffs of the court out of which the same issued or not, and shall so soon as served return the same (*c*) to the clerk of the court of which they are respectively bailiffs; but they shall not be required to travel beyond the limits of their division, or be allowed to charge mileage for any distance travelled beyond the limits of the county in which the court of which they are respectively bailiffs is situated (*d*). 13, 14 V. c. 53, s. 13; 16 V. c. 177, s. 29; 18 V. c. 125, s. 2.

Clerk to prepare affidavits of service, &c.

LXXX. The clerk shall prepare affidavits of service of all summonses issued out of his court, or sent to him for service, stating how the same were served, the day of service, and the distance the bailiff necessarily travelled to effect service (*e*), and the affidavits shall be annexed to or endorsed on the summonses respectively; but the judge may require the bailiff to be sworn in his presence and to answer such questions as may be put to him touching any service or mileage. 16 V. c. 177, s. 31.

(*c*) The bailiff should make a note of the mode of service without delay, to enable him correctly to make the return required by rule 11. If the service is not personal the bailiff should make enquiry as to the name and position of the person that he leaves the process or paper with, if unknown to him, so that he may be able to fill in the affidavit of service properly, and to give full information to the judge if required so to do under section 80.

(*d*) By 27, 28 Vic. cap. 27, sec. 2, a summons in a suit entered as there provided for may be served by the bailiff of the court from whence such summons issues, notwithstanding that the defendant may live in another county (sec. 1), and as this act is incorporated with the Division Courts Act, the bailiff would doubtless in such case be entitled to his full mileage.

(*e*) See form 7.

One of several partners may be sued in certain cases.

LXXXI. In case of a debt or demand against two or more persons, partners in trade or otherwise jointly liable (*f*), but residing in different divisions, or one or more of whom cannot be found, one or more of such persons may be served with process, and judgment may be obtained and execution issued against the person or persons served, notwithstanding others jointly liable have not been served or sued, reserving always to the person or persons against whom execution issues, his or their right to demand contribution from any other person jointly liable with him. 13, 14 V. c. 53, s. 29.

Bailiff may seize property of firm on certificate of judge.

LXXXII. Whenever judgment has been obtained against any such partner, and the judge certifies that the demand proved was strictly a partnership transaction, the bailiff, in order to satisfy the judgment, and costs and charges thereon, may seize and sell the property of the firm, as well as that of the defendants who have been served (*g*). 13, 14 V. c. 53, s. 29.

Clerks and bailiffs may sue and be

LXXXIII. Every clerk or bailiff may sue and be sued (*h*) for any debt due to or by him, as the

---

(*f*) In the Superior Courts, if one of several joint contractors be sued alone, he may plead in abatement the non-joinder of the others, unless it can be shewn that those not sued were out of Upper Canada. But here, if these partners or other joint contractors reside in different divisions, *or* if one of them cannot be found, any one or more of them may be served and sued, as though the person not sued had not been a contracting party.

The words *cannot be found* are indefinite. It was evidently the intention of the Legislature to remove the restrictions of the common law on this point; the words cannot therefore refer exclusively to cases where the defendant is out of Upper Canada, but must also apply to cases where he cannot be found *after diligent enquiry*. It would be for the judge, upon the question being raised, and before going into the merits of the case, to determine whether proper exertion has been made to effect service.

(*g*) This section only applies to the cases referred to in the previous one.

As a general rule only the defendant's own goods, or his undivided share or interest in the partnership property, can be seized and sold under an execution against one partner, so as not to affect the property or possession of the other partner, and the purchaser would have to discover what that interest might be as best he could. (*Johnson* v. *Evans*, 1 D. & L. 935; *Holmes* v. *Mentze*, 4 A. & E. 131.)

(*h*) These words are permissive, whilst the words in the latter part of the section are imperative and prohibitory.

case may be, separately or jointly with any other person in the court of any next adjoining division in the same county, in the same manner, to all intents and purposes, as if the cause of action had arisen within such next adjoining division, or the defendant or defendants were resident therein, and no clerk or bailiff shall bring any suit in the Division Court of which he is such clerk or bailiff. 13, 14 V. c. 53, s. 62.

sued in adjoining divisions.

LXXXIV. On the day named in the summons (*i*) the defendant shall in person, or by some person on his behalf (*j*), appear in the court to answer, and on answer being made the judge shall, without fur-

Judge may summarily dispose of cause or non suit plaintiff.

(*i*) Neither the act nor the rules expressly lay down all the duties of clerks and bailiffs *in court*. It is not necessary, however, to say much on this subject. Each judge will of course make such arrangement as he finds most conducive to the convenient and speedy despatch of business.

(*j*) A good deal has been said about the evils and inconveniences arising from the too common practice in this country of allowing unqualified persons or *agents* to conduct cases in court. Some judges permit professional men only to exercise this privilege of advocacy, whilst others do not think that they have power, or at all events do not like to exercise it, to prevent any "agent" from acting on behalf of the suitor who may employ him. There has never been any decision on the subject, and the act leaves it an open question, but the statute respecting attorneys (Con. Stat. U. C. ch. 35) is principally relied upon in favor of the former view. Section one enacts, that no person, unless admitted, &c., as an attorney or solicitor, shall act as such in any superior or inferior court of civil or criminal jurisdiction in law or equity, &c., or sue out any writ or process, or commence, carry on, solicit or defend any action, suit or proceeding in the name of any other person, &c.; and section 18 provides that if any person, unless himself a plaintiff or defendant, commences, &c., any suit, &c., in any court of law or equity, without being admitted as an attorney or solicitor, he shall be incapable of recovering any fee, reward or disbursements on account thereof; and such offence shall be a contempt of the court in which such proceeding has been commenced and punishable accordingly. Whatever may be the strict law of the case, there appears to be sufficient authority to warrant a judge in refusing to hear or acknowledge in a suit before him any layman claiming to act as an advocate. It is at most a matter of discretion on the part of the judge The writer has before now (10 U. C. L. J. 258) suggested the propriety of the allowance of a small counsel fee to professional men, for conducting cases in court, *as a taxable item* in the costs of the cause. This would to a certain extent, it

ther pleading or formal joinder of issue, proceed, in a summary way, to try the cause and give judgment; and in case satisfactory proof is not given to the judge entitling either party to judgment, he may nonsuit (*k*) the plaintiff; and the plaintiff may, before verdict in jury cases, and before judgment pronounced in other cases, insist on being nonsuited. 13, 14 V. c. 53, ss. 41, 84.

Proceedings in case defendant does not appear.

LXXXV. If on the day named in the summons (*l*) the defendant does not appear, or sufficiently excuse his absence, or if he neglects to answer, the judge, on proof of due service of the summons and copy of the plaintiff's account, claim or demand, may proceed to the hearing or trial of the cause on the part of the plaintiff only, and the order, verdict or judgment thereupon, shall be final and absolute, and as valid as if both parties had attended; and, except in actions of tort or trespass, in case of the personal service of the summons and of detailed particulars of the plaintiff's claim, the judge may, in his discretion, give judgment without further proof (*m*). 13, 14 V. c. 53, s. 45.

Judge may adjourn hearing of cause.

LXXXVI. In case the judge thinks it conducive to the ends of justice, he may adjourn the hearing of any cause in order to permit either party to sum-

---

is submitted, have the effect of throwing the business into the hands of those best able to conduct it, and at the same time be a matter of justice to the successful suitor, who, under the present system, has to pay money for the recovery of a just debt, or for defending himself from an unjust claim, as the case may be.

(*k*) A nonsuit only affects that particular action, but is not a bar to any further proceeding, or to another suit for the same subject matter.

A defendant is in general entitled to his costs of defence on the plaintiff being non-suited, and section 114 authorises the judge in his discretion to award to the defendant his costs and other reasonable charges in satisfaction for his trouble and attendance. But some of the most experienced judges apply the principles acted on in the Court of Chancery as to costs, and do not always award the costs according to the event of the suit.

(*l*) The defendant is bound to be present at the time appointed for the opening of the court, and to remain in attendance till the case is called on.

(*m*) Similar to the proceedings in the Superior Courts on a specially endorsed writ.

mon witnesses or to produce further proof, or to serve or give any notice necessary to enable such party to enter more fully into his case or defence, or for any other cause which the judge thinks reasonable, upon such conditions as to the payment of costs and admission of evidence, or other equitable terms as to him seems meet (*n*). 16 V. c. 177, s. 26; 13, 14 V. c. 53, s. 45; 18 V. c. 125, s. 1, *the end.*

TENDER OR PAYMENT OF MONEY INTO COURT. (*o*)

Plea of tender and payment of money into court.

LXXXVII. If the defendant in any action of debt or contract brought against him in any Division Court, desires to plead a tender before action brought of a sum of money in full satisfaction of the plaintiff's claim, he may do so on filing his plea (*p*) with the clerk of the court before which he is summoned to appear, at least six days before the day appointed for the trial of the cause, and at the same time paying into court the amount of the money mentioned in such plea, and notice of such plea and payment (*q*) shall be forthwith communicated by the clerk of the said court to the plaintiff by post (on receiving the necessary postage,) or by sending the same to his usual place of abode or business. 16 V. c. 177, s. 27.

Amount to be paid to plaintiff, &c

LXXXVIII. The said sum of money shall be paid to the plaintiff, less one dollar, to be paid over to the defendant for his trouble, in case the plaintiff

(*n*) See rule 28.

(*o*) A tender must be made to the person authorized to receive it, and it must be unconditional. A tender of more than a man ought to pay is good, but it is not so if change is required. The actual production of the money is necessary, unless dispensed with. British and Canadian silver coin is a good tender, up to ten dollars; copper coin to twenty cents. American gold coin and British gold and silver coin are a good tender according to rates specified by act of Parliament (Con. Stat. Can. cap. 15). Country bank notes are, in England, a good tender, unless objected to at the time, (*Polglass* v. *Oliver*, 2 C. & J. 15; *Lockyer* v. *Jones*, Peake, 180, *n*,) and so it is presumed are our Provincial bank notes.

Payment into court admits the jurisdiction, and that a debt is due to that amount, in fact, everything that the plaintiff must have proved in order to recover.

(*p*) See rule 29 and note, and form 68 (c).

( ) See rule 29.

do not further prosecute his suit, and all proceedings in the said action shall be stayed, unless the plaintiff, within three days after the receipt of notice of such payment, signify to the clerk of the said court his intention to proceed for his demand, notwithstanding such plea (*r*), and in such case the action shall proceed accordingly. 16 V. c. 177, s. 27.

The rule as to costs in such cases.

LXXXIX. If the decision thereon be for the defendant, the plaintiff shall pay the defendant his costs, charges and expenses, to be awarded by the court, and the amount thereof may be paid over to him out of the money so paid in with the said plea, or may be recovered from the plaintiff in the same manner as any other money payable by a judgment of the said court; but, if the decision be in favor of the plaintiff, the full amount of the money paid into court as aforesaid shall be applied to the satisfaction of his claim, and a judgment may be pronounced against the defendant for the balance due and the costs of suit according to the usual practice of the court in other cases. 16 V. c. 177, s. 27.

Defendant may pay money into court.

XC. The defendant may at any time, not less than six days before the day appointed for the trial, pay into court such sum as he thinks a full satisfaction for the plaintiff's demand, together with the plaintiff's costs up to the time of such payment. 13, 14 V. c. 53, s. 46.

Clerk to give notice of payment into court.

XCI. The clerk having received the necessary postage, shall forthwith send notice of such payment to the plaintiff by post or otherwise to his usual place of abode or of business, and the sum so paid shall be paid to the plaintiff, and all proceedings in the action stayed, unless within three days after the receipt of the notice, the plaintiff signify to the clerk his intention to proceed for the remainder of the demand claimed, in which case the action shall proceed as if brought originally for such remainder only (*s*). 13, 14 V. c. 53, s. 46.

(*r*) This signification should be in writing to prevent mistakes.

(*s*) See rule 32.

XCII. If the plaintiff recovers no further sum in the action than the sum paid into court, the plaintiff shall pay the defendant all costs, charges and expenses incurred by him in the action after such payment, and such costs, charges and expenses shall be duly taxed, and be recovered by the defendant by the same means as any other sum ordered to be paid by the court. 13, 14 V. c. 53, s. 46

Plaintiff to pay defendant's costs if no further sum required.

SET-OFF AND STATUTORY DEFENCE.

XCIII. In case the defendant or defendants desire to avail themselves of the law of set-off (*t*) or of the Statute of Limitations or of any defence under any other statute having force of law in Upper Canada;

Defendant to give notice of set-off or other statutory defence.

(*t*) The statute giving the right of set-off is 2 Geo. II. cap. 22, s. 13. It enacts, "that when there are *mutual debts* between the plaintiff and defendant, or if either party sue or be sued as executor or administrator, where there are mutual debts between the testator or intestate and either party, one debt may be set against the other, and such matter may be given in evidence upon the general issue," &c.

The subject matter of a set-off must be a debt due at the time the action is brought, but not a demand for uncertain damages, nor a claim on a guarantee for debt or against contingent damages. A set-off under the statute cannot be had in actions for *torts*, nor when the demands are not mutual and in the same right. A debt barred by the Statute of Limitations cannot be set off, and the plaintiff may plead the statute. And it is presumed that he would be entitled to an adjournment under section 86 to enable him to give the necessary notice.

A defendant is not bound to set off his claim against the plaintiffs', but he may do so, even though it is beyond the jurisdiction (provided he abandon the excess, sec. 95), but by section 96, the judgment of the court is a full discharge of the whole cause of action; or he may shew a claim sufficient to overbalance the plaintiff's claim, and then demand that the defendant be non-suited under section 95.

It is said that Courts of Equity will grant relief in cases of mutual credit where there is an equitable, without a legal right to set off (*James* v. *Kynnier*, 5 Ves. 108); and in *Switzer* v. *Wilson*, Chan. Cham. Rep. 160, it is remarked that equity professes to follow the law in allowing set-off, except where there are particular circumstances which ought in equity to make a difference. As Division Courts have an equitable jurisdiction, the latitude allowed in courts of Equity would be applicable to them. But when there are unconnected cross demands, equity does not in general interfere to set-off one against another, in the absence of any special circumstance or agreement express or implied. Nor unless it is shewn that the debts are due from and to the same parties respectively.

they, or one of them, shall, at least six days before the trial or hearing, give notice thereof in writing (*u*) to the plaintiff, or leave the same for him at his usual place of abode if within the division, or, if living without the division, shall deliver the same to the clerk of the court in which the action is to be tried, and in case of a set-off, the particulars thereof shall accompany the notice (*v*). 13, 14 V. c. 53, s. 43; 16 V. c. 177, s. 29; 18 V. c. 125, s. 1.

No evidence of set-off allowed.

XCIV. No evidence of set-off shall be given by the defendant except such as contained in the particulars of set-off delivered. 13, 14 V. c. 53, s. 42.

Plaintiff may be non-suited or judgment given for defendant.

XCV. If the defendant's demand, as proved, exceeds the plaintiff's, the court may non-suit the plaintiff; or if the defendant's set-off, after remitting any portion of it he pleases, does not exceed one hundred dollars, the court may give judgment for the defendant for the balance found in his favour. 13; 14 V. c. 53, s. 43.

Set-off to be a full discharge.

XCVI. And where a set-off is set up, the judgment of the court thereon shall be a full discharge, as well of the amount allowed to be set-off as the amount by which such claim of the defendant exceeded one hundred dollars, and the judgment shall be entered accordingly. 13, 14 V. c. 53, s. 43.

SUBPŒNAS.

Parties may obtain subpœnas from clerk.

XCVII. Any of the parties to a suit may obtain, from the clerk of any Division Court in the county, a subpœna (*x*) with or without a clause for the pro-

(*u*) See rule 29 and forms 8 & 9.

(*v*) A set-off is in the nature of a cross action, and is therefore governed by the same rules that apply to the particulars and proof of plaintiff's claims.

(*x*) In the majority of cases plaintiffs know what defence is likely to be set up, but, unless the witnesses reside at a considerable distance from the court, it would be better for them not to get out their subpœnas, until the time has elapsed for defendant giving his notice of statutory defence, or pleading tender and paying money into court, for otherwise the judge might well refuse to allow the fees for a witness who might prove to be unnecessary.

Any person present in court may be called upon to give evidence in a case without being subpœnaed.

duction of books, papers and writings, requiring any witness, resident within the county (*y*) or served with a subpœna therein, to attend at a specified court or place before the judge, or any arbitrator appointed by him under the provision hereinafter contained (*z*); and the clerk, when requested by any party to a suit, or his agent, shall give copies of such subpœna. 13, 14 V. c. 53, s. 48; 16 V. c. 177, s. 5; 18 V. c. 125, s. 3.

Services of subpœnas, by whom made.

XCVIII. Any number of names may be inserted in the subpœna, and service thereof may be made by any literate person (*a*), and proof of the due service thereof, together with the tender or payment of expenses, may be made by affidavit sworn before any county judge or the clerk of any Division Court, or before any person authorized to take affidavits in any of the Superior Courts, and proof of service may be received by the several judges of the said courts, either orally or by affidavit. 16 V. c. 177, ss. 5, 33; 13, 14 V. c. 53, s. 48.

Penalty for disobeying subpœna or refusing to be sworn.

XCIX. Every person served with a copy of a subpœna either personally or at his usual place of abode, and to whom at the same time a tender (*b*) of payment of his lawful expenses (*c*) is made, who refuses or neglects without sufficient cause to obey the subpœna, and also every person in court called upon to give evidence, who refuses to be sworn (or affirm where affirmation is by law allowed) or to give evidence shall pay such fine not exceeding eight dollars, as the judge may impose, and shall, by verbal or written order of the judge, be, in addition, liable to imprisonment for any time not exceeding ten days; and such fine shall be levied and collected with costs, in the same manner as fines imposed on

(*y*) See section 100 as to subpœnas to witnesses residing out of the county.

(*z*) See sec. 109 and notes.

(*a*) Including either party to the suit. But no fees would generally be allowed for the service of subpœnas unless made by a bailiff of the court. And with a view to facilitate proof of service it would be advisable in all cases to have the same made by the bailiff or by some person not a party to the suit.

(*b*) See sec. 87, note (*o*).

(*c*) See rule 48 and form 14.

jurymen for non-attendance (*e*), and the whole or any part of such fine, in the discretion of the judge, after deducting the costs, shall be applicable towards indemnifying the party injured by such refusal or neglect (*f*), and the remainder thereof shall form part of the General Fee Fund. 13, 14 V. c. 53, s. 48.

Parties may obtain subpœnas from Superior Courts.

C. Any party may obtain from either of the Superior Courts of Common Law a subpœna requiring the attendance at the Division Court, and at the time mentioned in such subpœna, of a witness residing or served with such subpœna in any part of Upper Canada (*g*); and the witness shall obey such subpœna, provided the allowance for his expenses, according to the scale settled in the Superior Courts be tendered to him at the time of service (*h*). 16 V. c. 177, s. 5.

(*e*) Under sec. 126. See forms 59, 63.

(*f*) It is supposed that this provision does not interfere with the right of the injured party to bring an action for damages against a witness, who when duly subpœnaed, fails to attend.

(*g*) The mode of compelling the attendance of witnesses not resident in the county is here pointed out. Should the clerk not keep a supply of these subpœnas on hand, they can be obtained from the deputy clerks of the Crown in outer counties.

(*h*) The fees allowed by rule of court are as follows:

To witnesses residing within three miles of the Court House, per diem	$0 75
To witnesses residing over three miles from the Court House	1 00
Barristers and attorneys, physicians and surgeons, when called upon to give evidence in consequence of *any professional service* rendered by them, or to give *professional opinions*, per diem	4 00
Engineers and surveyors, when called upon to give evidence of *any professional service* rendered by them, or to give evidence depending upon their *skill and judgment*, per diem..	4 00

If the witnesses attend in one cause only they will be entitled to the full allowance. If they attend in more than one cause they will be entitled to a proportionate part in each case only. The travelling expenses of witnesses over ten miles shall be allowed according to the sums reasonably and actually paid, but in no case shall exceed one shilling per mile one way (Har. C. L. P. Act, p. 716).

Under this rule the taxing officers of the Superior Courts of law at Toronto allow fees to witnesses coming over ten miles as follows:

If they travel by railway or by other public conveyance, only the ordinary fare, but if they are

EVIDENCE AND EXAMINATION OF PARTIES AND WITNESSES. (*i*)

CI. On the hearing or trial of any action or in any other proceeding, the parties thereto and all other persons may be summoned as witnesses and examined, either on behalf of the plaintiff or defendant, upon oath (or affirmation), to be administered by the proper officer of the court; Provided always, that no party to the suit shall be summoned or

Parties to cause, may be subpœnaed as witnesses.

---

obliged to pay anything extra owing to casualties, then such further sum as is reasonably and actually paid, not exceeding in the whole one shilling a mile one way.

If they travel by their own conveyance, then at the same rate per mile, as would be charged by stages in the vicinity, and which in Canada is generally three cents per mile (with any necessary extras as already mentioned).

The sum of one dollar per diem is to include all incidental expenses of food and shelter during the journey.

(*i*) It would be impossible in a work of this kind to give even an outline of the principal rules which govern the law of evidence; it may however briefly be stated that,

As a general rule the best evidence, of which the nature of a case will admit, must be given. But, if it is impossible from the loss of documents or the death of witnesses, &c., or from the wrongful act of the opposite party, to produce the best or *primary* evidence, *secondary* evidence would become admissible, but only after laying a proper foundation for it to the satisfaction of the judge.

Hearsay evidence is in general inadmissible.

Witnesses are not incapacitated from giving evidence by crime or interest; but parties to the suit cannot, subject to the limitations in the next sections, give evidence on their own behalf, nor can wives give evidence for their husbands, but the plaintiff as well as the defendant may be called by the opposite party or by the judge.

Insane persons (except during lucid intervals); children who do not understand the nature of an oath; atheists and other infidels, who profess no religion which can bind their consciences, are incompetent witnesses. Barristers and attorneys and their clerks cannot be compelled to give, and may be prevented from giving evidence touching any communications made to them in such character.

See the "act respecting witnesses and evidence" (Con. Stat. U. C. cap. 32, sections 1 to 8.)

As to the means of securing evidence the four preceding sections provide for compelling the attendance of witnesses. Rule 26 provides for the inspection of documents by one party in the possession or control of the other. Rule 30 enables either party to the suit to give his opponent notice of his intention to admit any fact on the trial of the cause for the purpose of saving expense in proof, and form 10 is the form given for this notice.

examined, except at the instance of the opposite party or of the judge. 13, 14 V. c. 53, s. 81.

Judge may require either party to give evidence.

CII. The judge holding any Division Court may, whenever he thinks it conducive to the ends of justice, require the plaintiff or defendant in any cause or proceeding to be examined under oath or affirmation, and in any case of debt or contract brought for a demand not exceeding eight dollars, in which the plaintiff gives sufficient evidence to satisfy the judge that the defendant has become indebted to such plaintiff, but the plaintiff has not evidence to establish the particular amount, the court may in its discretion examine the plaintiff on his oath or affirmation, touching the items of such account, and give judgment thereon accordingly, and such judge may also, under like circumstances, examine the defendant as to the amount of any payment or set-off in any such case, and may give judgment accordingly for such defendant. 16 V. c. 177, ss. 22, 23.

Judge may receive in evidence plaintiffs' or defendants' books of account.

CIII. In any suit for a debt or demand, not being for tort, and not exceeding twenty dollars, the judge, on being satisfied of their general correctness, may receive the plaintiffs' books as testimony, or in case of a defence of set-off or of payment, so far as the same extends to twenty dollars, may receive the defendants' books, and such judge may also receive as testimony the affidavit or affirmation of any party or witness in the suit resident without the limits of his county, but before pronouncing judgment, the judge may require any such witness or any party in a cause to answer upon oath or affirmation any interrogatories that may be filed in the suit. 13, 14 V. c. 53, ss. 31, 72; 16 V. c. 177, s. 28.

AFFIDAVITS. (*j*)

Affidavit may be sworn before judge, clerk or commissioner.

CIV. All affidavits to be used in any of the Division Courts, or before any of the judges thereof, may be sworn before any county judge or before the clerk or deputy clerk of any Division Court, or before any judge, or commissioner for taking affidavits in any of

(*j*) See rule 46.

the Superior Courts. 13, 14 V. c. 53, ss. 11, 88; 16 V. c. 177, s. 33.

Wilfully giving false evidence,—perjury.

CV. In case any person in any examination, wilfully and corruptly gives false evidence, or wilfully swears (or affirms) falsely in any matter where an oath, affidavit or affirmation is required or allowed in this act, he shall be liable to the penalties of wilful and corrupt perjury. 13, 14 V. c. 53, s. 47; 16 V. c. 177, s. 5, latter part.

JUDGE'S DECISION.

Judge may give judgment instanter, or postpone judgment.

CVI. The judge, in any case heard before him, shall, openly in court, and as soon as may be after the hearing, pronounce his decision, but if he is not prepared to pronounce a decision instanter, he may postpone judgment and name a subsequent day and hour for the delivery thereof in writing at the clerk's office; and the clerk shall then read the decision to the parties or their agents if present, and he shall forthwith enter the judgment, and such judgment shall be as effectual as if rendered in court at the trial. 13, 14 V. c. 53, s. 39.

Judge may direct times and proportions in which judgment shall be paid.

CVII. The judge may order the time or times and the proportions in which any sum and costs recovered by judgment of the court shall be paid (*k*), reference being had to the day on which the summons was served, and, at the request of the party entitled thereto, he may order the same to be paid into court, and the judge, upon the application of either party, within fourteen days after the trial, and upon good grounds being shewn, may grant a new trial upon such terms as he thinks reasonable, and

(*k*) It is usual for judges, for the sake of convenience and uniformity, to make a standing rule on this subject, the time given for payment (not being more than 50 days by section 108) being in proportion to the amount of the judgment, exception however being made to the rule upon special circumstances being shewn to the judge's satisfaction, either on oath in court or by affidavit. In cases where a judgment creditor can shew by oath or affidavit that his debt is in peril by delay, it is usual for the judge to grant immediate execution.

in the mean time may stay proceedings (*l*). 13, 14 V. c. 53, ss. 50, 72, 84; 16 V. c. 177, ss. 11, 28.

Execution not to be postponed for more than 50 days.

CVIII. Except in cases where a new trial is granted, the issue of execution shall not be postponed for more than fifty days from service of the summons without the consent of the party entitled to the same

---

(*l*) The right of a suitor under certain circumstances to obtain a new trial is one of great importance, especially in courts from which there is no appeal. It gives the judge an opportunity of calmly reviewing his decision, without the unavoidable hurry and distraction incident to a crowded court and a number of cases, presented for adjudication in a crude state, and not brought to a simple issue by the science of pleading, and generally unexplained by experienced counsel. It gives the suitor an opportunity of obtaining redress in a variety of cases and under various circumstances.

The following are the principal grounds upon which new trials are granted in the Superior Courts, and which are applicable to Division Courts:—

Msitake of the judge; wrong non-suit; improper admission or rejection of evidence; default or misconduct of an officer of the court; absence of counsel, upon its being clearly shewn that the defendant has a good defence on the merits; default or misconduct of, or being misled, or taken by surprise by the opposite party; absence of material witnesses; misconduct or perjury of witnesses; discovery of fresh evidence that is material, &c. And to these may be added, in jury cases, misdirection of the judge; the improper discharge of a jury; default or misconduct of jury; perverse verdict, or verdict against law, or evidence, or judge's charge; that the damages are excessive or too small, &c.

For the reasons already suggested in the first part of this note it would seem that judges should exercise the power of granting new trials liberally, and in some cases where they would not be granted in a Superior Court, but new trials should not be granted in any case where the application is made on a ground that does not affect the equity of the case.

It was incidentally decided under 13 & 14 Vic. cap. 53, sec. 84, and 16 Vic. cap. 177, sec. 7, that a new trial could not be had in interpleader cases, (*Reg.* v. *Doty*, 13 U. C. Q. B. 398,) and if this be the law, and at present it must be considered so, an alteration, it is conceived, would be most desirable, for in no class of cases would new trials be more beneficial than in interpleader issues. See sec. 175, note (*e*).

The right to a new trial, being only by force of the statute, must be exercised strictly according to the terms of it. The application may be made either when both parties are present on the day of hearing (Rule 52), or within fourteen days after the trial. And it would appear that if the judge hears an application on the day of trial and decides against granting it, he becomes *functus officio*, and a subsequent application will be futile—the first judgment being

but in case it at any time apppears to the satisfaction of the judge, by affidavit, or affirmation, or otherwise, that any defendant is unable, from sickness or other sufficient cause, to pay and discharge the debt or damages recovered against him, or any instalment thereof, ordered to be paid as aforesaid, the judge may suspend or stay any judgment, order or execution given, made or issued in such action, for such time and on such terms as he thinks fit, and so from time to time until it appears by the like proof that such temporary cause of disability has ceased (*m*). 16 V. c. 177, s. 28; 13, 14 V. c. 53, ss. 50, 98.

ARBITRATION. (*n*)

CIX. The judge may, in any case, with the consent of both parties to the suit, or of their agents, order the same, with or without other matters in dispute between such parties (*o*), being within the

Judge may order cause to be referred to arbitration.

---

final. (*Great Northern R. W. Co.* v. *Mossop*, 16 C. B. 580; 4 W. R. 116; 2 U. C. L. J. 19.)

The practice on this subject is minutely laid down in rule 52. The form of order for a new trial is given in form 19.

(*m*) No provision similar to this exists in any of the other courts of law or equity, and the large discretionary power here vested in the judge should be sparingly exercised. An *ex parte* order for an extension of time would be obviously unjust to the judgment creditor. An application should therefore be made to the judge, upon producing and filing affidavits disclosing the facts relied upon, for a summons headed in the court and cause, calling upon the plaintiff, at a certain time and place, to shew cause why the defendant should not have a certain number of days within which to pay the debt; and so in like manner the plaintiff has power to shew that the disability has ceased.

(*n*) Suitors do not often take advantage of these provisions, finding generally that there is more satisfaction in the decision of an experienced judge who has power to decide the dispute upon equitable grounds, than in the award of an inexperienced layman, who, with the best intentions, may possibly make an award that must in the end be set aside by the judge. In matters of long and complicated accounts which the judge has not time to examine, and as to which there is in the Superior Courts a provision for a compulsory reference, the services of an intelligent arbitrator would be very useful. In that class of cases, and in cases growing out of family quarrels, when the bickerings and exposures in open court would embitter the parties and perhaps alienate them for life, the adjustment by arbitration may be well resorted to.

(*o*) This reference can only be had with the consent of both parties, there being no provision for

jurisdiction of the court, to be referred to arbitration to such person or persons, and in such manner and on such terms as he thinks reasonable and just. 16 V. c. 177, s. 4.

Only revocable with judge's assent.

CX. Such reference shall only be revocable by either party, with the consent of the judge. 16 V. c. 177, s. 4.

Award to be entered as judgment.

CXI. The award of the arbitrator or arbitrators or umpire shall be entered as the judgment in the cause, and shall be as binding and effectual, as if given by the judge (*p*). 16 V. c. 177, s. 4.

Judge may set aside award.

CXII. The judge on application to him within fourteen days after the entry of such award, may, if he thinks fit, set aside the award, or may with the consent of both parties, revoke the reference and order another reference to be made in the manner aforesaid (*q*). 16 V. c. 177, s. 4.

---

compulsory reference in the Division Courts. But consent to reference is all that is required, the appointment of the arbitrator and the terms, &c., belong to the judge.

Section 97 provides for issuing summonses to witnesses in arbitration cases. When a suitor desires to compel the attendance of a witness, he should take the arbitrator's appointment to the clerk, who will thereupon issue a summons to the witness, which may be as in form 13 (a).

The arbitrator cannot enlarge the time for making the award unless the order of reference gives him power. The award is considered as published when the arbitrator has given notice to both parties of its having been made and ready for delivery, and after that time, or probably after execution, it cannot be altered in any material part.

See forms 25, *et seq.*, for various useful forms in arbitration cases.

(*p*) See rule 69 (clause 6), and form of minute of judgment in procedure book (No. 27), under rule 51.

(*q*) An award may be defective or bad in various ways. According to the practice in the Superior Courts awards may be set aside and in some cases referred back to the arbitrator: if the arbitrator has exceeded his authority, or misconducted himself, or made a mistake in the law, which appears on the face of the award; or if the award is uncertain, ambiguous, not final, not deciding all the matters in difference, or *vice versa*, according to the terms of the order, or if inconsistent, or illegal, or if the proceedings were irregular or fraudulent; or if the award is bad in a part not separable from the residue, for if separable it would only be referred back to amend the bad part.

The application to set aside the award should be made within the time limited, on producing to the

CXIII. Any of such arbitrators may administer an oath or affirmation to the parties, and to all other persons examined before such arbitrator (*r*). 16 V. c. 177, s. 5. Arbitrators may also administer oaths.

COSTS AND WHERE RESTRAINED. (*s*)

CXIV. The costs of any action or proceeding not otherwise provided for, shall be paid by or apportioned between the parties in such manner as the judge thinks fit, and in cases where the plaintiff does not appear in person or by some person on his behalf, or appearing does not make proof of his demand to the satisfaction of the judge, he may award to the defendant such costs and such further sum of moneys, by way of satisfaction for his trouble and attendance as he thinks proper, to be recovered as provided for in other cases under this act, and in default of any special direction, the costs shall abide the event of the action, and execution may issue for the recovery thereof in like manner as for any debt adjudged in the court. 13, 14 V. c. 53, s. 83. Judge may apportion costs.

CXV. No costs shall be recoverable in any suit brought in any court for the recovery of any sum awarded by judgment in a Division Court, without the order of the judge of the court in which such suit is brought, on sufficient cause shewn (*t*). 13, 14 V. c. 53, s. 52. Costs not recoverable in Superior Court in actions upon judgments of Division Courts.

---

judge the original award or a verified copy of it, supported by an affidavit of such facts as may be considered material, and notice of the intended application should be given to the opposite party to enable him to oppose it if he so desires.

(*r*) See form 25 (b).

(*s*) The following section only applies to cases where the court has jurisdiction, for where the court has no jurisdiction, the judge has no power to award costs. (*Frazer* v. *Fothergill*, 14 C. B. 298; *Lawford* v. *Partridge*, 26 L. J., N. S., Ex. 147.

See section 84, note (*k*).

(*t*) Notwithstanding this section, it was held by the Court of Queen's Bench, that an action is not maintainable in the Superior Courts on a Division Court judgment. (*McPherson* v. *Forrester*, 11 U. C. Q. B. 362.)

Robinson, C. J., in delivering judgment said, "We think that we must hold that [the action] cannot [be sustained], on account of the special provision made in the statute as to the manner of enforcing Division Court judgments, and from the manner in which these provisions would be interfered

Plaintiff not to have costs where verdict not over ten dollars without certificate.

CXVI. In case any suit be brought in any of Her Majesty's Superior or other courts of record in respect of any grievances committed by any clerk, bailiff or officer of a Division Court, under colour or pretence of the process of such court, and the jury upon the trial find no greater damages for the plaintiff than ten dollars, the plaintiff shall not have costs unless the judge certifies in court upon the back of the record, that the action was fit to be brought in such court of record. 13, 14 V. c. 53, s. 108.

CLERKS AND BAILIFFS MAY TAKE CONFESSIONS.

Clerks and bailiffs may take confessions.

CXVII. Any bailiff or clerk, before or after suit commenced, may take a confession or acknowledgment of debt from any debtor or defendant desirous of executing the same, which confession or acknowledgment shall be in writing and witnessed by the bailiff or clerk at the time of the taking thereof; and upon the production of such confession or acknowledgment to the judge, and its being proved by the oath of such bailiff or clerk, judgment may be entered thereon (*u*).

Affidavit required in such cases.

CXVIII. Such oath or affidavit shall state that the party making it has not received, and that he will not receive any thing from the plaintiff or defendant, or any other person, except his lawful fees, for taking such confession or acknowledgment, and

---

with, if the plaintiff, who has obtained his judgment, could go at once into a higher court and sue upon it." After referring to 13 & 14 Vic. c. 53, sec. 52, he continues, "But that is a mere negative provision. It will have a meaning and an operation given to it, if we suppose it meant to apply to cases in which an action might be brought in one Division Court upon judgments recovered in another; and we do not think we can allow our judgment upon the question to be influenced by the existence of that merely negative clause, imported, as it evidently was, into this statute from a former act, without duly reflecting upon the very great difference between such former act, and the system about to be established by this statute. . . . The judgment, however, must continue to remain within the control of the Division Court."

(*u*) Rule 31, and forms 11 and 12, gives all the necessary explanations and directions on the subject of confessions, and entering judgment upon them.

that he has no interest in the demand sought to be recovered (*v*). 13, 14 V. c. 53, s. 54.

JURY CASES.

When a jury may be had.

CXIX. Either party may require a jury, in actions of tort, where the amount sought to be recovered exceeds ten dollars, and in all other actions where such amount exceeds twenty dollars. 13, 14 V. c. 53, ss. 30, 32.

Parties to give notice to clerk if they require a jury.

CXX. In case the plaintiff requires a jury to be summoned to try the action, he shall give notice thereof in writing to the clerk at the time of entering his account, demand or claim, and shall at the same time pay to the clerk the proper fees for the expenses of such jury, and in case the defendant requires a jury, he shall, within five days after the day of service of the summons on him (*w*) give to the clerk or leave at his office the like notice in writing, and shall at the same time pay the proper fees as aforesaid; and thereupon, in either of such cases, a jury shall be summoned according to the provisions hereinafter contained. 13, 14 V. c. 53, ss. 32, 33.

Who may be jurors.

CXXI. All male persons being subjects of Her Majesty by birth or naturalization, between the ages of twenty-one and sixty years, assessed upon the collector's roll, and resident in the several divisions respectively, shall be jurors for the Division Courts in such divisions (*x*). 13, 14 V. c. 53, s. 35.

(*v*) The matter of this section is embodied in the form of affidavit given in form No. 12.

(*w*) If the words, "at the time of entering his account," &c., refer to the time of the *original* entry of the suit, and if the words, "within five days after the day of service of the summons," &c., cannot be interpreted to refer also to an order for a new trial, it follows that a jury cannot be demanded in cases where a new trial is granted. And such would appear to be the result of the English cases, though the rules there specially provide, that in such cases a jury *can* be had. (See *Sparrow* v. *Reed*, 17 L. J., Q. B., 183; 12 Jur. 896; *Reg.* v. *Harwood*, 22 L. J. Q. B. 127; 17 Jur. 87.)

As to whether a jury can be had in interpleader cases see section 175 (fourth note).

(*x*) See section 127.

Jurors, how selected and summoned.

CXXII. The jurors to be summoned to serve at any Division Court shall be taken from the collector's rolls of the preceding year, for the townships and places wholly or partly within the division, and shall be summoned in rotation, beginning with the first of such persons on such roll; and if there be more than one such township or place within the division, beginning with the roll for that within which the court is held, and then proceeding to that one of the other rolls which contains the greatest number of such persons' names, and so on until all the rolls have been gone through; after which, if necessary, they may be again gone through wholly or partly in the same order, and so on *toties quoties*. 13, 14 V. c. 53, s. 35.

Collector to furnish clerk with list of jurors.

CXXIII. For the purposes of the last preceding section, the collector for each place wholly or partly within any division, shall furnish the clerk of the Division Court thereof with correct lists of the names of all persons liable to serve as jurors at such court in the order in which they stand upon the rolls. 13, 14 V. c. 53, s. 35.

Jurors to be summoned for each court.

CXXIV. The clerk of each Division Court shall cause not less than fifteen of the persons liable to serve as jurors to be summoned to attend at each session of the court (*y*) at the time and place to be mentioned in the summons, and such summons shall be served at least three days' before the court, either personally, or by leaving the same with a grown-up

(*y*) These words would lead one to suppose that fifteen jurymen must be summoned for each court, whether a jury has been demanded by any suitor or not, as may done under secs. 119 and 120, but this cannot have been the intention of the legislature. Such a course would entail a great deal of useless labor on clerks and bailiffs, for which there is no provision for payment; and section 132, which empowers a judge in his discretion to order a jury to be empanelled of "five persons present" in the court, to try any disputed fact, does not contemplate the presence of fifteen jurymen, summoned under the preceding sections, and in fact provides for cases on the supposition that there are no such jurymen present. Section 120, moreover, shews that the clerk is to be set in motion by the parties and fees deposited.

See form 15, for the form of the "Summons to jurors."

person at the residence of the juror. 13, 14 V. c. 53, s. 35.

Parties entitled to challenge.

CXXV. Either of the parties to a cause shall be entitled to his lawful challenge against any of the jurors in like manner as in other courts (*z*). 13, 14 V. c. 53, s. 35.

Penalty on jurors disobeying summons.

CXXVI. Any juryman who, after being duly summoned for that purpose, wilfully neglects or refuses to attend the court in obedience to the summons, shall be liable to a fine in the discretion of the judge, not exceeding four dollars, which fine shall be levied and collected with costs, by the same process as any debt or judgment recovered in the said court, and shall form part of the general fee fund (*a*). 13, 14 V. c. 53, s. 35.

Service as juror at Division Court not to exempt him from serving at Superior Court.

CXXVII. Service as a juror at any Division Court shall not exempt such juror from serving as a juror in any court of record or in the Court of Chancery; and no person shall be compelled to serve as a juror in any Division Court who is by law exempted from serving as a petty juror in the Superior Courts (*b*). 13, 14 V. c. 53, s. 35; 16 V. c. 177, s. 21.

Penalty on collector neglecting to furnish clerk with list of jurors.

CXXVIII. If any collector, for six days after demand made in writing, neglects or refuses to furnish the clerk of the division in which the township, town, city or ward for which he is a collector is wholly or in part situate, with a correct list of the names of persons liable to serve as jurors in the Division Court, according to the provisions of the one hundred and twenty-first section of this act, the clerk may issue a summons to be personally served on the said collector three days at least before the sitting of the court, requiring him to appear at the then next sitting of the court, to show cause why he refused or neglected to comply with the provisions of the said section. 16 V. c. 177, s. 21.

(*z*) See Con. Stat. U. C. cap. 31, secs. 98 to 102.

(*a*) The form of the minute in the procedure book of imposition of fine for non-attendance is given in schedule, as form No. 61.

(*b*) The persons exempted and disqualfied from serving as grand or petty jurors are set out in Con. Stat. U. C. cap. 31, secs. 8, 9, 12 and 13.

Judge may fine collector for breach of duty.

CXXIX. Upon proof of the service of such summons, the judge may, in a summary manner, inquire into the neglect or refusal, or may give further time, and may impose such fine upon the collector, not exceeding twenty dollars, as he deems just, and may also make such order for the payment by the collector, of the costs of the proceedings as to the said judge seems meet, and all orders made by the judge for the payment of a fine or costs, shall be enforced against the collector by such means as are provided for enforcing judgments in the Division Courts. 16 V. c. 177, s. 21.

Judge's order for payment by collector, how enforced

Judge's list and jury list.

CXXX. The causes to be heard by the judge alone shall be set down for hearing in a separate list from the list of causes to be tried by a jury, which two lists shall be severally called "The Judge's List" and "The Jury List," and the causes shall be set down in such lists in the order in which they were in the first instance entered with the clerk;—"The Jury List" shall be first disposed of, and then "The Judge's List;" except when the judge sees sufficient cause for proceeding differently. 13, 14 V. c. 53, s. 34.

Five jurors to be empannelled, &c.

Verdict to be unanimous.

CXXXI. Five jurors shall be empanelled and sworn to do justice between the parties whose cause they are required to try, according to the best of their skill and ability, and to give a true verdict according to the evidence (*c*), and the verdict of every jury shall be unanimous. 13, 14 V. c. 53, s. 37.

Judge may order jury to be empanelled to try any disputed fact.

CXXXII. In case the judge before whom a suit is brought thinks it proper to have any fact controverted in the cause tried by a jury, the clerk shall instantly return a jury of five persons present (*d*)

(*c*) After the oath is taken the clerk should call over the names of the jurors, who will say "sworn" if sworn. If persons allowed by law to affirm (as Quakers, Menonists or Tunkers,) are on the jury, an affirmation is administered to them instead of an oath.

See forms 15 (a), 15 (b), for forms of oath and affirmation.

(*d*) This may sometimes be a delicate and difficult task for the clerk, and perhaps subject him to ill-natured remarks from disappointed suitors and others. he should therefore be careful to

to try such fact, and the judge may give judgment on the verdict of the jury, or may grant a new trial on the application of either party in the same way and under similar circumstances as new trials are granted in other cases on verdicts of juries. 16 V. c. 177, s. 11.

Judge may discharge jury not agreeing, &c.

CXXXIII. If in any case the judge is satisfied that a jury, after having been out a reasonable time, cannot agree upon their verdict, he may discharge them, and adjourn the cause until the next court, and order the clerk to summon a new jury for the next sitting of the court for that division, unless the parties consent that the judge may render judgment on the evidence already taken, in which case he may give judgment accordingly. 13, 14 V. c. 53, s. 38.

JUDGMENTS (*e*) AND EXECUTIONS. (*f*)

Cross-Judgments.

Cross-judgments may be set-off.

CXXXIV. If there be cross-judgments between the parties, the party only who has obtained judgment for the larger sum, shall have execution and

---

choose men above suspicion, and, if possible, strangers to the disputants, or at all events, entirely unconnected with them in business or otherwise.

It will not be necessary to make out a written summons. The clerk, on the verbal order of the judge, writes down the names of five persons in the court room and calls them one by one to appear and be sworn as jurors.

(*e*) As to the duration of a Division Court judgment see note to rule 67.

(*f*) Before considering the subject of executions generally it will be necessary to see what provision has been made to regulate any conflict which may arise as to priority between executions issued respectively from the Superior or County Courts and Division Courts against the same debtors.

Section 266 of the Common Law Procedure Act (Con. Stat. U. C., cap. 22) enacts, that "Where a writ against the goods of a party has issued from any of such courts, and a warrant of execution against the goods of the same party has issued from a Division Court, the right to the goods seized shall be determined by the priority of the time of the delivery to be executed of the writ to the sheriff, or of the warrant to the bailiff of the Division Court; and the sheriff on demand, shall, by writing signed by him, or his deputy, or a clerk in his office, inform the bailiff of the precise time of such delivery of the writ, and the bailiff on demand shall shew his warrant to any sheriff's officer; and such writing purporting to be so signed, and the endorsement on the warrant shewing the precise time of the

then only for the balance over the smaller judgment, and satisfaction for the remainder, and also satisfaction on the judgment for the smaller sum shall be entered; and if both sums are equal, satisfaction shall be entered upon both judgments. 13, 14 V. c. 53, s. 51.

Where money not paid pursuant to order, execution to issue.

CXXXV. In case the judge makes an order for the payment of money, and in case of default of payment of the whole or of any part thereof, the party in whose favor such order has been made, may sue out execution against the goods and chattels of the party in default; and thereupon the clerk, at the

---

delivery of the same to such bailiff, shall respectively be sufficient justification to any bailiff or sheriff acting thereon." (Slightly altered by the commissioners from 20 Vic. cap. 57, sec. 24.)

The question was mooted by the court in *Culloden* v. *McDowell*, 17 U. C. Q. B. 359, but neither argued nor decided, as to whether executions from Division Courts bind the debtor's property from the time of the receipt of the writ by the bailiff, or only from the time of actual seizure. Chief Justice *Robinson* said, "The writ (of execution) indeed had issued in January, but that did not signify; it could not bind the property *before it came into the bailiff's hands*,—if, indeed it could before *an actual seizure* was made under it; for it is not to be assumed that an execution from an inferior court binds from the time of its delivery to the bailiff."

Under sec. 16 of the Statute of Frauds, writs of execution bind from the time of the delivery thereof to the sheriff or coroner to be executed. This provision obviously applies only to writs issuing from a Superior or County Court, and does not affect Division Courts —which are inferior courts having only a statutory existence, and whose officers have only the powers expressly given by statute. Sheriffs, on the contrary, are officers having great powers and privileges under the common law; the provision of the Statute of Frauds in fact limited the former operation of writs. There seems to be no common law right, as there is nothing in the statute which would give bailiffs power to hold goods under executions from Division Courts until they had actually taken possession of them in the manner authorized by the statute.

There seems, therefore, to be little doubt, and it is the generally received opinion, that Division Court executions bind from the time of *actual seizure* only. A different rule would doubtless prevail in cases of a conflict between sheriffs and bailiffs under the enactment above referred to. But it is thought that that provision cannot have the effect of altering or interfering with the law where there is no such conflict.

The law in England as to Superior Court writs has been altered by a late statute, by which executions only bind the debtor's property from the time of seizure.

request of the party prosecuting the order (*g*), shall issue under the seal of the court a *fieri facias* (*h*) to one of the bailiffs of the court, who by virtue thereof shall levy by distress and sale of the goods and chattels of such party (*i*), being within the county within which the court was holden, such sum of money and costs (together with interest thereon from the date of the entry of the judgment) as have been so ordered, and remain due, and shall pay the same over to the said clerk (*j*). 13, 14 V. c. 53, s. 53.

Writs of Fi. Fa. where to be executed.

CXXXVI. No writ in the nature of a writ of *fieri facias* or attachment shall be executed out of the limits of the county over which the judge of

---

(*g*) It is a common notion that all a plaintiff has to do to recover a claim is to leave it with the clerk, and prove it if necessary at the trial, and that the clerk will, when the proper time arrives, issue execution for the amount of the judgment. This is quite an erroneous view, and such a practice would lead to much mischief. All that the clerk has to do is to issue execution after default, *at the request* of the judgment creditor.

(*h*) See sec. 141, and forms 20 and 21.

(*i*) See sec. 151 as to what may be taken in execution.

The act relating to replevin does not authorise the replevying or taking out of the custody of a bailiff any personal property seized under process issued from any Division Court. (See 23 Vic. cap. 45, sec. 8, and sec. 208 and note.)

(*j*) Various sections and rules provide for some of the duties of bailiffs in respect to writs of *fi. fa.* delivered to them for execution. Section 136, and the late act of 27 & 28 Vic. cap. 27, inserted after section 71, refer to the locality of his jurisdiction. Section 138, to payment of debt and costs before sale. Section 141, to the time of return of the writ. Sections 150 and 151 to what may be seized under it. Sections 152, 153 and 154, to proceedings to realize securities for money under seizure. Sections 155 and 156 to the sale of goods under seizure. Section 175, to interpleaders. Sections 176 to 180, to cases where rent is due the debtor's landlord. Rule 12, to returns to be made to the clerk of what may have been done under the writ.

It would be impossible in a work of this nature to give even a brief outline of the various important duties of bailiffs with respect to executions, or the responsibilities they incur in performing those duties, &c. Such matters as do come within our design will be referred to under the appropriate sections. For further information the reader is referred to the pages of the *Upper Canada Law Journal*, where the subjects have been from time to time carefully and fully discussed.

the court from which such writ issues has jurisdiction (*k*). 18 V. c. 125, s. 1, *middle part*.

If defendant remove to another county, execution obtainable in such county.

CXXXVII. In case any person against whom a judgment has been entered up removes to another county without satisfying the judgment, the county judge of the county to which such party has removed may, upon the production of a copy of the judgment duly certified by the judge of the county in which the judgment has been entered, order an execution for the debt and costs, awarded by the judgment, to issue against such party (*l*). 13, 14 V. c. 53, s. 55.

If defendant, before sale, pay to clerk or bailiff of court out of which execution issued, execution to be superseded.

CXXXVIII. If the party against whom an execution has been awarded, pays or tenders to the clerk or bailiff of the Division Court out of which the execution issued, before an actual sale of his goods and chattels, such sum of money as aforesaid, or such part thereof as the plaintiff agrees to accept in full of his debt, together with the fees to be levied, the execution shall thereupon be superseded, and the goods be released and restored to such party. 13, 14 V. c. 53, s. 55.

Clerk of any court in which judgment entered to prepare transcript thereof, to transmit to

CXXXIX. The clerk of any Division Court shall, upon the application of any plaintiff or defendant, (or his agent,) having an unsatisfied judgment in his favor in such court, prepare a transcript of the entry of such judgment (*m*), and shall send the same to the

---

(*k*) Except in cases where the plaintiff has brought his action in a Division Court the place of sitting whereof is nearest the residence of the defendant, under the provisions of 27 & 28 Vic. cap. 27, (inserted after section 71,) under which circumstances the writ may be executed in the county in which defendant resides as well as in the county in which the judgment was recovered.

(*l*) This section is practically superseded by section 139.

(*m*) The statute from which this section is taken was passed after the publication of the rules and forms, the analagous proceeding being that under section 137. Form 52 is given in the schedule as the form for a transcript of judgment, but has especial reference to the transcript permitted by section 142. It may, however, be useful in framing a form for use under this section. Form 52 (a) is given as a form in common use of a transcript of judgment from one Division Court to another, and may be relied upon as correct, except so far as it may be necessary to make a further statement in special cases, or of any revival of the judgment under rule 67. And

clerk of any other Division Court in any other county (*n*), with a certificate at the foot thereof, signed by the clerk who gives the same (*o*), and sealed with the seal of the court of which he is clerk, and addressed to the clerk of the court to whom it is intended to be delivered, and stating the amount unpaid upon such judgment, and the date at which the same was recovered; and the clerk to whom such certificate is addressed shall, on the receipt of such transcript and certificate, enter the transcript in a book to be kept in his office for the purpose, and the amount due on

any other Division Court.

---

with respect to this rule, if a judgment is more than a year old, it would be advisable that the transcript should shew whether an instalment had been paid on the judgment, or that an execution or warrant of commitment had been issued within a year from the time of obtaining the judgment. If one or other of these facts do not appear, the clerk before acting upon the judgment should be satisfied that the leave of the judge in whose county the judgment was originally recovered has been obtained.

The writer does not see why, under this section, any number of transcripts should not be sent to as many counties, in analogy to the practice in the Superior Courts of issuing as many writs of execution as may be required to different sheriffs. Sending a transcript of a judgment is not transmitting *the judgment* itself; and in this respect this section differs materially from sec. 143, which provides that a judgment may be removed from a Division Court to a County Court, and *become a judgment* of the latter court. The use and intention of this transcript is to give the foreign clerk all necessary information as to the state of the cause, so as to enable him to enforce the judgment in his division. In the Superior Courts the attorney is the person properly cognizant' in the first place, of the position of the suit, but in Division Courts his place is, in the majority of instances, practically filled by the clerk. Of course a plaintiff who causes several transcripts of judgments to be sent to different counties does so at his own risk of costs, and any damages which may accrue to the debtor by such a proceeding. It is right to add, that the views here expressed are somewhat at variance with those held by some of the county judges.

(*n*) Not to a clerk of a Division Court in the same county. Such a mode of proceeding is not warranted by the act.

(*o*) It is the practice in some counties to charge for the certificate as well as for the copy of the entry of the judgment, or the transcript, literally speaking. This it is thought, is an improper charge; in the first place, there is nothing in the tariff that warrants the charging such certificate, the allowance being merely for "every copy of judgment to another county;" and in the next place, the simple copy of the entry would be useless without the clerk's certificate authenticating it. The two things are required to make up what is technically called "a transcript of judgment."

the judgment according to the certificate; and all proceedings may be taken for the enforcing and collecting the judgment in such last mentioned Division Court, by the officers thereof that could be had or taken for the like purpose upon judgments recovered in any Division Court (*p*). 18 V. c. 125, s. 3.

Renewal of judgment in case of death of party to judgment.

CXL. In case of the death of either or both of the parties to a judgment in any Division Court, the party in whose favor the judgment has been entered, or his personal representative in case of his death, may revive such judgment against the other party, or his personal representative in case of his death, and may issue execution thereon in conformity with any rules which apply to such Division Court in that behalf (*q*). 13, 14 V. c. 53, s. 73.

(*p*) More practical difficulty arises in reference to the working of the act in cases of "foreign" summonses and transcripts of judgments to "foreign" courts than any other. In the case of a summons sent from one court to another for service, there is no provision for the receipt of the money by the foreign clerk, if a debtor should desire to pay him on the spot. The clerk, if he receives it, does so as the agent of the debtor, and in case of loss, the debtor would have to pay it a second time, and would have no recourse against the clerk's sureties. In the same way a bailiff has no authority to receive the amount of the claim endorsed on the summons which he serves, and the debtor, if he wishes to be perfectly safe, must bring or send the money to the clerk, or wait till the bailiff comes with an *execution* instead. In the case of moneys being paid to the foreign clerk by a debtor, there is no provision for a return of the amount to the "home" clerk, with whom the creditor entered his suit, and from whom he expects to get his money. It is thought by some that the moment a transcript of judgment is sent off, the clerk to whom it is sent must deal directly with the plaintiff. But this course presents many difficulties, and the usual practice is for the foreign clerk to return the money, together with a formal return, (see form 52 (c), one in common use,) to the home clerk. But in doing this he undertakes a responsibility, and *may*, if the money does not arrive safely, be called upon to pay a second time. One part of the difficulty may be obviated by obtaining the plaintiff's signature to a request or order (form 52 (d)) to the foreign clerk to transmit the proceeds of the execution to the home clerk. This, however, might be no protection to the plaintiff, for if the clerk is not acting in accordance with or under the act, his sureties would not be liable in case of loss.

(*q*) Rule 68 directs that the mode of reviving a judgment shall be by summons on the judgment in the nature of a *sci. fa.*, the proceedings on which shall be the same as in ordinary cases. Forms 45, 46, 47, 48, 50 and 51, are the necessary forms as given in this behalf in the schedule.

CXLI. Every execution shall be dated on the day of its issue, and shall be returnable within thirty days from the date thereof (*r*). 13, 14 V. c. 53, s. 56. Execution, when dated and returnable.

CXLII. In case an execution be returned *nulla bona*, and the sum remaining unsatisfied on the judgment under which the execution issued amounts to the sum of forty dollars (*s*), the plaintiff or defendant may obtain a transcript of the judgment from the clerk, under his hand, and sealed with the seal of the court, which transcript shall set forth (*t*): If execution returned *nulla bona*, parties may obtain transcript.

(*r*) In the Superior Courts a writ cannot be executed after it is returnable, and on this principle it was decided in *Weston* v. *Thomas*, 6 U. C. L. J. 181, by *Logie*, Co. J., with reference to this section, that an execution from a Division Court cannot be executed after the expiration of thirty days from its date. And in *Duggan* v. *Kitson*, 20 U. C. Q. B. 321, it was remarked that it would be a fatal objection to the title of any purchaser at a bailiff's sale, that nothing had been done towards seizing under the writ until after it had become returnable.

(*s*) The words, "the sum remaining unsatisfied," clearly indicate that the $40 may be partly made made up of costs and possibly interest also, though this is not so certain. Interest accruing subsequently to an entry of judgment is no *part* of the judgment, although the collection of it may be enforced by execution.

(*t*) This transcript is different from that referred to in section 139, and should be carefully drawn in accordance with the act, following as far as possible the form (No. 52) given in the schedule.

In *Farr* v. *Robins*, 12 U. C. C. P. 35, the clerk of the Division Court who made out the transcript evidently acted under the 139th section, and omitted the statement of the issuing of the *fi. fa.* goods and the return thereof. The transcript was accordingly held to be informal and insufficient to support a judgment in the County Court in which it had been filed. In giving judgment, *Draper*, C. J., said, "The Legislature have apparently adopted the principle that an execution against lands must be founded on a record, and as Division Courts are not courts of record, they have provided a method by which their judgments may be made records of the County Court and thereupon that executions against lands may issue. But in order that the transcript may become a judgment of record, they have required that it should, among other things, shew the date of issuing the execution against goods, and the return to that writ, in order to avoid any conflict with or departure from the 252nd sec. of ch. 22 of Con. Stat. U. C., which enacts that no execution shall issue against lands and tenements until the return of an execution against goods and chattels."

This case was followed in *Jacomb* v. *Henry*, 13 U. C. C. P. 377, which decided that a transcript was defective and invalid which did not contain a statement of the proceedings in the cause.

1. The proceedings in the cause;

2. The date of issuing execution against goods and chattels; and

3. The bailiff's return of *nulla bona* thereon, as to the whole or a part. 13, 14 V. c. 53, s. 57.

Upon filing transcript in office of County Court clerk, judgment to be judgment of that court

CXLIII. Upon filing such transcript in the office of the clerk of the County Court in the county where such judgment has been obtained, or in the county wherein the defendant's or plaintiff's lands are situate, the same shall become a judgment of such County Court (*u*), and the clerk of such County Court shall file the transcript on the day he receives the same, and enter a memorandum thereof in a book to be by him provided for that purpose, which memorandum shall contain:

1. The names of the plaintiff and defendant:

2. The amount of the judgment;

3. The amount remaining unsatisfied thereon; and

4. The date of filing;

For which services the clerk of the County Court shall be entitled to demand and receive from the person filing the same the sum of fifty cents. 13, 14 V. c. 53, s. 57.

County Court clerk's book to be accessible.

CXLIV. Such book shall at all reasonable hours be accessible to any person desirous of examining the same, upon the payment to the clerk of ten cents. 13, 14 V. c. 53, s. 57.

Parties may prosecute judgment in County Court.

CXLV. Upon such filing and entry the plaintiff or defendant may, until the judgment has been fully paid and satisfied, pursue the same remedy for the recovery thereof, or of the balance due thereon, as if the judgment had been originally obtained in the County Court (*v*).

(*u*) See section 145.

(*v*) Section 143 provides, that upon filing the required transcript in the office of the County Court the Division Court judgment *shall* become a judgment of such County Court, and directs the clerk of the latter court to make certain entries in a book to be provided for that purpose; and this section enacts,

CXLVI. [Repealed by 24 Vic. cap. 41, sec. 2.] Certificate for registration.

NEGLECT OF DUTY BY BAILIFFS IN RELATION TO EXECUTIONS, &c.

CXLVII. In case any bailiff employed to levy an execution against goods and chattels, by neglect, connivance or omission, loses the opportunity of so doing (*w*), then upon complaint of the party thereby aggrieved, and upon proof by the oath of a credible witness of the fact alleged to the satisfaction of the court, the judge shall order the bailiff to pay such damages as it appears the plaintiff has sustained, not exceeding the sum for which the execution issued, and the bailiff shall be liable thereto; and upon demand made thereof, and on his refusal to satisfy the same, payment shall be enforced by such means as are provided for enforcing judgments recovered in the court (*x*). 13, 14 V. c. 53, s. 101. If bailiffs neglect their duty in relation to execution.

---

that upon such filing and entry the plaintiff (or defendant) *may* pursue the same remedies thereon as if the judgment had been originally obtained in such County Court.

A judgment cannot be a judgment of two courts at the same time, if, therefore, a judgment, which was originally a judgment of a Division Court, has "become a judgment of a County Court," it necessarily ceases to be a judgment of the former court, and all proceedings to enforce it must therefore be taken in the latter court. What these proceedings are it is not our province at present to discuss, it may however be noticed, that it has been decided under these sections that a judgment debtor is bound to appear and be examined as to debts and liabilities, &c., under Con. Stat. U. C. ch. 24, sec. 41, and may be imprisoned upon default, (*Kehoe* v. *Brown*, 13 U. C. C. P. 549,) and it is a matter of every day practice to obtain garnishing orders on such judgments.

(*w*) This section applies where the bailiff has lost the opportunity of making the money on an execution. Section 148 where the bailiff neglects duly to return any execution or makes a false return thereto; and section 185 to cases where the bailiff has made the money but has not paid it over.

(*x*) This is a summary remedy against the bailiff, entirely irrespective of the right of an aggrieved party to sue the bailiff and his sureties on the security covenant, referred to in sections 24 and 25.

The plaintiff's course under this section would be, to make a plain statement of the facts and hand the same to the clerk to be served on the bailiff, and produced before the judge on the next court day, or such day as he might appoint for hearing the matter; on which day the plaintiff should be in attendance with his witness or wit-

Action against bailiff and sureties for neglect of bailiff in returning execution.

CXLVIII. If any bailiff neglects to return any execution within three days after the return day thereof, or makes a false return thereto, the party who sued out such writ may maintain an action in any Court having competent jurisdiction against such bailiff and his sureties on the covenant entered into by them, and shall recover therein the amount for which the execution issued, with interest thereon from the date of the judgment, or such less sum as in the opinion of the judge or jury the plaintiff under the circumstances is justly entitled to recover. 13, 14 V. c. 53, s. 59.

Execution may issue instanter, and if bailiff has removed, his sureties nevertheless liable.

CXLIX. If a judgment be obtained in such suit against the bailiff and his sureties, execution shall immediately issue thereon, and in case of the departure or removal of such bailiff from the limits of the county, the action may be commenced and carried on against his sureties alone, or against any one or more of them. (*y*)

The interest of a mortgagor in goods mortgaged may be sold in execution.

CL. On any writ, precept or warrant of execution against goods and chattels, the sheriff or other officer to whom the same is directed, may seize and sell the interest or equity of redemption in any goods or

---

nesses to prove his case; the bailiff and his witnesses would then be heard, and if the complaint was sustained an order would be made on the bailiff to pay such damages to the plaintiff, as the judge might think proper, and that in default thereof execution should issue against the bailiff. The plaintiff should then have a copy of this order served upon the bailiff, and at the same time demand from him the amount mentioned in the order (or what would be better, endorse on the order and copy a demand for the amount). Upon the refusal of the bailiff, or his neglect, which would amount to the same thing, to satisfy the demand, the plaintiff should go to the clerk with the person who served the order and made the demand, himself to make an affidavit that the bailiff had not paid the amount, and that it was still due to him, and the person effecting service and making de mand to make an affidavit of such facts, upon which the clerk would be justified in issuing an execution against the bailiff for the amount due. As the proceedings under this act are somewhat complicated and difficult, parties usually find it more to their advantage to proceed by ordinary action against the officer and his sureties on the covenant.

(*y*) These very stringent provisions are intended for ensuring promptitude on the part of bailiffs in acting on executions placed in their hands, and if more generally known to suitors would be more efficacious.

chattels of the party against whom the writ has issued, and such sale shall convey whatever interest the mortgagor had in such goods and chattels at the time of the seizure (*z*). 20 V. c. 3, s. 11; *and see* 12 V. c. 73, s. 1.

What may be seized under execution against goods and chattels.

CLI. Every bailiff or officer having an execution against the goods and chattels of any person, may by virtue thereof seize and take any of the goods and chattels of such person (*a*) [excepting those which

(*z*) "If the mortgagor is in possession there can be no question that the sheriff [bailiff] may seize the *corpus* of the property [that is to say may make an actual seizure of it], and the interest of the mortgagor, together with the possession, would pass to the sheriff's vendee upon a sale made by him, and such purchaser would be subject to the rights of the mortgagee whatever they might be." (*Burns*, J., in *Squair* v. *Fortune*, 18 U. C. Q. B. 547.) But if the mortgagee is in possession, the bailiff, although he appears to have the right to seize and expose the goods, in order effectually and advantageously to make sale of the equity of redemption, cannot sell the goods themselves or take them from the custody of the mortgagee and transfer them to the purchaser. (*Ib.*; *Swift et al.* v. *Cobourg and Peterboro' R. W. Co.*, 5 U. C. L. J. 253.)

In case of the sale of an "interest or equity of redemption" in any goods, the bailiff's advertisement and proceedings should shew the fact clearly, and should refer to the chattel mortgage.

The interest of a mortgagee in goods is not an interest that can be sold under an execution. (*Ferrie* v. *Cleghorn*, 19 U. C. Q. B. 241.)

(*a*) That is to say, the personal goods of the debtor; that is, as is said in *Duggan* v. *Kitson*, 20 U. C. Q. B. 316, "such chattels as are subject to distress and sale under warrants from justices or courts of inferior jurisdiction, and under by-laws or otherwise;" in fact, "such things as he can deliver over to the purchaser, or such things as the latter part of the section expressly authorizes the seizure of," not mere claims or demands, or choses in action, which are not assignable or liable to seizure.

The section does not authorize the seizure and sale of chattels real, as, for instance, a a lease or term of years. (*Ib.*)

But it would seem to include all instruments containing an unconditional covenant to pay a specific sum to the judgment debtor for his own benefit.

In *Calverly* v. *Smith*, 3 U. C. L. J. 67, the defendant, acknowledging the correctness of the plaintiff's claim as to part, paid that sum into court. A Division Court bailiff, who held an execution against the plaintiff, was purposely present when the money was paid in, and seized it, after it had been laid on the table before the clerk, and receipt given for it to the defendant's attorney. The court held the seizure illegal, saying that under the act the bailiff, &c., could only seize money which is in the hands of the defendant, and not in the hands of a third party.

are by law exempt from seizure (*b*),] and may also seize and take any money or bank notes, and any cheques, bills of exchange, promissory notes, bonds, specialities or securities for money, belonging to such person. 13, 14 V. c. 53, s. 89.

(*b*) The words between brackets are substituted by 23 Vic. cap. 25, sec. 2, for the words "the wearing apparel and bedding of such person or his family, and the tools and implements of his trade to the value of twenty dollars, which shall to that extent be protected from the seizure," which are the words of the original act.

The articles now exempted from seizure by the fourth section of the same act are:

1. The bed, bedding and bedsteads in ordinary use by the debtor and his family.

2. The necessary and ordinary wearing apparel of the debtor and his family.

3. One stove and pipes, and one crane and its appendages, and one pair of andirons, one set of cooking utensils, one pair of tongs and shovel, one table, six chairs, six knives, six forks, six plates, six teacups, six saucers, one sugar basin, one milk jug, one teapot, six spoons, all spinning wheels and weaving looms in domestic use, and ten volumes of books, one axe, one saw, one gun, six traps, and such fishing nets and seines as are in common use.

4. All necessary fuel, meat, fish, flour and vegetables, actually provided for family use, and not more than sufficient for the ordinary consumption of the debtor and his family for thirty days, and not exceeding in value the sum of forty dollars.

5. One cow, four sheep, two hogs and food therefor for thirty days.

6. Tools and implements of, or chattels ordinarily used in, the debtor's occupation to the value of $60.

By the fifth section none of the articles mentioned in sub-secs. 3, 4, 5 and 6, are exempt from seizure in satisfaction of a debt contracted for such identical article, and by section 6 the debtor may select out of any larger number the several chattels exempt from seizure under the act.

This act was amended by 24 Vic. cap. 27, sec. 2, which provides, that "notwithstanding anything contained in the act of 23 Vic. cap. 25, the various goods and chattels which were, prior to the passing of the last mentioned act, liable to seizure in execution for debt in either Upper or Lower Canada, shall, as respects debts contracted before the 19th of May, 1860, remain liable to seizure and sale in execution, provided that the writ of execution under which they are seized shall have endorsed upon it a certificate, signed by the judge of the court out of which the suit issues, certifying that it is for the recovery of a debt contracted before the date above mentioned."

In the course of a short time the reason and benefit of this act will cease, it will not therefore be necessary to refer at length to its provisions.

It was held in *Davidson* v. *Reynolds*, 16 U. C. C. P., that a horse, sleigh, and harness of a farmer, ordinarily used in his occupation, under the value of $60, were exempt under sub-sec. 6.

CLII. The bailiff shall, for the benefit of the plaintiff, hold any cheques, bills of exchange, promissory notes, bonds, specialities, or other securities for money so seized or taken as aforesaid, as a security for the amount directed to be levied by the execution, or so much thereof as has not been otherwise levied or raised, and the plaintiff, when the time of payment thereof has arrived, may sue in the name of the defendant, or in the name of any person in whose name the defendant might have sued, for the recovery of the sum or sums secured or made payable thereby (*c*). 13, 14 V. c. 53, s. 90.

Bailiff to hold cheques notes, &c., seized under execution for benefit of plaintiff.

The arms, &c., of officers and men of volunteer corps are exempt from seizure in execution. (27 Vic. cap. 3, sec. 12.)

Bees reared and kept in hives are exempt from seizure for debt, or for the discharge of *any liability whatsoever*, except the amount of their purchase money. (28 Vic. cap. 8, sec. 2.)

The statute of 23 Vic. cap. 25 does not bind the Crown. (*Reg.* v. *Davidson*, 21 U. C. Q. B. 41.)

As to exemptions when the defendant absconds from the Province. In certain property, which had been left by the defendant on his absconding from the Province in the possession of his wife and family, and all of which would, under ordinary circumstances, have been exempt, was seized under the writ. The wife claimed the goods, and the question was submitted to the court, whether or not this exemption could be claimed by the wife, the defendant at the time being an absconding debtor. *Robinson*, C. J., said, "It is my opinion at present, looking at the whole statute, 23 Vic. cap. 25, that when a debtor has absconded from his dwelling in this Province, the bed, bedding, &c., which would have been exempt from execution against him in ordinary cases, if he had been residing with his family, will not be exempted when they are no longer in his use, but only in the use of his family whom he has left behind. There are several expressions in the statute which lead to that conclusion, but perhaps on further consideration I might come to a different conclusion on that point, though it is material to consider that in cases of attachment against the goods of absconding debtors there is no exemption."

This judgment was not given with any reference to the Division Courts Act, and the words in section 199 which empower the bailiff to make the seizure of the absconding debtor's goods, are "all the personal estate and effects, &c., *liable to seizure under execution for debt*." It may therefore be doubted whether the same conclusion would have been arrived at, if the question had come up on an execution issued from a Division Court.

See section 176, as to whether the exemption given by the statute does or does not operate to exempt from seizure and sale the goods of a debtor in cases where his landlord has made a claim for rent under that section.

(*c*) There is nothing in this section to warrant a practice which is said to prevail in some courts of suing in the name of the plain-

Defendant in original cause not to discharge suit.

CLIII. The defendant in the original cause shall not discharge such suit in any way without the consent of the plaintiff or of the judge. 13, 14 V. c. 53, s. 90.

The party wishing to enforce must secure costs.

CLIV. The party who desires to enforce payment of any security seized or taken as aforesaid, shall first pay or secure all costs that may attend the proceeding (*d*), and the moneys realized, or a sufficient part thereof, shall be paid over by the officer receiving the same to apply on the plaintiff's demand, and the overplus, if any, shall be forthwith paid to the defendant in the original suit, under the direction of the judge. 13, 14 V. c. 53, s. 90.

Overplus.

Bailiff after seizure of goods to

CLV. The bailiff, after seizing goods and chattels by virtue of an execution, shall indorse on such

---

tiff, or in fact in the name of any assignee, of ordinary book debts or other choses in actions of that nature. The action must be brought in the name of the defendant, and the notice required by rule 19 must be given on the summons to appear to warn the person liable on any such securities. that the amount due must be paid to the *beneficial* plaintiff. But the defendant must, of course, in such cases, take any exception as to parties at the trial.

This provision is different from the analogous proceeding in the Superior Courts, where the action may be brought in the name of the sheriff.

See the case of *McDonald* v. *McDonald et al.*, 21 U. C. Q. B. 52, as to the pleadings and evidence in actions brought in a Superior Court under these sections.

(*d*) This is rather indefinite, and is remarked upon in *McDonald* v. *McDonald et al.*, *ante*, where *Robinson*, C. J., says, "I suppose it means what is not stated, that the payee or holder of the note, &c., whose name is to be used in the action, as plaintiff, must be secured against liability for costs, if the defendant should succeed in the action. It may, however, mean that the real plaintiff shall make the defendant secure as to his costs, in case the action shall fail, for the person whose name is used may be worth nothing, and he is not in fact the real plaintiff; or it may mean that both are to be secured in the costs, for the expression is very general—that the person who desires to enforce payment, (who may be either the bailiff or the execution plaintiff,) shall first pay or secure, &c. The provision has not been carefully framed, for as the amount of costs cannot be known till the suit is at an end, they cannot be first paid,—that is, before the suit is begun, — although they may be secured."

If proceedings are commenced before the security be given, the proper course would be to apply to stay proceedings until given. (*Ib.*)

execution the date of the seizure (*e*), and shall immediately, and at least eight days before the time appointed for the sale, give public notice by advertisement signed by himself (*f*), and put up at three of the most public places in the division where such goods and chattels have been taken, of the time and place within the division when and where they will be exposed to sale, and the notice shall describe the goods and chattels taken. 13, 14 V. c. 53, s. 60.

endorse date of seizure and give notice of sale.

CLVI. The goods so taken shall not be sold until the expiration of eight days at least next after the seizure thereof (*g*), unless upon the request in writing under the hand of the party whose goods have been seized. 13, 14 V. c. 53, s. 60.

Goods not to be sold till after 8 days have expired after seizure.

CLVII. No clerk, bailiff or other officer of any Division Court shall, directly or indirectly, purchase any goods or chattels at any sale made by any Division Court bailiff under execution, and every such purchase shall be absolutely void (*h*). 13, 14 V. c. 53, s. 61.

Bailiff and other officer not to purchase goods seized.

(*e*) The bailiff at the time of seizing the goods should make out an inventory of them. He may then remove them, or if he find it more convenient, there is usually no objection to his taking proper security for the forthcoming of the goods when required, *but of course he does this at his own risk*, as the goods are presumed to be in his custody, and he is accountable to the plaintiff if any loss thereby arises.

If the bailiff is requested to withdraw from a seizure which he has made, he should get the request from the plaintiff in writing to protect himself.

(*f*) See schedule of forms, No. 20 (d), for a form of notice of sale.

(*g*) That is to say, eight clear days, not reckoning the day of posting the notices or the day of sale.

The sale should be for cash only, —the bailiff has no power to sell goods on credit.

Care should be taken not to sell more than is sufficient to satisfy the execution, and it is the duty of the bailiff to stop the sale as soon as sufficient money is realized to cover the execution.

There is no objection to the plaintiff purchasing his debtor's goods at a sale by the bailiff, but it must be a *bonâ fide* sale, or if there be no bidding, they must be fairly valued, and the amount credited on the execution.

(*h*) It may be remarked that the prohibition extends to *any* sale made by *any* bailiff under execution. An analagous enactment is contained in 27 & 28 Vic. cap. 28, sec 30, which provides, that "no sheriff, deputy sheriff, bailiff, or constable, shall, directly or indirectly, purchase any goods or chattels, lands or tenements, by him exposed to sale under execution."

Judge may order an execution to issue before regular day.

CLVIII. In case the judge be satisfied upon application on oath made to him by the party in whose favour a judgment has been given, or be satisfied by other testimony that such party will be in danger of losing the amount of the judgment, if compelled to wait till the day appointed for the payment thereof before any execution can issue, such judge may order an execution to issue at such time as he thinks fit. 13, 14 V. c. 53, s. 63.

JUDGMENTS IN COURTS OF REQUESTS CONTINUED.

Judgments in the former Courts of Requests provided for.

CLIX. The orders, decisions and judgments of the Courts of Requests formerly existing in Upper Canada (*i*), which were in force on the thirtieth day of November, one thousand eight hundred and forty-one, and which remain unsatisfied, shall be taken to have been orders, decisions and judgments of the several Division Courts to the clerks of which the books, papers and documents connected with the business of such Courts of Requests, have been delivered by order of any judge of a district or county in Upper Canada, and such orders, decisions, and judgments, shall be carried out and enforced in the same manner as similar proceedings in such Division Courts; but no proceedings shall be taken by any county judge to carry out and enforce such orders, decisions or judgments, unless he be satisfied by the oath of the party, and such other evidence as he may require, (all of which shall be reduced to writing,) that it is just and reasonable in equity and good conscience that the same should be enforced. 16 V. c. 177, s. 24.

EXAMINATION OF JUDGMENT DEBTORS.

Judgment debtors may be examined at the instance of their creditors.

CLX. Any party having an unsatisfied judgment or order in any Division Court for the payment of any debt, damages or costs (*k*), may procure from

(*i*) These courts were abolished by 4 & 5 Vic. cap. 53, and the provisions in this section may now be said to be *effete*.

(*k*) Either for debt or costs, or both, and either on a judgment for a plaintiff on his claim, or for a defendant on a set-off.

the court wherein the judgment has been obtained, if the defendant resides or carries on his business within the county in which the division is situate, or from any Division Court in any other county into which the judgment may have been removed under the one hundred and thirty-ninth section of this act and within the limits of which Division Court the defendant resides or carries on his business (*l*), a summons in the form prescribed by any rule (*m*), respecting the practice and proceedings of the Division Courts, and such summons may be served (*n*) either personally upon the person to whom the same is directed, or by leaving a copy thereof at the house of the party to be served, or at his usual or last place of abode, or with some grown person there dwelling, requiring him to appear at a time and place therein expressed, to answer such things as are named therein, and if the defendant appears in pursuance thereof, he may be examined upon oath, touching his estate and effects, and the manner and circumstances under which he contracted the debt or incurred the damages or liability which formed the subject of the action, and as to the means and expectation he then had, and as to the property and means he still has, of discharging the said debt, damages or liability, and as to the disposal he has made of any property. 13, 14 V. c. 53, s. 91; 16 V. c. 177, s. 30; 22 V. c. 33, s. 20, 1859.

CLXI. The person obtaining such summons and all witnesses whom the judge thinks requisite, may

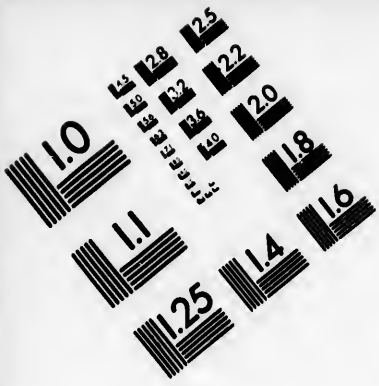
And witnesses, &c.

(*l*) In the former case the summons being obtainable if the debtor resides in any part of the *county* in which is situated the Division Court wherein judgment was recovered. But if the judgment has been removed by a transcript to another court in another county, the summons must be taken out there, provided the defendant resides or carries on his business within the limits of *such Division Court*. It is therefore necessary, whenever a debtor removes from the county wherein the original judgment has been obtained, to send a transcript to the Division Court within the limits of which the debtor may reside, &c.

See also notes to sec. 71.

(*m*) The course to be pursued by the creditor is laid down in rule 17, and the forms there referred to.

(*n*) See note to section 75.



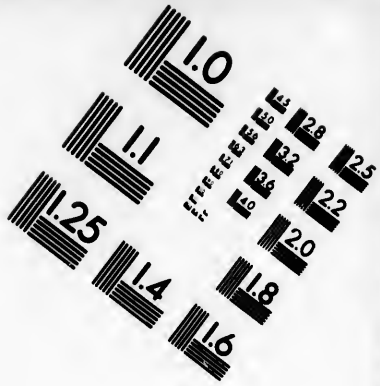
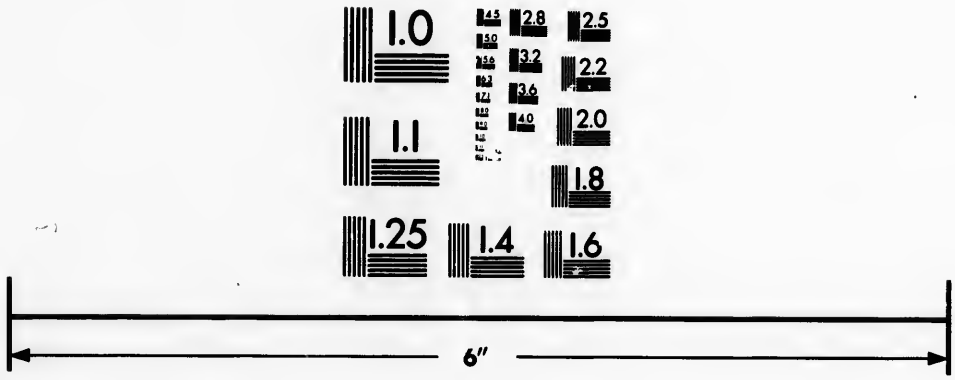
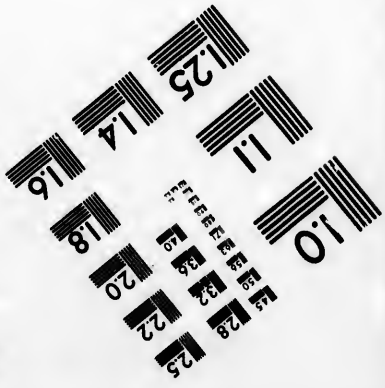


IMAGE EVALUATION TEST TARGET (MT-3)





Photographic Sciences Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

be examined upon oath, touching the enquiries authorized to be made as aforesaid. 13, 14 V. c. 53, s. 91; 16 V. c. 177, s. 30; 22 V. c. 33, s. 22.

The examination to be in judge's chamber.

CLXII. The examination shall be held in the judge's chamber, unless the judge shall otherwise direct (*o*). 22 V. c. 33, s. 23, 1859.

The costs provided for.

CLXIII. The costs of such summons and of all proceedings thereon, shall be deemed costs in the cause, unless the judge otherwise directs (*p*). 16 V. c. 177, s. 30; 13, 14 V. c. 53, s. 91.

Party examined and discharged not to be again summoned, except, &c.

CLXIV. In case a party has, after his examination, been discharged by the judge (*q*), no further summons shall issue out of the same Division Court at the suit of the same or any other creditor, without an affidavit satisfying the judge upon facts not before the court upon such examination, that the party had not then made a full disclosure of his estate, effects and debts, or an affidavit satisfying the judge that since such examination the party has acquired the means of paying. 22 V. c. 33, s. 23, 1859.

Consequence of neglect or refusal to attend,

CLXV. If the party so summoned, 1. Does not attend as required by the summons, or allege a sufficient reason for not attending; or 2. If he attends and refuses to be sworn or to declare any of the things aforesaid; or 3. If he does not make answer touching the same to the satisfaction of the judge;

(*o*) The object of this provision is to obviate any unnecessary exposure and annoyance consequent upon an examination in open court. It would, however, be both useless and cruel to insist upon the attendance of a debtor before the judge at his chambers in the county town, it is therefore the usual practice for judges to direct that these examinations shall take place in the court room of the court from whence the summons issues, or in some convenient place in the neighbourhood after the rest of the business is disposed of.

(*p*) There is no provision made for the payment of the debtor's expenses to the place of examination. In the Superior courts some of the judges consider it only reasonable that such expenses should be paid, but it is not the usual practice to do so in Division Courts, and the latter part of section 166 seems to intimate that such payment is not contemplated by this act.

(*q*) That is, discharged as not being in a position to make any payment on the judgment recovered against him.

or 4. If it appear to the judge either by the examination of the party or by other evidence, [a] that the party obtained credit from the plaintiff or incurred the debt or liability under false pretences, or [b] by means of fraud or breach of trust, or [c] that he wilfully contracted the debt or liability without having had at the time a reasonable expectation of being able to pay or discharge the same, or [d] has made or caused to be made any gift, delivery or transfer of any property, or has removed or concealed the same with intent to defraud his creditors or any of them; or 5. If it appears to the satisfaction of the judge that the party had when summoned, or since the judgment was obtained against him, has had sufficient means and ability to pay the debt or damages, or costs recovered against him, either altogether or by the instalments which the court in which the judgment was obtained has ordered, and if he has refused or neglected to pay the same at the time ordered (*r*), whether before or after the return of the summons,—the judge may, if he thinks fit, order such party to be committed to the common gaol of the county in which the party so summoned resides or carries on his business, for any period not exceeding forty days (*s*). 16 V. c. 177, s. 30; 13, 14 V. c. 53, s. 92.

In what cases only the party summoned may be committed for non-attend-

CLXVI. A party failing to attend according to the requirements of any such summons as aforesaid, shall not be liable to be committed to gaol for the default, unless the judge is satisfied that such non-attendance is wilful, or that the party has failed to

(*r*) Either at the time judgment was given, or by any subsequent order under sec. 170.

(*s*) But it appears to be necessary that the debtor should be called upon by summons to shew cause why he should not be committed to gaol for having made default in his payments; and upon the return of this summons the judge is to use his discretion, and refuse to commit if any sufficient cause is shewn. (See *Harper* v. *Carr*, 7 T. R. 270; *Kinning* v. *Buchanan*, 8 C. B. 271: 1 C. C. C. 504; *Ex parte Kinning*, 4 C. B. 507; 1 C. C. C. 17.)

A form of this summons is given in the schedule, No. 55 (a), being taken from one prepared by the late Judge Campbell.

ance: costs allowed him in certain cases.

attend after being twice so summoned (*t*), and if at the hearing it appears to the judge, upon the examination of the party or otherwise, that he ought not to have been so summoned, or if at such hearing the judgment creditor does not appear, the judge shall award the party summoned a sum of money by way of compensation for his trouble and attendance, to be recovered against the judgment creditor in the same manner as any other judgment of the court. 22 V. c. 33, s. 21, 1859.

Commitment in case of refusal.

CLXVII. Whenever any order of commitment as aforesaid has been made, the clerk of the court shall issue, under the seal of the court, a warrant of commitment (*u*) directed to the bailiff of any Division Court within the county, and such bailiff may, by virtue of such warrant, take the person against whom the order has been made. 13, 14 V. c. 53, s. 95.

Constables, &c., to execute warrants.

CLXVIII. All constables and other peace officers within their respective jurisdictions shall aid in the execution of every such warrant, and the gaoler or keeper of the gaol of the county in which such warrant has been issued, shall receive (*v*) and keep the defendant therein until discharged under the provisions of this act or otherwise by due course of law. 13, 14 V. c. 53, s. 95.

When debtor in custody shall be discharged.

CLXIX. Any person imprisoned under this act, who has satisfied the debt or demand, or any instalment thereof payable, and the costs remaining due

---

(*t*) If the debtor does not appear upon the first summons, the burthen of proof lies upon the creditor desiring to have him committed to shew that such non-attendance has been "wilful;" but the failure to attend on being summoned a second time raises the presumption that such non-attendance was "wilful," thereby subjecting the debtor to punishment for non-attendance.

(*u*) See forms 56 and 57.

By rule 55 warrants of commitment shall bear date on the day on which the *order* for commitment was entered in the procedure book, and shall continue in force for three months.

By rule 10 the clerk issuing the warrant must endorse upon it the amount of debt and costs, in gross, up to the time of its delivery to the bailiff for execution.

(*v*) Rule 13 requires the bailiff, when he delivers the person arrested to the gaoler, with the warrant, to indorse the number of miles, shewing the amount of mileage, and also to state in writing the actual day of the arrest.

at the time of the order of imprisonment being made, together with the costs of obtaining such order, and all subsequent costs, shall, upon the certificate of such satisfaction, signed by the clerk of the court, or by leave of the judge of the court in which the order of imprisonment was made, be discharged out of custody. 13, 14 V. c. 53, s. 99.

Judges may make order and may alter and modify the same.

CLXX. The judge, before whom such summons is heard, may, if he thinks fit, rescind or alter any order for payment previously made against any defendant so summoned before him, and may make any further or other order, either for the payment of the whole of the debt or damages recovered and costs forthwith, or by any instalments, or in any other manner that he thinks reasonable and just (*w*). 13, 14 V. c. 53, s. 93.

Parties may be examined when.

CLXXI. In case the defendant in any suit brought in a Division Court has been personally served with the summons to appear, or personally appears at the trial, and judgment be given against him, the judge, at the hearing of the cause or at any adjournment thereof, may examine the defendant and the plaintiff, and any other person touching the several things hereinbefore mentioned, and may commit the defendant to prison, and make an order in like manner as he might have done in case the plaintiff had obtained a summons for that purpose after judgment (*x*). 13, 14 V. c. 53, s. 94.

(*w*) That is to say, instead of committing a debtor for non-payment of the debt as originally ordered, he may extend the time for payment, or order the payment of the debt by instalments, and upon any default made the debtor will be liable to be again brought up on a fresh summons, and thereupon dealt with as provided for in section 165.

(*x*) It is difficult to understand the exact meaning of this section. It can scarcely be intended that the judge should commit a debtor to prison for not having paid a claim—perhaps a disputed account between the parties—only settled by judicial interposition a few moments previously. The judge could, however, it is presumed, make such enquiries as he might think necessary, for the purpose of obtaining information as to the debtor's ability to pay, and thereupon make an order for payment of the debt, by instalments or otherwise, and upon which, if default should be made, the creditor might have the debtor again

Party committed not to be discharged for insolvency.

CLXXII. No protection, order or certificate granted by any Court of Bankruptcy, or for the relief of insolvent debtors, shall be available to discharge any defendant from any order of commitment as aforesaid. 13, 14 V. c. 53, s. 95, *the end.*

Debt not to be extinguished.

CLXXIII. No imprisonment under this act shall extinguish the debt or other cause of action on which a judgment has been obtained, or protect the defendant from being summoned anew and imprisoned for any new fraud or other default rendering him liable to be imprisoned under this act, or deprive the plaintiff of any right to take out execution against the defendant (*y*). 13, 14 V. c. 53, s. 96.

CLAIMS BY LANDLORDS OR OTHERS TO GOODS SEIZED.

Interpretation of certain words.

CLXXIV. The word "landlord" shall include the person entitled to the immediate reversion of the lands, or, if the property be held in joint tenancy, corparcenary or tenancy in common, shall include any one of the persons entitled to such reversion, and the word "agent," shall mean any person usually employed by the landlord in the letting of lands or in the collection of the rents thereof, or specially authorized to act in any particular matter by writing under the hand of such landlord. 16 V. c. 177, s. 15.

---

summoned and proceeded against under section 165.

But the principal benefit of this section appears to consist in the power it gives of punishing summarily any fraud on the part of the debtor coming within the fourth clause of section 165, which might be proved at the hearing. (see *Ex parte Purday*, 19 L. J., C. P. 222.) Of course, such an order can only be made if the debtor "personally appears at the trial," and has thus an opportunity of defending himself, nor would a judge, except in a very clear case, exercise the powers given to him; and where the debtor could shew any reasonable ground for leading the judge to believe that he may be able thereafter to clear himself from the fraud charged against him, however strong the evidence of such fraud may be, the judge would properly refuse to make any order of committal.

(*y*) In fact these sections partake of the nature of penalties, either for fraud or for contempt of court, as the case may be, the power of imprisonment not being by way of satisfaction of the debt. (*Ex parte Kinning*, 4 C. B. 507.)

Claims of landlords to goods seized in execution, how to be adjusted.

CLXXV. In case a claim be made (*z*) to or in respect of any goods or chattels, property or security, taken in execution or attached under the process of any Division Court, or in respect of the proceeds or value thereof, by any landlord for rent, or by any person not being the party against whom such process issued (*a*), then, subject to the provisions of the "Act respecting absconding debtors," the clerk of the court, upon application of the officer (*b*) charged with the execution of such process may, whether before or after the action has been brought against such officer, issue a summons calling before the court out of which such process issued, or before the court holden for the division in which the seizure under such process was made, as well the party who issued such process as the party making such claim (*c*), and

---

(*z*) There is nothing in the act expressly requiring a claimant to make his claim in writing, except a landlord under section 176, but such a course would be most advisable for all parties concerned.

The claim should state not only that the goods seized are those of the claimant and not of the execution debtor, but also in what way the party claims. (*Ex parte Harper et al.*, 4 C. C. C. 115.) See form 27 (a), as to this notice of claim.

(*a*) No application for an interpleader can therefore be made until a claim has been made by a *third party* after an *actual seizure* of the goods.

(*b*) This application should be in writing, addressed to the clerk, and should contain, as fully as possible, all the facts with reference to the seizure and claim that are referred to in the form which is supplied, No. 27 (b).

An interpleader summons issued by a clerk without a previous request by the bailiff would be irregular if not void. (*Reg.* v. *Doty*, 13 U. C. Q. B. 398.

(*c*) An interpleader issue is not strictly a suit or action, it is in fact an interlocutory proceeding in another suit, wherein the court is subsequently to act in disposing of the rights of parties. The parties concerned are, the claimant, who is deemed the plaintiff, and the execution creditor, who is deemed the defendant (see rule 53), in the issue that is to be tried for the purpose of ascertaining which of them—claimant or judgment creditor—is entitled to the goods under seizure.

The provisions of this section are intended solely for the protection of bailiffs, though the bailiff is not bound to take advantage of them, and in many cases when he finds upon enquiry that the claim set up is clearly fraudulent, or without a shadow of right, he would not do so; and in such a case he might safely take a sufficient indemnity from the plaintiff and proceed to sell. If, however, he finds it necessary for his protection to take out an interpleader summons, he should be prompt in making his

When actions in the Superior Courts respecting the subject

thereupon any action which has been brought in any of Her Majesty's Superior Courts of Record, or in a local or inferior court in respect of such claim, shall be stayed (*d*), and the court in which such action

---

application. The provisions do not apply to conflicting executions, it being the duty of the bailiff to pay the first execution creditor. (See *Bragg* v. *Hopkins*, 2 Dowl. 151.)

The rule has, however, been altered as far as the Superior Courts are concerned, by the late act of 28 Vic. cap. 19.

Where an execution plaintiff directs goods to be seized, or persists in opposing the claimant's title to them after they have been seized, and the issue is decided in favour of the latter, he has a good right of action against the former for damages sustained by the seizure; and the result of the issue is conclusive as to the claimant's right to the goods. (*Harmer* v. *Gouinlock*, 21 U. C. Q. B. 260; *May et al.* v. *Howland et al.*, 19 U. C. Q. B. 66.)

It has been decided, that in *interpleader* issues, contrary to general rule, the judge of a Division Court may try the question of property in goods, even though the enquiry may involve the title to land. (*Munsie* v. *McKinley*, 15 U. C. C. P. 50; 1 L. C. G. 8.)

The disposition of the goods seized is, during the pendency of the interpleader issue, in the absence of any special order by the judge, left to the discretion of the bailiff. It is very common for him to take a bond for the production of them, but this course, though advantageous to the person who shall eventually prove to be the owner, is not without risk to the officer. His safest course is to sell the goods and pay the proceeds into court; or else, if the articles are not perishable, nor likely to deteriorate rapidly in value, nor be expensive to keep, he might deposit them in a safe place under his own control. The character of the parties and the nature of the goods will generally be a guide to him.

In *Harmer* v. *Cowan*, 23 U. C. Q. B. 479, the defendant, a bailiff, seized certain goods under an execution, which were claimed by the plaintiff. The bailiff, intending to apply for an interpleader summons, sold the goods subject to the claim. The price of the goods was not paid to the bailiff, and they were to remain in his custody until judgment should be given on an intended interpleader application, which was subsequently adjudicated upon. *Hagarty*, J., said, "However we may be inclined to agree with the plaintiff that a bailiff cannot make a conditional sale, we do not see how we can therefore turn his objectionable proceedings into an absolute sale, vesting the property in his vendee. We incline to consider the sale wholly nugatory, and that the execution was not executed, and the goods still remained in the words of the act, 'taken in execution,'" &c.

(*d*) This application must be made to the court, or a judge of the court, in which such action is pending. Delay in making the application will not, it is said, deprive the applicant of his rights, but will influence the court as to costs. (*Washington* v. *Webb*, 16 U. C. Q. B. 232.)

The questions that arose in several cases as to the position of the

has been brought, or any judge thereof, on proof of the issue of such summons, and that the goods and chattels, or property, or security, were so taken in execution or upon attachment, may order the party bringing such action to pay the costs of all proceedings had upon such action after the issue of such summons out of the Division Court, and the county judge having jurisdiction in such Division Court shall adjudicate upon the claim (*e*), and make such

matter may be stayed.

---

parties when the goods had been replevied from a bailiff under a Superior Court writ, are set at rest by the enactment of 23 Vic. cap. 45, sec. 8, that goods taken under process from a Division Court cannot be replevied. (See that section. and notes to it, in another place under the head of "Replevin in Division Courts.")

The court will not interfere if it appears that the Division Court judge has not awarded damages to the claimant for the seizure by the execution creditor. (*Mercer* v. *Stanberry*, 4 W. R. 649; 2 U. C. L. J. 177.)

An application under the sections from which the one before us is compiled, was objected to on the ground, that although the interpleader was fully heard before the Division Court judge, no judgment was then given, nor was any subsequent day appointed for giving judgment according to section 106, and that therefore there was no binding decision in the court below, whereby the action of the claimant against the bailiff for trespass in seizing his goods could be stayed. *Draper*, J., said, "On the face of the judge's adjudication there is nothing but what he had authority to do, and I do not feel at liberty to enquire, on this application, into the regularity or mode of the proceedings themselves which end in this adjudication." (*Finlayson* v. *Howard*, 1 U. C. Pr. R. 224; 1 U. C. L. J. 94.)

Rule 53 provides, that by consent an interpleader claim may be tried, though the requirements of the rule as to certain proceedings have not been complied with.

(*e*) It was held in the late case of *Munsie* v. *McKinley*, 15 U. C. C. P. 50; 1 U. C. L. J., N. S. 12; 1 L. C. G. 8, that the words, "The county judge, &c., shall adjudicate upon the claim," are imperative, upon the judge to decide all interpleader issues without the aid of a jury. It is submitted that there are other and stronger reasons than the mere words of the section above referred to, why a jury could not be called in interpleader issues by either one of the *parties to the suit*; such as, amongst others, the provisions as to jury cases under sections 119, &c. The words referred to in the above judgment, are not very different from those in section 55, which certainly do not mean that juries cannot be had in ordinary cases; and it may be remarked that the words, "the county judge having jurisdiction in such Division Court shall adjudicate upon the claim," are used in contradistinction to the application to be made to a different court or judge in the previous part of the section. (See *Washington* v. *Webb*, 16 U. C. Q. B. 232.)

order between the parties in respect thereof, and of the costs of the proceedings, as to him seems fit, and such order shall be enforced in like manner as an order made in any suit brought in such Division Court, and shall be final and conclusive between the parties. 13, 14 V. c. 53, s. 102; 16 V. c. 177, s. 7; 19 V. c. 43, s 56.

RIGHTS OF LANDLORDS PROTECTED.

Provisions in relation to rents due to landlords.

CLXXVI. So much of the act passed in the eighth year of the reign of Queen Anne, intituled, *An Act for the better security of rents and to prevent frauds committed by tenants* (*f*), as relates to the liability of goods taken by virtue of any execution, shall not be deemed to apply to goods taken in execution under the process of any Division Court, but the landlord of any tenement in which any such goods are so taken, may, by writing under his hand, or under the hand of his agent, stating the terms of holding, and the rent payable for the same (*g*), and delivered to the bailiff making the levy, claim any rent in arrear then due to him, not exceeding the rent of four weeks when the tenement has been let by the week, and not exceeding the rent accruing due in two terms of payment where the tenement

---

But however this may be, it is a very common and a very convenient practice, and one which has received the sanction of some of the best of our county judges, for *the judge* to call to his assistance a jury under the provisions of section 132, to try "any fact controverted in the cause," adopting or not their finding is his discretion. This section does not appear from the report of *Munsie* v. *McKinley*, to have been referred to, either by the court or by counsel, on the argument.

It is rather remarkable, that in this case no reference was made to the fact that a new trial had been granted by the judge of the Division Court, whereas it was decided in *Reg.* v. *Doty*, 13 U. C. Q. B. 398, referred to in note (*l*) to section 107, that under such circumstances no new trial could be had. If this was not an oversight it would be an argument that the Court of Common Pleas did not agree with the Queen's Bench on this point.

(*f*) Section 1 of this act (8 Anne cap. 14) provides that no goods shall be taken in execution unless the execution creditor, before removal of the goods, pays to the landlord the rent due. But it will be seen that the following sections are substituted for the provisions of the statute of Anne.

(*g*) See form 32 (a).

has been let for any other term less than a year, and not exceeding in any case the rent accruing due in one year (*h*). 16 V. c. 177, s. 6.

How the bailiff is to proceed.

CLXXVII. In case of any such claim being so made, the bailiff making the levy shall distrain as well for the amount of the rent claimed, and the costs of such additional distress, as for the amount of money and costs for which the warrant of execution has issued, and shall not sell the same, or any part thereof, until after the end of eight days at least next following after such distress taken. 16 V. c. 177, s. 6.

(*h*) The exemption act (see section 151 and notes) only relates to the seizure of goods under a writ. It may be said, therefore, that these exemptions do not touch the case of a distress under a landlord's warrant, and it has been decided in England that if the proper claim be made by a landlord, the bailiff may distrain on goods that would be exempt from seizure under an execution (*Woodcock* v. *Pritchard*, 17 L. T. Rep., Q. B. 16); and section 179, which recognises the right of replevin in these cases, coupled with the subsequent act of 23 Vic. cap. 45, sec. 8, supports this view. The act under which this case was decided did not contain, if it would make any difference, any provision similar to that of section 180. *Woodcock* v. *Pritchard* does not appear to have been expressly overruled; but, on the other hand, the later cases of *Beard* v. *Knight*, 27 L. J., Q. B. 359; 4 Jur., N. S. 782, and *Wilcoxon* v. *Searly*, 29 L. J. Ex. 154, to the effect, that the goods of a stranger on the premises, which, as a general rule, are liable for rent in arrear, are not distrainable under this section, are sufficient to found a strong argument against the former case, combined with the fact, that the bailiff's right to levy is derived solely from the writ of execution, unless indeed it can be considered that he becomes, upon receiving the notice of claim, the bailiff of the landlord as well as of the court issuing the writ, as was suggested in *Woodcock* v. *Pritchard*.

But again, can the mere direction of section 177, that "the bailiff making the levy shall distrain as well for the amount of the rent claimed," &c., make the bailiff enforcing the execution the bailiff *of the landlord*. It was necessary that such or similar words should be used for the purpose of directing the bailiff to increase the amount of his levy, but the writer thinks it would require more explicit words to clothe the bailiff with powers which he could only receive under his common law right from the landlord himself. The principle would seem to be, that the bailiff's right to levy arises *by virtue of the execution*, under which it is his duty to levy the debt out of certain of the debtors goods. Upon the claim being made for rent, the statute steps in and authorises him to make a further levy to satisfy the further demand, but his position as the bailiff of the court is not altered, and he is still acting *under the writ of execution*.

Fees of bailiff in such cases.

CLXXVIII. For every additional distress for rent in arrear, the bailiff of the court shall be entitled to have as the costs of the distress, instead of the fees allowed by this act, the fees allowed by the act *respecting distresses for small rents and penalties* (*i*). 16 V. c. 177, s. 6.

If replevin made.

CLXXIX. If any replevin be made of the goods distrained, so much of the goods taken under the warrant of execution shall be sold, as will satisfy the money and costs for which the said warrant issued, and the costs of the sale, and the surplus of such sale, and the goods so distrained, shall be returned as in other cases of distress for rent and replevin thereof (*j*). 16 V. c. 177, s. 6.

When landlord's claim to rent is to be first paid.

CLXXX. No execution creditor under this act shall be satisfied his debt, out of the proceeds of such execution and distress, or of execution only where the tenant replevies, until the landlord who conforms to the provisions of this act has been paid the rent in arrear for the periods hereinbefore mentioned (*k*). 16 V. c. 177, s. 6.

(*i*) Con. Stat. U. C. cap. 123. The fees under this act are as follows:

Levying distress under $80, *one dollar.*

Man keeping possession, per diem, *seventy-five cents.*

Appraisement, whether by one appraiser or more, *two cents* in the dollar on the value of the goods.

If any printed advertisement, not to exceed in all *one dollar.*

Catalogues, sale, commission and delivery of goods, *five cents* in the dollar on the net produce of the sale.

Bailiffs have no right to charge poundage in cases of this kind. See *Murray* v. *McNair*, 2 L. C. G. —.

Under section 11 of this act, every person who makes a distress shall give a copy of the demand, and of the costs and charges of the distress, signed by him, to the person whose goods are levied upon. The strict letter of this would not include, perhaps, bailiffs acting under sections 176 and 177, but it would be advisable for them as a rule to do the same thing.

(*j*) Section 8, of 23 Vic. cap. 45, provides that the act relating to replevin shall not authorize the replevying out of the custody of a bailiff any personal property seized under Division Court process; but this section is to be read as part of the Division Courts Act, and a fair construction must if possible be placed upon both enactments; it is therefore thought that the late act does not touch cases where the bailiff distrains for rent as well as on an execution.

(*k*) The landlord, therefore, unless the goods are replevied, is to be paid first, and any balance is to go to the execution creditor; anything more than this must, of course, be returned to the debtor.

PENAL CLAUSES.

Forgery of seal, process, &c.

CLXXXI. Every person who forges the seal or any process of the court, or who serves or enforces any such forged process, knowing the same to be forged, or delivers or causes to be delivered to any person any paper falsely purporting to be a copy of a process of the court, knowing the same to be false, or who knowingly acts or professes to act under any false color of process of the court, shall be guilty of felony (*l*). 13, 14 V. c. 53, s. 86.

CONTEMPT OF COURT.

Contempt of court.

CLXXXII. If any person wilfully insults the judge or any officer of any Division Court during his sitting or attendance in court, or interrupts the proceedings of the court, any bailiff or officer of the court may, by order of the judge, take the offender into custody, and the judge may impose upon the offender a fine not exceeding twenty dollars, and in default of immediate payment thereof, the judge may by warrant under his hand and seal commit the offender to the common gaol of the county for any period not exceeding one month, unless such fine and costs, with the expense attending the commitment, be sooner paid (*m*). 13, 14 V. c. 53, s. 75.

BAILIFFS TO BE CONSTABLES.

Bailiff to exercise duty of constable during holding of court.

CLXXXIII. Every bailiff shall exercise the authority of a constable during the actual holding of the court of which he is a bailiff, with full power to prevent breaches of the peace, riots or disturbances within the court room or building in which the court is held, or in the public streets, squares, or other

(*l*) This enactment has been held to be confined to the use of false instruments, and does not apply to the mere verbal assertion of authority. (*Reg.* v. *Myott*, 6 C. C. C. 407; 1 U. C. L. J. 35.)

In a prosecution under this section it is not necessary to show that the document used bears any resemblance to the genuine process of the court. (*Reg.* v. *Evans*, 7 Cox. C. C. 293: *Reg.* v. *Richmond*, 8 *ib.* 200.)

(*m*) See section 189 for form of conviction, and form 62 for a form of warrant of commitment for contempt.

places within the hearing of the court, a[illegible] may, with or without warrant, arrest all parties offending against the meaning of this clause, and forthwith bring such offenders before the nearest justice of the peace, or any other judicial officer having power to investigate the matter or to adjudicate thereupon (*n*). 13, 14 V. c. 53, s. 13.

IF BAILIFF ASSAULTED.

If bailiff assaulted.

CLXXXIV. If any officer or bailiff, (or his deputy or assistant,) be assaulted while in the execution of his duty, or if any rescue be made or attempted to be made of any property seized under a process of the court, the person so offending shall be liable to a fine not exceeding twenty dollars, to be recovered by order of the court, or before a justice of the peace of the county or city (*o*), and to be imprisoned for any term not exceeding three months, and the bailiff of the court, or any peace officer, may in any such case take the offender into custody (with or without warrant) and bring him before such court or justice accordingly. 13, 14 V. c. 53, s. 14.

MISCONDUCT OF CLERKS, BAILIFFS, &c.

Misconduct of clerks and bailiffs.

CLXXXV. If any bailiff or officer, acting under colour or pretence of process of the court, be guilty of extortion or misconduct, or does not duly pay or account for all money levied or received by him by virtue of his office, the judge, at any sitting of the court, if a party aggrieved thinks fit to complain to him in writing, may inquire into the matter in a summary way, and for that purpose may summon and enforce the attendance of all necessary parties and witnesses, and may make such order thereupon for the repayment of any money extorted, or for the

(*n*) This section is an amplification of the preceding one, and gives jurisdiction to justices of the peace, as well as to the judge of the court, to investigate and adjudicate upon the offences referred to in the section. The words, "other judicial officer," must refer to the judge of the court, who is specially named in section 182. Sections 187 and 188 shew how fines imposed under authority of the act are to be enforced.

(*o*) See section 189 for form of conviction in such case.

due payment of any money so levied or received, and for the payment of any such damages and costs to the parties aggrieved, as he thinks just; and in default of payment of the money so ordered to be paid by such bailiff within the time in such order specified for the payment thereof, the judge may, by warrant under his hand and seal, cause such sum to be levied by distress and sale of the goods of the offender, together with the reasonable charges of such distress and sale, and in default of such distress (or summarily in the first instance) may commit the offender to the common gaol of the county for any period not exceeding three months (*p*). 13, 14 V. c. 53, s. 76.

EXTORTION.

Extortion.

CLXXXVI. If any clerk, bailiff or other officer exacts, or takes any fee or reward other than the fees appointed and allowed by law for or on account of any thing done by virtue of his office, or on any account relative to the execution of this act, he shall, upon proof thereof before the court, be for ever incapable of being employed in a Division Court in any office of profit or emolument, and shall also be liable in damages to the party aggrieved. 13, 14 V. c. 53, s. 77.

FINES HOW ENFORCED.

Fines how enforced by Division Courts.

CLXXXVII. In case a Division Court imposes any fine under authority of this act, the same may be enforced upon the order of the judge, in like manner as a judgment for any sum adjudged therein, and shall be accounted for as herein provided. 13, 14 V. c. 53, s. 82.

How enforced by justices of the peace.

CLXXXVIII. In all cases in which by this act any penalty or forfeiture is made recoverable before a justice of the peace, such justice may, with or without information in writing, summon before him the party complained against, and thereupon hear

(*p*) The judge has also power at any time to remove any clerk or bailiff without assigning any reason (sec. 23).

and determine the matter of such complaint, and on proof of the offence convict the offender, and adjudge him to pay the penalty or forfeiture incurred, and proceed to recover the same. 13, 14 V. c. 53, s. 104.

FORM OF CONVICTION.

Form of conviction.

CLXXXIX. In all cases where a conviction is had for any offence committed against this act, the form of conviction may be in the words or to the effect following, that is to say: 13, 14 V. c. 53, s. 105.

Be it remembered, That on this —— day of —— in the year of our Lord ——, A. B., is convicted before —— one (*or* two, *as the case may be*,) of Her Majesty's justices of the peace for the county of ——, —— or before ——, a county judge of the county of ——, acting under the Division Courts act, of having (*note the offence*); and I, (*or* we) ——, the said ——, do adjudge the said —— to forfeit and pay for the same the sum of ——, or to be committed to the common gaol of the county of —— for the space of

Given under —— hand and seal, the day and year aforesaid.

DISPOSAL OF FINES.

Fines how disposed of.

CXC. The moneys arising from any penalty, forfeiture or fines imposed by this act, not directed to be otherwise applied, shall be paid to the clerk of the court which imposed the same, and shall be paid by him to the county attorney of the county, to be accounted for as part of the fee fund. 13, 14 V. c. 53, s. 103.

JUDGMENTS NOT TO BE REVERSED FOR WANT OF FORM.

Judgment not to be reversed for want of form,

CXCI. No order, verdict, judgment, or other proceeding had or made concerning any matter or thing under this act, shall be quashed or vacated for any matter of form. 13, 14 V. c. 53, s. 106.

LIMITATIONS AND NOTICE OF ACTIONS FOR THINGS DONE UNDER THIS ACT. (*q*)

CXCII. No levy or distress for any sum of money to be levied by virtue of this act, shall be deemed unlawful, or the party making the same be deemed a trespasser, on account of any defect or want of form in the information, summons, conviction, warrant, precept or other proceeding relating thereto, nor shall the party distraining be deemed a trespasser from the beginning (*r*) on account of any irregularity afterwards committed by him, but the person aggrieved by such irregularity may recover full satisfaction for the special damage. 13, 14 V. c. 53, s. 79.

Distress not to be deemed unlawful or parties trespassers by reason of defect in proceedings.

Not to be trespassers *ad initio.*

CXCIII. Any action or prosecution against any person for any thing done in pursuance of this act (*s*), shall be commenced within six months after the fact was committed, and shall be laid and tried

Limitation of actions for things done under this act.

(*q*) It may be stated as a general principle that clerks and bailiffs acting in a ministerial capacity, and in the performance of a duty, are not liable for anything done by them in the performance of such duty.

With reference to costs in actions against Division Court officers, it is provided by the Common Law Procedure Act, sec. 330, that in case any suit be brought in any Court of Record in respect of any grievance committed by any clerk, bailiff or officer under color or pretence of court process, and the jury shall find no greater damages for the plaintiff than ten dollars, the plaintiff shall not have costs unless the judge certifies in court, on the back of the record, that the action was fit to be brought in such Court of Record.

(*r*) Trespass *ab initio*, or, from the beginning, occurs in this way, —When one, who has authority by law for doing an act, but, instead of acting lawfully under that authority, abuses it, such abuse turns the act into trespass, and the person becomes a trespasser *ab initio*, and this even though his conduct may have been lawful in the first place. The effect of this section is therefore, that a person so acting as to come within this definition, though liable for any special damage, would not be liable for acts originally justifiable.

(*s*) A thing is done "in pursuance of the act" when the person who does it is acting honestly and *bonâ fide*, either under the powers which the statute gives or in discharge of the duty which it imposes, reasonably supposing that he has authority, though he may erroneously exceed the powers so given to him, yet if he acts *bonâ fide* in order to execute such powers or discharge such duties, he is to be considered as acting "in pursuance of the act," and entitled to the protection conferred on persons whilst so acting. (See 10 U. C. L. J. 150.)

in the county where the fact was committed, and notice in writing of such action and of the cause thereof shall be given to the defendant, one month at least before the commencement of the action (*t*). 13, 14 V. c. 53, s. 107.

The protection afforded by these sections does not apply to the defendant in an action brought against him for trespass in seizing the goods of A. on an execution against B., either as to venue or to notice of action (*Dollery* v. *Whaley*, 12 U. C. C. P. 105; 8 U. C. L. J. 239), nor to a defendant in an action for maliciously suing out an attachment. (*Palk* v. *Kenney*, 11 U. C. Q. B. 350).

But it does apply when a bailiff and his sureties are sued under the statutory covenant for an excessive levy by the former and a sacrifice of the plaintiff's goods; and the bailiff may raise the defence both of want of notice, and that the action was not brought within six months under a plea of not guilty by statute. (*Pearson* v. *Ruttan et al.*, 15 U. C. C. P. 79; 1 L. C. G. 26.)

(*t*) That is to say, if the notice is served, for instance, on the 28th of March, the writ may be taken out on the 29th of April. (*McIntosh* v. *Vansteinburgh*, 8 U. C. Q. B. 248.)

Bailiffs are entitled to notice if they believe they are acting in the discharge of their duty, even though the warrant under which they act be not under seal. (*Anderson* v. *Grace et al.*, 17 U. C. Q. B. 96.)

A bailiff is not entitled to notice in an action brought against him for money had and received to recover the excess levied by him under an execution, but which he has failed to return to the plaintiff, as he is not acting "in pursuance of the act," the charge being an *omission* not a concurrence in a positive tort. (*Dale* v. *Cool*, 6 U. C. C. P. 544.)

The reference in the next section to the act to protect justices of the peace and other officers from vexatious actions (Con. Stat. U. C. cap. 126), creates a difficulty as to whether the provisions of the latter statute are applicable to notices of action under this section so as to render it necessary to state certain facts in the notice which are required by that act. It would seem, however, from the language of *Draper*, C J., in *McPhatter et al.* v. *Leslie et al.*, 23 U. C. Q. B. 573, that a notice of action to a Division Court clerk is sufficient if it comply with this section. He says, "In *Dale* v. *Cool*, 4 U. C. C. P. 462, *Macaulay*, C. J., held, that on reference to 13 & 14 Vic. cap. 53, sec. 107, 14 & 15 Vic. cap. 54, sec. 5, and 16 Vic. cap. 177, sec. 14, he thought the bailiff entitled to notice, and that the objection was open to him on the plea of not guilty *per stat.* The first of these three acts is the Division Courts Act, the second is the act for the protection of magistrates and others, and the third is the Division Courts Extension Act. In *Anderson* v. *Grace*, 17 U. C. Q. B. 96, the Chief Justice says, it is the act of 14 & 15 Vic. that must govern, because the previous enactments giving protection are repealed by that act. But the Con. Stat. U. C. cap. 19, secs. 193, 194, provide expressly for notice and limitation

CXCIV. If tender (*u*) of sufficient amends be made before action brought, or if the defendant after action brought, pays a sufficient sum of money into court with costs, the plaintiff shall not recover, and in any such action (*v*) the defendant may plead the general issue (*w*), and give any special matter in evidence under that plea (*x*). 13, 14 V. c. 53, s. 107. Defendant may tender amends and plead the general issue, &c.

---

of action for anything done under that act; and though the enactments of 14 & 15 Vic. are re-enacted by Con. Stat. U. C. cap. 126, it appears to me we cannot hold that the latter chapter was intended to overrule or vary the provisions of chapter 19 of the same statute, but that they were establishing rules for distinct cases. I think, therefore, that the clerk in this case having been served with a notice of action, such as chapter 19 requires, cannot successfully object to the want of additional formalities which chapter 126 requires."

If the notice volunteers information which is incorrect, it will be bad. In *Buck* v. *Hunter*, 20 U. C. Q. B. 486, *Robinson*, C. J., says, "If this notice had given no information whatever in regard to the court in which the action would be brought [necessary under chapter 126], there would be less difficulty in holding it to be sufficient, though it is usual in all these notices to state the court in which the plaintiff intends to sue. But here the plaintiff has given incorrect information on a point on which the statute does not expressly require that he should have given any, and we cannot say that we think the learned judge was wrong in holding it bad on account of its tendency to mislead."

A notice of action stated a trespass on the 18th of October and on divers other days. The goods were seized on the 18th October, but returned and again seized on the 18th November and sold. The notice was held sufficient. (*Oliphant* v. *Leslie*, 24 U. C. Q. B. 398.)

(*u*) See note (*o*) to section 87.

(*v*) The words "any such action," have been judicially interpreted to mean *any* action, and not only an action in which a tender or payment into court has been made, and they are to be read as a separate member of the section. By this construction the original intention of the act (sec. 107 of 13 & 14 Vic. cap. 53, which is now divided into sections 193 and 194) is preserved and is made reconcilable with the "Vexatious actions" act and with itself. (*Pearson* v. *Ruttan et al.*, 15 U. C. C. P. 79; 1 L. C. G. 26.)

(*w*) That is, put in a general denial or statement that he is not guilty.

A bailiff intending to avail himself of the privileges of this section in an action brought against him in a Division Court, should, if acting on his own behalf, give the notice of defence under section 93, taking form 9 as a guide. If the action is brought in a County Court or one of the Superior Courts, he will, of course, place his defence in the hands of a lawyer.

(*x*) If the action be brought in a Division Court the benefits of this section would practically amount to nothing, but if brought in any of the Superior Courts

And see the act to protect justices of the peace and other officers from vexatious actions (*y*).

PROTECTION OF BAILIFF—COPY OF WARRANT, &c.

Demand of perusal and copy of warrant to be made before action.

CXCV. No action shall be brought against the bailiff of a Division Court, or against any person acting by his order and in his aid, for any thing done in obedience to any warrant under the hand of the clerk and seal of the court (*z*), until a written demand, signed by the person intending to bring the action, of the perusal, and a copy of such warrant has by such person, his attorney or agent, been served upon, or left at the residence of such bailiff, and the perusal and copy have been neglected or refused for the space of six days after such demand. 16 V. c. 177, s. 14.

Bailiff entitled to verdict on production of warrant.

CXCVI. In case, after such demand and compliance therewith by shewing the warrant to, and permitting a copy thereof to be taken by the party demanding the same, an action be brought against

---

where pleadings are necessary the advantages thus given to the defendant are very considerable.

It was doubted in *Pearson* v. *Ruttan et al.*, *ante*, whether sureties can in a joint action against the bailiff and themselves take advantage of want of notice of action to the bailiff or to themselves, or of any other defence given by statute for the protection of the former. But in a joint action against the bailiff as principal and his sureties. the recovery must be against all or none—the discharge of the principal involving that of the sureties.

(*y*) Con. Stat. U. C. cap. 126.

(*z*) The enactment is only intended for the protection of bailiffs, or persons acting by their orders or in their aid; it does not therefore extend to constables executing warrants of attachment issued by a magistrate, nor to constables enforcing a magistrate's warrant for any penalty made recoverable before him under the Division Courts Act. (*Gray* v. *McCarty*, 22 U. C. Q. B. 568.)

Nor does the provision apply in actions against a bailiff where the wrong complained of is the misconduct of such officer and not anything illegal in the writ itself or in the act of granting it. (*Sayers* v. *Findlay*, 12 U. C. Q. B. 155; *Oliphant* v. *Leslie et al.* 24 U. C. Q. B. 398.)

Although it has been held that a bailiff acting in obedience to a warrant, without a seal, can claim notice of action (*Anderson* v. *Grace et al.*, 17 U. C. Q. B. 96), yet it will be observed that *this* section expressly refers to the warrant being under the hand of the clerk and the seal of the court, and a bailiff could not justify under the following sections unless the warrant was so signed and sealed.

such bailiff or other person who acted in his aid for any such cause without making the clerk of the court who signed or sealed the warrant a defendant, then on producing or proving such warrant at the trial, the jury shall give their verdict for the defendant, notwithstanding any defect of jurisdiction or other irregularity in or appearing by the warrant. 16 V. c. 111, s. 14.

If clerk and bailiff joint defendants, bailiff entitled to verdict on producing warrant, and what costs plaintiffs entitled to.

CXCVII. If an action be brought jointly against such clerk and bailiff, or the person who acted in his aid, then on proof of the warrant, the jury shall find for the bailiff or the person who so acted, notwithstanding such defect or irregularity as aforesaid; and if a verdict be given against the clerk, the plaintiff shall recover his costs against him, to be taxed by the proper officer in such manner as to include the costs which the plaintiff is liable to pay to the defendant for whom a verdict has been found. 16 V. c. 111, s. 14.

Defendant may plead general issue and give the act in evidence.

CXCVIII. In any such action the defendant may plead the general issue, and give the special matter in evidence at any trial to be had thereon (*a*). 16 V. c. 111, s. 14.

ABSCONDING DEBTORS.

Absconding debtors.

CXCIX. In case any person, being indebted in a sum not exceeding one hundred dollars, nor less than four dollars, for any debt or damages arising upon any contract, express or implied (*b*), or upon any judgment, 1. Absconds from this Province, leaving personal property liable to seizure under execution for debt (*c*) in any county in Upper Canada; or 2. Attempts to remove such personal property, either out of Upper Canada or from one county to another therein; or 3. Keeps concealed in any County of Upper Canada to avoid service of process; and in case any creditor of such person, his servant or

(*a*) See sec. 194, notes (*w*), (*x*).

(*b*) See note to form 3 for concise statements of various claims on contracts.

(*c*) See section 151, note (*b*), as to what goods are covered by these words.

agent makes and produces an affidavit or affirmation to the purport of the form prescribed by any rule respecting the practice and proceedings of the Division Courts (*d*), (and the clerk of any Division Court of the county wherein the debtor was last domiciled, or where the debt was contracted, may administer such affidavit or affirmation (*e*),) and in case the said affidavit or affirmation be filed with such clerk, then such clerk, upon the application of such creditor, his servant or agent, shall issue a warrant under the hand and seal of such clerk, in the form C. directed to the bailiff of the Division Court within whose division the same is issued, or to any constable of the county, commanding such bailiff or constable to attach, seize, take and safely keep all the personal estate and effects of the absconding, removing or concealed person within such county, liable to seizure under execution for debt (*f*), or a sufficient portion thereof, to secure the sum mentioned in the warrant (*g*), with the costs of the action, and to return

(*d*) Rule 24 directs that this form shall be according to No. 22 in the schedule.

The affidavit must not be in the alternative, and must comply with the form. In *Quackenbush et al.* v. *Snider*, 13 U. C. C. P. 201, the affidavit, after stating the indebtedness, further stated that the defendant had good reason to believe, &c., that the said debtors had absconded from the Province of Canada with intent and design to defraud him of said debt; *or* that the debtors were about to abscond from said Province; *or* leave the county of, &c., with intent, &c., taking away personal property liable to seizure under execution for debt; *or* that the said debtors *were concealed* within the county of, &c., to avoid being served with process, with intent, &c. *Draper*, C. J., said that the affidavit did not contain any one of the three alternatives contained in the statute. "The last alternative is the one most nearly approached; but there is an obvious difference between *keeping* concealed and simply *being* concealed, which might be on a single occasion to avoid being served with process."

The form (No. 22) directs that the character in which a party sues, as executor or the like, must be stated in the affidavit; and for forms as to this see note to above form *post*.

(*e*) See forms 7 (a), &c., for affirmations by Quakers, &c., and special jurats.

(*f*) See section 151, note (*b*).

(*g*) "All the personal estate, &c., or a sufficient portion thereof to secure the sum, &c.," appears to be a clumsy way of saying that the bailiff is to seize enough goods to satisfy the debt and costs, or if there are not enough for that purpose, then all. It can scarcely mean that the bailiff is to seize *all* the debtors goods liable to seizure,

the warrant forthwith to the court out of which the same issued. 13, 14 V. c. 53, s. 64.

When justice of the peace may issue attachments, &c.

CC. The judge, or a justice of the peace for the county (*h*), may take the affidavit in the last preceding section mentioned, and upon the same being filed with such judge or justice, the judge or justice may issue a warrant under his hand and seal in the form C., and such judge or justice shall forthwith transmit the affidavit to the clerk of the Division Court within whose division the same was made or taken, to be by him filed and kept among the papers in the cause. 13, 14 V. c. 53, s. 64.

Bailiff or constable to seize and make inventory.

CCI. Upon receipt of such warrant by the bailiff or constable, and upon being paid his lawful fees, including the fees of appraisement, such bailiff or constable shall forthwith execute the warrant, and make a true inventory (*i*) of all the estate and effects which he seizes and takes by virtue thereof, and shall within twenty-four hours after seizure, call to his aid two freeholders, who being first sworn by him to appraise the personal estate and effects so seized (*j*), shall then appraise the same, and forth-

---

whether or not such seizure be largely in excess of what would be a "sufficient sum." But though this is the apparent meaning of the words used, it cannot be denied that this reading leads to many difficulties which would have been obviated (at least if the debtor had *absconded*) by authorising the bailiff to attach *all* the property. See secs. 204 & 207 and notes.

(*h*) After the decision in *Gray* v. *McCarty et al.*, 22 U. C. Q. B. 568, creditors will not willingly intstitute proceedings before a magistrate, and magistrates on their part will be chary of acting under this section. In the case referred to, the defendant M. at the request of defendant W., gave a warrant to defendant K. to attach the goods of the plaintiff, but through some neglect or ignorance the necessary affidavit was not made and filed. Upon this warrant some goods of the plaintiff's were seized. On action brought, the court considered that all the defendants were liable; and that as the affidavit was not made and filed, the magistrate, as well as the attaching creditor, was a trespasser. An application to the clerk of a Division Court, who would have known what was necessary, would have saved all this loss.

(*i*) See form 20 (a).

(*j*) See form 20 (b), for a form of the oath to be administered by the bailiff, who should endorse a memorandum thereof on the inventory, after the appraisers have done their duty. The appraisement must be in writing, similar to form 20 (c), and attached to inventory. See tariff of fees.

with return the inventory attached to such appraisement to the clerk of the court in which the warrant is made returnable. 13, 14 V. c. 53, s. 64.

Proceedings may be continued in court out of which attachment issued.

CCII. In any case commenced by attachment, in a Division Court, the proceedings may be conducted to judgment and execution in the Division Court of the division within which the warrant of attachment issued. 13, 14 V. c. 53, s. 64.

Proceedings commenced before attachment to continue.

CCIII. When proceedings have been commenced in any case before the issue of an attachment such proceedings may be continued to judgment and execution in the Division Court within which the proceedings were commenced. 13, 14 V. c. 53, s. 64.

Property attached may be sold under execution.

CCIV. The property seized upon any warrant of attachment shall be liable to seizure and sale under the execution to be issued upon the judgment, or in case such property was perishable, and has been sold, the proceeds thereof shall be applied in satisfaction of the judgment (*k*). 13, 14 V. c. 53, s. 64.

(*k*) Cases of several attachments are provided for by sections 206 and 207, but there is no express provision for any conflict between attaching and non-attaching creditors of the defendant.

There can be no question but that an execution issued on a judgment obtained in the ordinary manner, and placed in the bailiff's hands, before an attachment from a Division Court, and necessarily, therefore, before an execution to be obtained in such attachment suit, has the priority.

And, further than this, it seems to be the more general opinion, and that acted upon by the majority of the County judges, that, although the debtor's goods are seized under an attachment, they are nevertheless liable to the execution of any creditor who may obtain a judgment, and deliver the execution issued thereupon to the bailiff before judgment is obtained and execution issued by the attaching creditor. The case principally relied on in support of this view is that of *Francis* v. *Brown*, 11 U.C. Q. B. 588; 1 U. C. L. J. 225, in which the above rule was laid down, but with this difference—that there, the execution of the non-attaching creditor was issued from a Superior Court.

If such be the rule respecting executions from Superior Courts, there would seem to be no reason, particularly looking at the broad ground taken in the judgment in *Francis* v. *Brown*, why it should not likewise be applicable to executions from Division Courts.

Proceedings by attachment are either to compel the appearance of, or rather to effect service upon a defendant, or to obtain security to the plaintiff for his claim; in neither case, it is argued, would it be reasonable, that by taking a step for such a purpose a creditor

CCV. No plaintiff shall divide any cause of action into two or more suits for the purpose of bringing the same within the provision of the preceding sections, but any plaintiff having a cause of action above

Plaintiff not to divide cause of action.

---

should obtain a priority over another creditor who commenced proceedings before him, such proceedings being finally carried to judgment and execution.

Again, section 211 provides, that an execution shall forthwith issue upon a judgment obtained in a suit, wherein the summons was personally served before the seizure of any property under *any* warrant of attachment, that is any warrant in some suit other than that in which the summons was personally served, (if such be the meaning of the section). If this is not intended to give the plaintiff who had commenced his proceedings by personal service the advantage of priority of execution, what is the object of the provision that the execution should issue forthwith. The rule,—that laid down in *Francis* v. *Brown*,—appears to be, *qui prior est in tempore, potior est in jure.*

On the other hand, it is urged with much force, that carrying out this doctrine to its full extent would work great hardship and injustice to attaching creditors; and it is argued in this way:

Where proceedings are commenced by an attachment obtained on the ground that the defendant is removing goods out of Upper Canada, or from one county to another, to defraud his creditors, another creditor may commence proceedings and serve the defendant with process personally, immediately upon the seizure of the property under the attachment, and ten days only before the sitting of the next court for the division. This creditor so effecting personal service may thus obtain judgment and execution two months in advance of the attaching creditor — unless the attaching creditor succeeds also in effecting personal service of his summons.

Again, it may happen, it is urged, that several of a number of attaching creditors might be unable to prove their claims, as required by law, at the first court, and an adjournment be obtained until a following court. Executions would issue on the judgments in favour of some of the attaching creditors, and property might be sold to realize the full amount of such execution, but the judge might direct that no distribution should be made until the other creditors, the plaintiffs in the adjourned attachment suits, had an opportunity of obtaining judgment at the following court. In the meantime, other creditors at that court might obtain judgments in suits where the summons had been personally served, and if the executions on such judgments were allowed to attach upon the property in custody of the clerk under the attachment, the attachment creditors would be deprived of the benefit of the security obtained by their proceedings, and instead of saving the property for themselves, they would merely have benefited a party who did not move in the matter until the property was in the hands of the law.

If the ground upon which an attachment could be obtained in the Division Courts was only because the defendant had absconded, so that personal service could not be

the value of one hundred dollars, and not exceeding two hundred dollars, for which an attachment might be issued if the same were not above the value of one hundred dollars may abandon the excess, and upon proving his case, may recover to an amount not

effected after the issue of an attachment, no conflict could arise, and all creditors wishing to obtain anything from the debtor's property would have to proceed by attachment under sec. 207 in order to obtain judgment and execution to be entitled to rate.

It is also objected that there is a much stronger reason than the supposed equities of the case for thinking that attaching creditors have priority, and that the principle to be applied is that the goods when once attached and handed over to the Clerk are in the custody of the law and are not therefore liable to seizure under execution. It is contended that there is nothing in the act to interfere with this principle, in fact that sections 199, 204 & 211 all uphold it. Sec. 199 only authorizes the bailiff to seize sufficient goods to cover the debt and costs mentioned in the warrant delivered to him in a particular suit, and not all the goods of the debtor as in the Superior Courts, expressly for the security of all his creditors (note *g*). If the principle referred to does not govern where is the sense of enacting, as an apparent exception to the general rule, that property seized under an attachment may be seized or sold under an execution to be issued in such attachment suit. But this section says nothing about *any other* execution. The rights of a judgment creditor who has commenced his suit and served his summons personally upon the defendant before the seizure of any of his property under an attachment are referred to sec. 211, and it is provided that his suit shall proceed as if no attachment had issued, and that he shall have execution forthwith on his judgment. If it was intended that other creditors should be able to acquire an advantage by obtaining judgment on a personal service after the seizure of property under an attachment, it would have been provided for.

The silence of the act respecting the rights of judgment creditors in the Superior Courts was held not to deprive them of their rights to priority. When in a Division Court attaching creditors obtain by means of such attachments a security for their debts—the property being held in the custody of the law for that purpose—unless the rights of others are provided for, where their claims conflict, the security provided to attaching creditors by the act must be upheld against the claims of others whose rights are not provided for or referred to.

It is also thought by some that after a seizure has been made under an attachment, the non-attaching creditor ought not, unless he should have had already commenced his proceedings by personal service, gain any advantage over the attaching creditor by subsequently effecting personal service.

The matter is one of considerable difficulty, and whichever may be the better opinion on these points it is quite evident that the Legislature has carefully abstained from throwing any unnecessary light on the subject.

exceeding one hundred dollars (*l*), and the judgment of the court in such case shall be in full discharge of all demands in respect of such cause of action, (*m*) and the entry of judgment therein shall be made accordingly (*n*). 13. 14 V. c. 53, s. 64,—*See* s. 26.

If several attachments issued.

CCVI. In case several attachments issue against any party, then, subject to the provisions contained in the seventeenth section of the act respecting absconding debtors, (*o*) the proceeds of the goods and chat-

---

(*l*) See section 59 and notes.

The reference to sec. 26 means sec. 26 of 13 & 14 Vic. cap. 53.

(*m*) See section 60.

(*n*) See form No. 17.

(*o*) Con. Stat. U. C. cap. 25. The section provides, that if a sheriff to whom a writ of attachment has been delivered for execution, finds any property or effects which have been sold as perishable belonging to the absconding debtor in the hands or custody of any constable, clerk or bailiff, under a warrant of attachment from a Division Court, the sheriff shall demand and take from such bailiff, &c., all such property or proceeds thereof, which such bailiff, &c., is bound to deliver to the sheriff upon demand by him, and notice of the writ of attachment, under a penalty of forfeiting double the value of the amount thereof, to be recovered by such sheriff with costs of sale, and to be by him accounted for, after deducting his costs, as part of the property of the debtor; but the creditor who has taken out such warrant of attachment may proceed to judgment against the debtor in the Division Court, and on obtaining judgment and serving a memorandum of the amount thereof and of the costs, to be certified under the hand of the clerk, every such creditor shall be entitled to satisfaction in like manner as, and in ratable proportion with the other creditors who obtain judgment, as mentioned in section 29, which enacts, that the property in the sheriff's hands shall be ratably distributed among each of the plaintiffs in such writs as obtain judgment and sue out execution, in proportion to the sums actually due upon such judgments, and the court or a judge may delay distribution in order to give a reasonable time for obtaining judgment.

Section 30 further enacts, that every creditor who produces a certified memorandum from the clerk of any Division Court of his judgment, shall be considered a plaintiff in a writ of attachment who has obtained judgment and sued out execution, and shall be entitled to share accordingly.

In case the property is insufficient to pay all the creditors, section 31 provides that none shall be allowed to share unless their writs or warrants of attachment, as the case may be, were issued and delivered to the sheriff, or bailiff, or constable, as the case may be, for execution, within six months from the date of the first writ of attachment.

The enactments in the Absconding Debtors' Act that have been referred to are intended to provide for cases where writs have been

tels attached shall not be paid over to the attaching creditor or creditors according to priority, but shall be ratably distributed among such of the creditors suing out such attachments as obtain judgment against the debtor, in proportion to the amount really due upon such judgments, and no distribution shall take place until reasonable time, in the opinion of the judge, has been allowed to the several creditors to proceed to judgment. 13, 14 V. c. 53, s. 65.

If goods insufficient.

CCVII. When the goods and chattels are insufficient to satisfy the claims of all the attaching creditors, no such creditor shall be allowed to share, unless he sued out his attachment, and within one month next after the issue of the first attachment, gave notice thereof to the clerk of the court out of which the first attachment issued, or in which it was made returnable (*p*). 13, 14 V. c. 63, s. 65.

Clerk to take charge of goods attached.

CCVIII. All property seized under the provisions of the preceding sections, shall be forthwith handed over to the custody and possession of the clerk of the court out of which the warrant of attachment issued, or into which it was made returnable, and such clerk shall take the same into his charge and keeping (*q*) and shall be allowed all necessary disbursements for keeping the same. 13, 14 V. c. 53, s. 66.

On what terms goods attached may be restored.

CCIX. In case any person against whose estate or effects any such attachment has issued, or any person on his behalf, at any time prior to the recovery of

---

issued from both Superior Courts *and* Division Courts; but the provisions of the Division Courts Act only to cases of attachments from such courts. See note to sec. 204.

(*p*) If the bailiff seize "sufficient" goods to satisfy the warrant in his hands, and subsequently other attachments come in, but in the meantime the rest of the debtor's goods are not to be found; are these latter creditors entitled to share in the goods seized under first warrant? See note to section 204.

(*q*) The goods so in the possession of the clerk are in custody of the law, and the clerk would not be liable in an action of trespass, trover or detinue. (*Verrall* v. *Robinson*, 2 C. M. & R. 495; *Clark* v. *Orr*, 11 U. C. Q. B. 436; *Caron* v. *Graham*, 18 U. C. Q. B. 315.) It was also debated in the last case whether replevin would lie; but as to this now see sec. 8 of 23

judgment in the cause, executes and tenders to the creditor who sued out the attachment, and files in the court to which the attachment has been returned, a bond (*r*) with good and sufficient sureties, to be approved of by the judge or clerk, binding the obligors, jointly and severally, in double the amount claimed, with condition that the debtor (naming him) will, in the event of the claim being proved and judgment recovered thereon, as in other cases where proceedings have been commenced against the person, pay the same or the value of the property so taken and seized, to the claimant or claimants, or produce such property whenever thereunto required to satisfy such judgment, such clerk may supersede the attachment, and the property attached shall then be restored. 13, 14 V. c. 53, s. 67.

If the debtor does not appear.

CCX. If within one month from the seizure as aforesaid, the party against whom the attachment issued, or some one on his behalf, does not appear and give such bond, execution may issue as soon as judgment has been obtained upon the claim or claims, and the property seized upon the attachment or attachments, or enough thereof to satisfy the judgment and costs, may be sold for the satisfaction thereof, according to law, or if the property has been previously sold as perishable under the provisions hereinafter made, enough of the proceeds thereof may be applied to satisfy the judgment and costs. 13, 14 V. c. 53, s. 68.

If summoned personally.

CCXI. When the property of any person has been seized under any warrant of attachment as aforesaid, and a summons has been personally served on such person before seizure, (*s*) then the trial of the cause shall be proceeded with, as if no such warrant of attachment had been issued, and after judgment execution shall forthwith issue, unless otherwise ordered by the judge. 13, 14 V. c. 53, s. 68.

Vic. cap. 45, hereafter given. Would this latter provision apply to property handed over to the clerk under the above section?

(*r*) See form 24.

(*s*) Rule 25 provides for cases where the summons is not personally served. See note to sec. 204.

Proceedings against debtors to the party who absconded (t)

CCXII. Subject to the provisions contained in the fifteenth and seventeenth sections of the act respecting absconding debtors, in order to proceed in the recovery of any debt due by the person against whose property an attachment issues, where process has not been previously served, the same may be served either personally or by leaving a copy at the last place of abode, trade or dealing of the defendant with any person there dwelling, or by leaving the same at the said dwelling, if no person be there found; and in every case, all subsequent proceedings may be conducted according to the usual course of practice in the Division Courts; and if it appears to the satisfaction of the judge on the trial, upon affidavit, or other sufficient proof, that the creditor who sued out an attachment, had not reasonable or probable cause for taking such proceedings, the judge shall order that no costs be allowed to such creditor or plaintiff, and no costs in such case shall be recovered in the cause. 13, 14. V. c. 53, s. 69.

Perishable goods, how disposed of.

CCXIII. Subject to the provisions contained in the fifteenth and seventeenth sections of the act respecting absconding debtors, in case any horses, cattle, sheep or other perishable goods have been taken upon an attachment, the clerk of the court who has the custody or keeping thereof (the same having been first appraised) in the manner in the two hundred and first section of this act mentioned, may, at the request of the plaintiff who sued out the warrant of attachment, expose and sell the same at public auction, to the highest bidder, giving at least eight days' notice at the office of the said court, and at two other public places within his division, of the time and place of such sale, if the articles so seized will admit of being so long kept, otherwise he may sell the same at his discretion. 13, 14 V. c. 53, s. 70.

Creditors to give bond to indemnify officer, and to be filed.

CCXIV. It shall not be compulsory upon the bailiff or constable to seize, or upon the clerk to sell such perishable goods, until the party who sued out

(t) This marginal note is incorrect. The last five words should be struck out.

he warrant of attachment has given a bond (*u*) to he defendant therein, with good and sufficient sure-ies in double the amount of the appraised value of uch goods, conditioned that the party directing such eizure and sale will repay the value thereof, together ith all costs and damages incurred in consequence f such seizure and sale, in case judgment be not btained for the party who sued out such attachment, nd the bond shall be filed with the papers in the ause. 13, 14 V. c. 53, s. 70.

Residue how disposed of.

CCXV. The residue, after satisfying such judg-ents as aforesaid, with the costs thereupon, shall e delivered to the defendant or his agent, or to any erson in whose custody the goods were found, hereupon the responsibility of the clerk, as respects uch property, shall cease. 13, 14 V. c. 53, s. 71.

May be sued in the Division Court.

CCXVI. Any bond given in the course of any roceedings under this act, may be sued in any Divi-ion Court of the county wherein the same was xecuted, and proceedings may be thereupon carried n to judgment and execution in such court, not-withstanding the penalty contained in such bond may xceed the sum of one hundred dollars. 13, 14 V. . 43, s. 70.

Judge may deliver up.

CCXVII. Every such bond shall be delivered up o the party entitled to the same, by the order and t the discretion of the judge of such court, to be nforced or cancelled, as the case may require. 13, 4 V. c. 53, s. 70.

PENDING PROCEEDINGS CONTINUED.

Pending proceedings provided for.

CCXVIII. All proceedings, commenced before his act takes effect, shall be valid to all intents and urposes, and may be continued, executed and en-orced under this act against all persons liable thereto, n the same manner as if the same had been com-menced under the authority of this act. 13, 14 V. c. 53, s. 112; 16 V. c. 177, s. 32.

(*u*) See form 23.

SHORT TITLE OF THIS ACT.

Short title of act.

CCXIX. In citing, pleading or otherwise referring to this act, and any other acts hereafter passed respecting the said Division Courts, it shall be sufficient to use the expression "The Division Courts Act," or words of equivalent import, which words shall be understood to include and refer to such and so much of the said act or acts, as may be then in force touching or concerning, or in any wise relating to such courts. 16 V. c. 177, s. 32.

CCXX. The following are the forms and table of fees referred to in the foregoing sections:

FORM A. (*See sec.* 25.)

COVENANT BY CLERK OR BAILIFF.

Know all men by these presents, that we J. B., clerk (*or* bailiff, *as the case may be*) of the [——] Division Court in the County of ———, S. S., of ——, in the said County of ———, (*Esquire*), and P. M,, of ——, in the said County of ———, (*Gentleman*) ———, do hereby jointly and severally for ourselves, and for each of our heirs, executors and administrators, covenant and promise that J. B., clerk (*or* bailiff) of the said Division Court (*as the case may be*), shall duly pay over to such person or persons entitled to the same, all such moneys as he shall receive by virtue of the said office of clerk (*or* bailiff, *as the case may be*), and shall and will well and faithfully do and perform the duties imposed upon him as such clerk (*or* bailiff) by law, and shall not misconduct himself in the said office to the damage of any person being a party in any legal proceeding: nevertheless, it is hereby declared that no greater sum shall be recovered under this covenant against the several parties hereto than as follows, that is to say:

Against the said J. B. in the whole..... $ —
Against the said S. S. ..... —
Against the said P. M..... —

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

Signed, sealed and delivered, in the presence of

B. (*See sec.* 49.)

TABLE OF FEES.

FEE FUND (*v*).	Not exceeding $8.	Exceeding $8, and not exceeding $20.	Exceeding $20, and not exceeding $40.	Exceeding $40, and not exceeding $60.	Exceeding $60.
	$ c.	$ c.	$ c.	$ c.	$ c.
Entering account and issuing summons	0 10	0 10	0 30	0 40	0 60
Hearing an undefended cause ..	0 10	0 20	0 30	0 60	0 60
Hearing a defended cause to be increased by the judge, if he sees fit, to a sum not exceeding two dollars, whatever be the amount of the debt, damages, or subject matter of action. 16 V. c. 177, s. 3.....	0 20	0 40	0 80	1 00	1 50
Every order or judgment, (not to be charged when the defendant has given a confession of judgment,)	0 10	0 10	0 20	0 30	0 40
On every confession of judgment	0 10	0 10	0 10	0 10	0 10

(*v*) These fees have now to be paid by stamps under the provisions of the 27 & 28 Vic. cap. 5. These fees are slightly increased by section 21, which provides that all fees up to ten cents shall be made and paid at ten cents, all from twenty cents to thirty cents at thirty cents, and so on.

Parties entering suits are strictly speaking bound to furnish stamps to the clerk, but it is believed that clerks generally, for the convenience of suitors, and at no little trouble to themselves and without remuneration, keep themselves supplied with Fee Fund Stamps.

The provisions of the stamp act which in any way affect Division Courts are hereafter given.

TARIFF OF FEES—(*Continued.*)

Fees and Allowances to be received by Clerks of Division Courts (*w*).	Not exceeding $20.	Exceeding $20 and not $60.	Exceeding $60.
	$ c.	$ c.	$ c.
Entering every account and issuing summons	0 20	0 30	0 40
Copy of summons, particulars of demand or set-off, each	0 10	0 15	0 20
Every summons to witnesses with any number of names	0 10	0 10	0 10
Preparing affidavit, and administering oath to bailiff of service of summons	0 15	0 15	0 15*
Entering bailiff's returns to summons to defendant	0 05	0 05	0 05
Every copy of subpœna when made by the clerk	0 05	0 05	0 05
Entering set-off or other defence requiring notice to plaintiff	0 15	0 20	0 20
Adjournment of any cause	0 20	0 20	0 20
Entering every judgment or order made at hearing	0 15	0 20	0 25
Taking confession of judgment	0 15	0 15	0 15
Every warrant, attachment or execution	0 25	0 30	0 40
Every copy of judgment to another county	0 25	0 25	0 25
Entering and giving notice of jury being required	0 20	0 25	0 30
Making out summons to jury, for each juryman	0 10	0 10	0 10
For every affidavit taken and drawing the same	0 20	0 20	0 20
Returns to treasurer, to be paid out of the Fee Fund, including attendance on judge to audit the same, each, and to be retained from the Fee Fund in his hands (*x*)	4 00	4 00	4 00
Every search on behalf of a person not a party to a suit, to be paid by the applicant	0 10	0 10	0 10

* 16 V. c. 177, s. 11.

(*w*) These fees, and those payable to bailiffs, &c., which do not go to the government, are payable in money as heretofore.

(*x*) This fee is owing to the introduction of stamps, now lost to the clerks.

TARIFF OF FEES—*Continued.*

Fees and Allowances to be received by by Clerks—*Continued.*	Not exceeding $20.	Exceeding $20 and not $60.	Exceeding $60.
	$ c.	$ c.	$ c.
Every search for a party to a suit when the proceedings are over a year old....	0 10	0 10	0 10
Transmitting papers for service to another county or division, in addition to the necessary postage on transmission and return	0 20	0 20	0 20
Receiving papers from another county or division for service, entering same in a book, handing the same to the bailiff, and receiving his return, to be paid when the claim is filed or defence entered ...	0 20	0 20	0 20
For returning a judge's jury.....	0 25	0 25	0 25*

* 16 Vic. cap. 177, sec. 11.

The Bailiff's Fees.	Not exceeding $8.	Exceeding $8, and not exceeding $20.	Exceeding $20, and not exceeding $40.	Exceeding $40, and not exceeding $60.	Exceeding $60.
Service of summons, or other proceeding, except subpœna, on each person	$0 07§	$0 10	$0 15	$0 15	0 20
Service of subpœna on each witness	0 07§	0 07§	0 07§	0 07§	0 07§
For taking confession of judgment.....	0 07§	0 10	0 10	0 15	0 20
Drawing and attending to swear to every affidavit of service of summons, when served out of the division	0 20	0 20	0 20	0 20	0 20
Enforcing every warrant, execution or attachment, against the goods or body	0 30	0 30	0 40	0 60	0 75

§ Note.—In the repealed Tariff the item is 4*d.* equal to 6⅔ cts., but rendered 7 cts. to avoid the fraction.

TARIFF OF FEES—(*Continued.*)

THE BAILIFF'S FEES.	Not exceeding $8.	Exceeding $8, and not exceeding $20.	Exceeding $20, and not exceeding $40.	Exceeding $40, and not exceeding $60.	Exceeding $60.
For every mile necessarily travelled from the clerk's office, to serve summons or subpœna, and in going to seize on execution or attachment where money made or case settled after the levy.....	$0 08	$0 08	$0 08	$0 08	$0 08*
For every jury trial.....	.....	0 10	0 15	0 20	0 30
For carrying delinquent to prison, including all expenses and assistance, per mile, 20 cts.					
Every schedule of property seized, return, including affidavit of appraisal ...	.....	0 50	0 50	0 50	1 00
Every bond, including affidavit of justification....	.....	0 50	0 50	0 50	
Every notice of sale not exceeding three, under execution, on attachm't, 10 cts. each.					
That there be allowed to the bailiff upon the sale of property under any execution, the sum of two and a half per cent upon the amount realized, and not to apply to any overplus on the said execution.					
JURORS' FEES.					
Each juror sworn in any cause, out of the money deposited with the clerk for jurors' fees	.....	0 10	0 10	0 10	0 10†

* 18 V. c. 125, s. 5.

† 13, 14 V. c. 53, s. 36.

TARIFE OF FEES—(*Continued.*)

FEES OF APPRAISERS OF GOODS, &c., SEIZED UNDER WARRANT OF ATTACHMENT.

To each appraiser, 50 cts. per day during the time actually employed in appraising goods, to be paid in first instance by plaintiff, and allowed in costs of the cause, 50 cts‡

‡ 13, 14 V. c. 53, s. 64.

C. (*See sec.* 199.)

County of ——, }
(*here insert the county.*) }

To A. B., bailiff of the —— Division Court of the said county of —— (*or* to A. B., a constable of the county of ——, *as the case may be*).

You are hereby commanded to attach, seize, take and safely keep all the personal estate and effects (*y*) of C. D., (*naming the debtor,*) an absconding, removing or concealed debtor, of what nature or kind soever, liable to seizure under execution for debt within the county of (*here name the county*) or a sufficient portion thereof to secure A. B. (*here name the creditor*) for the sum of (*here state the amount sworn to be due*), together with the costs of his suit thereupon, and to return this warrant with what you shall have taken thereupon, to the clerk of the (*here state the number of the division*) Division Court of the county aforesaid forthwith: and herein fail not.

Witness my hand and seal, the —— day of ——, one thousand eight hundred and ——.

E. F. [L. S.]

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

(*y*) See sec. 151, note (*b*), as to what goods are covered by these words.

GENE

AS FRAMED AND
CONFIRMED B
TING THE PR
UPPER CANA

[NOTE.—The f
may be), are no
the judges.

The marginal
in *italics*, are also

Whereas by
sion Act of 18
for the Gover
authorise five
Canada, to fra
expedient, for
the courts hold
Division Court
process of such
of the said la
Division Court
thereafter pass
or might have
Courts, or as
and also to fra
should think i
that all such
certified to th
hands of the
of any three o
tice, submitted
mon Law at
Judges of the
tice, or the C
Toronto shoul

GENERAL RULES AND FORMS

AS FRAMED AND APPROVED PURSUANT TO 16 VIC. CAP. 177, SEC. 19, AND CONFIRMED BY SECTIONS 2 AND 70 OF 22 VIC. CAP. 19, FOR REGULATING THE PRACTICE AND PROCEDURE OF THE DIVISION COURTS FOR UPPER CANADA.

[NOTE.—The forms distinguished thus, *13 (a), *68 (b) (*as the case may be*), are not given in the Schedule of Forms as approved by the judges.

The marginal references to the rules and forms, which are printed in *italics*, are also original.]

Whereas by "The Upper Canada Division Courts Extension Act of 1853," it was enacted, That it should be lawful for the Governor General of this Province to appoint and authorise five of the Judges of the County Courts, in Upper Canada, to frame such general rules as to them should seem expedient, for and concerning the practice and proceedings of the courts holden under the authority of "The Upper Canada Division Courts Act of 1850," and for the execution of the process of such courts, and in relation to any of the provisions of the said last mentioned act, or of "The Upper Canada Division Courts Extension Act of 1853," or of any act to be thereafter passed, as to which there might have arisen doubts, or might have been conflicting decisions in the said Division Courts, or as to which there might thereafter arise doubts; and also to frame forms for every proceeding, for which they should think it necessary that a form should be provided: and that all such rules, orders and forms, as aforesaid, should be certified to the Chief Justice of Upper Canada, under the hands of the County Judges so appointed and authorised, or of any three of them; and should be, by the said Chief Justice, submitted to the judges of the Superior Courts of Common Law at Toronto, or any four of them; and that such Judges of the Superior Courts (of whom the said Chief Justice, or the Chief Justice of the Court of Common Pleas at Toronto should be one) might approve or disallow, or alter or

amend such rules or orders; and such of the rules as should be so approved by such Judges of the Superior Courts, should have the same force and effect, as if the same had been made and included in "The Upper Canada Division Courts Extension Act of 1853."

And whereas by virtue and in exercise of the power for that purpose given to the Governor of this Province by the said recited act, "The Upper Canada Division Courts Extension Act of 1853," The Honorable Samuel Bealey Harrison, Miles O'Reilly, Edward Clarke Campbell, George Malloch and James Robert Gowan (five of the Judges of the County Courts in Upper Canada), were on the twenty-fifth day of November, in the year of our Lord one thousand eight hundred and fifty-three, appointed by his Excellency the Administrator of the Government of this Province, to frame such general rules and orders as to them should seem expedient, for and concerning the practice and proceedings of the courts holden under the authority of the said Upper Canada Division Courts Act of 1850, and for the execution of the process of such courts, and in relation to any of the provisions of the said act of 1850, or of the above in part recited act, as to which there might have arisen doubts, or might have been conflicting decisions in the said Division Courts, or as to which there might thereafter arise doubts, and also to frame forms for every proceeding, for which they should think it necessary that a form should be provided.

In pursuance of the powers thereby vested in us, we, the said Samuel Bealey Harrison, Miles O'Reilly, Edward Clarke Campbell, George Malloch, and James Robert Gowan, have framed the following Rules, Orders, and Forms, and we do hereby certify the same to the Chief Justice of Upper Canada accordingly.

(Signed,) S. B. HARRISON,
M. O'REILLY,
E. C. CAMPBELL,
GEO. MALLOCH,
JAS. ROBT. GOWAN.

TORONTO, 28th June, 1854.

RULES.

TIME OF OPERATION.

1. All rules of practice and forms, now in force in the several counties respectively in Upper Canada, shall, from and after the rules and forms hereinafter set forth come into operation, cease to be used in the several Division Courts of Upper Canada; and, in lieu thereof, the following shall be the rules of practice and forms adopted and used in the said courts: and with reference to forms not continued in the schedule to these rules appended, where practicable, the forms prescribed in the said schedule shall be used as guides in framing the same, until forms shall be provided by the commission under the authority aforesaid.

2. It is ordered, that the following rules and forms shall come into operation, and be in force, upon, from and after the first day of October, 1854 (*a*).

CLERK'S DUTIES.

3. The clerk of every Division Court shall have an office at such place, within the division for which he is clerk, as the judge shall direct.

4. Two books (besides the account kept for the Fee Fund) (*b*) shall be kept by each clerk, and the necessary entries be fairly made therein, namely, a book to be called "the procedure book," in which shall be entered a note of all summonses issued, and of all orders, judgments, decrees, warrants, executions and returns thereto, and of all other proceedings in every cause, and at every court; and a book to be called the "cash book," in which shall be entered an account of all suitors' moneys paid into and out of court; which books shall be according to the forms given in the schedule to these rules appended, and kept, as nearly as may be, in the manner shown in the forms.

See No. 64 of schedule.

See No. 65 of schedule.

(*a*) See sections 2 and 70, and notes.

(*b*) See sec. 36 and note (*v*) to form B., page 111.

See No. 66 of schedule.

5. The returns required to be made by clerks under the 110th section of the "Upper Canada Division Courts Act of 1850," (*c*) shall be according to the form given in the schedule, and shall be made immediately after the 30th day of June, and 31st day of December, in each year, without any special order from the judge.

See No. 67 of schedule.

6. The list of unclaimed moneys required by the 13th section of the "Upper Canada Division Courts Extension Act of 1853" (*d*) shall be according to the form given in the schedule; and a copy thereof shall, in the month of January in each year, be transmitted by the clerk, together with the moneys therein mentioned, to the treasurer of the county.

See No. 68 of schedule.

7. The returns mentioned in the twelfth rule, shall be filed by the clerk in his office, and shall be open, without fee, to the inspection of any person interested, desirous of searching the same; and it shall be the duty of the clerk to examine such returns, and if found correct and complete, within ten days after the receipt thereof, to endorse thereon a memorandum in the following words:—"I have carefully examined the within return, and find the same to be full, true, and correct in every particular, to the best of my knowledge and belief. Dated the —— day of —— 18—, A. B., clerk." And if such returns be found by the clerk to be incorrect or incomplete, he shall forthwith notify the judge of the same, and of the particulars thereof.

8. The clerk shall number every demand, claim, or account, in the order in which it is received by him: the numbering to show the standing of the suit, in respect to the whole number of suits entered in the court for the then current year.

See No. 6 of schedule, also Rule No. 18.

9. The clerk shall annex to every summons (whether original, alias or pluries) the copy of account, demand or claim, entered with him according to the fourteenth rule; and to each copy of summons to be served, shall be likewise annexed a copy

(*c*) Sec. 41 of present act.

(*d*) Sec. 43 of present act.

of such account, demand or claim; and the clerk shall, without delay, issue the same for service (*e*).

10. Upon all warrants of commitment, the clerk of the court issuing the same shall indorse and show the amount of debt and costs, in gross, on each proceeding, or of fines and costs, up to the time of delivery to the bailiff for execution. See Nos. 56, 57 and 62 of schedule.

BAILIFF'S FEES.

11. Four days before the holding any court, the bailiff of that court shall deliver to the clerk a return of each summons issued or delivered to him, returnable at such court, and such return shall state the mode of service; and if a summons has not been served, the reason of such non-service shall be stated in writing on the back thereof (*f*).

12. Every bailiff, levying and receiving any money by virtue of any process, shall, within three days after the receipt thereof, pay over or transmit the same to the proper officer; and at every court, and at such other times as the judge shall require, the bailiff shall deliver to the clerk of the court a statement or return on oath, pursuant to the form in the schedule, of what shall have been done since his last return, under every warrant, precept and writ of execution, which he shall have been required to execute (*g*). See rule No. 7. See No. 68 of schedule.

15. The bailiff, or other officer, executing any warrant of commitment, shall, at the time of delivering the party arrested, with the warrant, to the jailor, indorse the number of miles, showing the amount of mileage, and also state, in writing, the actual day of the arrest.

DESCRIPTION OF PARTIES.

14. Every account, demand or claim, should show the names in full, and the present or last known

---

(*e*) See secs 35 & 74, and rules 15 & 18.

(*f*) See sec. 79.

(*g*) Besides this general return there should be a return endorsed upon each writ of *fieri facias*, stating what has been done under it—whether "money made," "no goods," &c., as the case may be. See forms Nos. 21 (a), 21 (b), 21 (c), 21 (d).

places of abode of the parties, and must be written in a legible manner, and delivered to the clerk, at his office; provided that if the plaintiff is unacquainted with the defendant's christian name, the defendant may be described by his surname, or by his surname and the initial of his christian name, or by such name as he is generally known by; and the defendant may be so described in the summons, and the same may be taken to be as valid, as if the true christian name and surname had been stated in the summons; and all subsequent proceedings thereon may be taken in conformity with such description; or, when the defendant's true name is discovered, the proceedings may be amended accordingly, on such terms as the judge may think fit and direct.

See No. 6 of schedule.

See amendments, commencing with rule No. 33.

PARTICULARS OF CLAIM.

15. The account, demand or claim shall, in every case admitting thereof, show the particulars in detail: and, in other cases, shall contain a statement of the particulars of the demand or claim, or the facts constituting the cause of action, in ordinary and concise language, and the sum or sums of money claimed in respect thereto (*h*) [*the forms in the schedule are given by way of illustration*]. Provided always, that, in all cases, the judge, in his discretion, and on such terms as he may think fit, may adjourn the hearing of the cause, for a statement of particulars, or further particulars.

See Nos. 3 & 4 of schedule.

16. In all actions in Division Courts against officers and their sureties (under the 22nd section of the "Upper Canada Division Courts Act of 1850,") (*i*) on the officer's *security covenant*, the particulars of the demand or claim shall be according to the form in the schedule. The summons and subsequent proceedings to be the same as in ordinary cases.

See No. 5 of schedule.

PARTICULARS OF JUDGMENT SUMMONS.

17. Where a party, having an unsatisfied judgment, desires to proceed under the 91st section of the "Upper Canada Division Courts Act of 1850,"

(*h*) See forms 3 & 4 and notes.

(*i*) Sec. 25 *et seq.* of present act.

(*k*) he shall enter with the clerk a minute in writing according to the form in the schedule, or to the like effect, which shall be numbered in the order in which it shall be received; and, if he proceeds in a Division Court, other than the one in which the judgment was entered, he shall, with the minute, deliver to the clerk a certified copy of the judgment; and thereupon a summons, bearing the number of the minute, shall issue, which summons shall be according to the form in the schedule, or to the like effect. See No. 54 of schedule. See No. 55 of schedule.

SUMMONS.

18. The ordinary summons on demand, account or claim, shall be issued according to the form to these rules appended, in lieu of the form given in the schedule to the "Upper Canada Division Courts Act of 1850;" and the issuing thereof shall be the commencement of the suit: and every summons shall be numbered to correspond with the demand or claim, on which it issues, and dated as of the day on which the same was entered for suit, except in the cases of *alias* or *pluries* summonses, which shall be dated on the day on which it actually issues (*l*). See No. 6 of schedule.

19. Where the plaintiff sues under the 90th section of the "Upper Canada Division Courts Act of 1850," (*m*) the proceeding shall be the same as in ordinary cases; but, in addition to the usual notice on the original summons to appear, there shall be added the following:—"The defendant is informed and cautioned, that A. B. (*the beneficial plaintiff*) only has power to discharge this suit, the subject matter of this suit having been seized under execution."

20. Leave to issue a summons under the 9th section of the "Upper Canada Division Courts Extension Act of 1853" (*n*) may be granted at any time by the judge, on production of an affidavit in the form or to the effect of the forms given in the schedule, or upon oath to the same effect, at any sittings See Nos. 1 & 2 of schedule.

(*k*) Sec. 160 of present act.
(*l*) See secs. 34 & 74.
(*m*) Sec. 152 of present act.
(*n*) Sec. 72 of present act.

of the court in which the action is to be brought; and where a summons issues by leave of the judge, no written order for such leave shall be necessary, but it shall be sufficient to insert in the summons "issued by leave of the judge."

SERVICE OF SUMMONS.

21. Where summons, or other process, is required to be served out of the division of the court from which the same issues (*o*), the papers may be transmitted by mail by the clerk issuing the same (on receiving the necessary postage and fees), to the clerk of the division where the same is required to be served; and such last mentioned clerk shall forthwith deliver such summons, or other process, to the bailiff of his division to be executed; and such bailiff shall serve the same, and forthwith make return thereof to the clerk of his court, in the manner required by the eleventh rule, and such last mentioned clerk, on return made, shall forthwith transmit the papers, by mail, with the necessary affidavits of service, if effected, to the first mentioned clerk.

22. Every summons on account, demand or claim, must be served ten days before the holding of the court (*p*) at which it is returnable (neither the day of service, nor the day of holding the court, to be counted), except when otherwise directed by the Upper Canada Division Courts Acts; and where any summons has not been served, another summons, or successive summonses may be issued.

See Nos. 54 & 55 of schedule.

23. The summons under the 91st section of the "Upper Canada Division Courts Act of 1850" (*q*) may be served by delivering to the defendant a copy thereof, and showing the original, if required; and shall be served ten days at least before the day on which the party is required to appear: provided always, that the service of such summons, at any time before the day appointed for the appearance of such party, may be deemed by the judge to be a good

(*o*) See sec. 73 and notes.
(*p*) See secs. 75 *et seq.*
(*q*) Sec. 160 of present act.

service, if it shall be proved to his satisfaction, that such party was about to remove out of the jurisdiction of the court.

ATTACHMENT.

24. The form of affidavit for an attachment (*r*) shall be according to the form in the schedule, in lieu of the form given in the "Upper Canada Division Courts Act of 1850," schedule D. *See No. 22 o schedule.*

25. In all cases where an attachment shall issue, (whether the suit be commenced by attachment in the first instance or not,) and the summons against the defendant shall not be personally served, the hearing or trial shall not take place until a month after the seizure under the attachment (*s*). *See Form C. to the act for form of writ of attachment.*

INSPECTION OF DOCUMENTS.

26. When in any action, the defendant (*t*) is desirous of inspecting any deed, bond or other instrument under seal, or any written contract, or other instrument in which he has an interest, and which shall be in the possession, power or control of the plaintiff, he may, within four days from the day of the service of the summons, give notice, by pre-paid post letter, or otherwise, that he desires to inspect such instrument, at any place to be appointed by the plaintiff, within the division in which the suit is brought; and the plaintiff shall appoint a place accordingly; and if the plaintiff shall neglect or refuse to appoint such place, or to allow the defendant or his agent to inspect it within three days from the day of receiving such notice, the judge may, in his discretion, on the day of hearing, adjourn the cause, for the purpose of such inspection, and make such order as to costs, as he shall think fit.

WITHDRAWAL BY PLAINTIFF.

27. If the plaintiff be desirous of not proceeding in the cause, he shall serve a notice thereof on the

(*r*) See sec. 199.
(*s*) See note to sec. 204.
(*t*) The interpretation rule, 70, shews that this power of inspection applies to either party to the suit.

defendant, in the manner directed in the "Upper Canada Division Courts Act of 1850," for the service of a notice of set-off (*u*), and after receipt of such notice, the defendant shall not be entitled to any further costs than those incurred up to the receipt of such notice, unless the judge shall otherwise order: and where a cause is not withdrawn until after the opening of the court, the hearing fee shall be charged, unless otherwise ordered.

ADJOURNMENT OF SUIT.

28. Where a cause is adjourned (*v*) no order of adjournment shall be served on either party, except by direction of the judge; and where the adjournment is opposed by either party, a hearing fee, as for a defended cause, shall be charged, and the usual costs of the day, in the discretion of the judge.

NOTICE OF DEFENCE.

29. Where the defendant is desirous to avail himself of the law of set-off, the statute of limitations, or any other defence requiring notice to the plaintiff, under the 43rd section of the "Upper Canada Division Courts Act of 1850," (*w*) the forms of notice in the schedule may be used, to be served in the manner directed by the act (*x*).

See Nos. 8 & 9 of schedule.

30. With a view to save unnecessary expense in proof, the defendant (or plaintiff) shall be at liberty to give the opposite party a notice in writing, that he will admit, on the trial of the cause, any part of the claim or set-off, or any facts which would otherwise require proof; and after such notice given, the plaintiff or defendant shall not be allowed any expense incurred for the purpose of such proof; the notice to be according to the form in the schedule, or to the

See No. 10 of schedule.

(*u*) See sec. 93, and rules 29 & 30.

(*v*) See sec. 86.

(*w*) Sec. 93 of present act.

(*x*) Sec. 87 provides that a defendant desiring to plead a tender and payment of money into court must file a plea to that effect six days before trial. As no form is given in the schedule under that section or this rule, a form of plea has been prepared, No. 68 (c), which will answer the purpose. The notice which sec. 87 requires the clerk to give may readily be drawn from the plea filed.

like effect, and served on the plaintiff or defendant, or left at his usual place of abode, at least six days before the trial or hearing.

CONFESSION.

31. Every confession or acknowledgment of debt, taken before suit commenced (*y*), must show therein, or by statement thereto attached at the time of the taking thereof, the particulars of the claim or demand for which it is given, with the same fulness and certainty as would be required, if such claim or demand were sued on in the ordinary manner; and unless application for judgment on such confession or acknowledgment shall be made to the judge, within three calendar months next after the same is taken, or at the sittings of the court next after the expiration of such period, no execution shall be issued on the judgment rendered, without an affidavit by the plaintiff or his agent, that the sum confessed, or some and what part thereof remains justly due; and applications for judgment shall be made at a court holden for the division, wherein the confession or acknowledgment was taken.

PAYMENT INTO COURT.

32. When the plaintiff shall, in accordance with the 46th section of the "Upper Canada Division Courts Act of 1850," (*z*) signify to the clerk his intention to proceed for the remainder of his demand, and such signification shall be given within three days after he received notice of the payment into court, but after the rising of the court at which the summons was returnable, the case shall be tried at the then next sittings of the court, and be put upon the list for that court in the regular order.

(*y*) By sec. 117 a confession may be given before or after suit. This rule provides for the former case. The form given in the schedule, No. 11, is of a confession after action, but will answer for one before action, by inserting in or attaching to it, the particulars required by this rule.

The affidavit of execution by the officer would be the same in both cases. See form 12.

(*z*) Sec. 91 of present act.

AMENDMENT.

33. Where a person, other than the defendant, appears at the hearing, and admits that he is the person whom the plaintiff intended to charge, his name may be substituted for that of the defendant, if the plaintiff consents, and thereupon the cause shall proceed, as if such person had been originally named in the summons; and, if necessary, the hearing may be adjourned on such terms as the judge shall think fit; and the costs of the person originally named as defendant, shall be in the discretion of the judge.

34. Where a party sues, or is sued, in a representative character, but at the hearing it appears that he ought to have sued or been sued in his own right, the judge may, at the instance of either party, and on such terms as he shall think fit, amend the proceedings accordingly; and the case shall then proceed in all respects, as to set-off and other matters, as if the proper description of the party had been given in the summons.

35. Where a party sues, or is sued in his own right, and it appears at the hearing, that he should have sued, or been sued in a representative character, the judge may, at the instance of either party, and on such terms as he shall think fit, amend the proceedings accordingly; and the case shall then proceed in all respects, as to set-off and other matters, as if the proper description of the party had been given in the summons.

36. Where the name, or description of a *plaintiff* in the summons, is insufficient or incorrect, it may at the hearing be amended, at the instance of either party, by order of the judge, on such terms as he shall think fit: and the cause may then proceed, as to set-off and other matters, as if the name and description had been originally such as it appears, after the amendment has been made.

37. Where the name, or description of a *defendant* in the summons, is insufficient or incorrrct, and the defendant appears and objects to the description, it

may be amended at the instance of either party, by order of the judge, on such terms as he shall think fit; and the cause may proceed as to set-off and other matters, as if the name or description had been originally such as it appears, after the amendment has been made: but if no such objection is taken, the cause may proceed, and in the judgment and all subsequent proceedings founded thereon, the defendant shall be described in the same manner. (*Amendments.*)

38. In actions by or against a husband, if the wife is improperly joined or omitted as a party, the summons, may, at the hearing, be amended at the instance of either party, by order of the judge, on such terms as he shall think fit; and the cause may proceed as to set-off and other matters, as if the proper person had been made party to the suit.

39. Where it appears at the hearing, that a *greater number* of persons have been made plaintiffs, than by law required, the name of the person improperly joined may, at the instance of either party, be struck out by order of the judge, on such terms as he shall think fit; and the cause may proceed as to set-off, and other matters, as if the proper party or parties only had been made plaintiffs.

40. Where it appears at the hearing, that a *less number* of persons have been made plaintiffs than by law required, the name of the omitted person may, at the instance of either party, be added by order of the judge, on such terms as he shall think fit; and the cause shall proceed as to set-off and other matters, and judgment shall be pronounced, as if the proper persons had been originally made parties; and unless the person, whose name is so added, shall assent thereto, either at the hearing or some adjournment thereof, personally, or by writing signed by him or his agent, proceedings on the judgment shall be stayed, until the court next after five clear days from the day of hearing; and if the person whose name is added, shall at the hearing or an adjournment thereof, consent to become a plaintiff (such consent being in writing signed by him or his agent), execution shall

(*Amendments.*)

issue as the judge shall think fit; but if such party shall not consent to become a plaintiff in manner aforesaid, either at the hearing or at an adjournment thereof, judgment of nonsuit may be entered.

41. When it appears at the hearing, that more persons have been made defendants, than by law required, the name of the party improperly joined may, at the instance of either party, be struck out by order of the judge, on such terms as he shall think fit; and the cause shall proceed as to set-off and other matters, as if the party or parties liable had been sued, and judgment shall be given for the party improperly joined.

42. Where several persons are made defendants, and all of them have not been served, the name or names of the defendant or defendants, who have not been served, may at the instance of either party, be struck out by order of the judge, on such terms as he shall think fit; and the cause shall then proceed, in all respects, as to set-off and other matters, as if all the defendants had been served.

43. Where, at the hearing, a variance appears between the evidence and the matters stated in any of the proceedings in the Division Court, such proceedings may, at the discretion of the judge, and on such terms as he shall think fit, be amended.

44. In cases of amendment, a corresponding amendment shall be made, in the presence of the judge, in the proceedings of the court, antecedent to such amendment; and the subsequent proceedings shall be in conformity therewith: and all amendments shall be made in open court, and during the sitting of the court.

45. The judge may, in any case, refuse to set aside, or to hold void, any of the proceedings, on account of any irregularity or defect therein, which shall not, in his opinion, be such as to interfere with the just trial and adjudication of the case upon the merits.

AFFIDAVITS.

46. Every affidavit, in any proceeding in the court, must be entitled in the cause (if a cause has been commenced), stating the christian and surname of the parties as in the summons, and also that of the deponent, and his place of abode and addition; and if an affidavit be sworn by an illiterate person, the jurat must contain a certificate of the clerk or commissioner administering the oath, that the affidavit was read in his presence to the party making the same, and that such party seemed perfectly to understand it (*a*); and there shall be no erasure nor interlineation in any jurat: but the judge shall not be bound to reject, as insufficient, any affidavit not complying with the above requisites, or any of them, but may, in his discretion, receive the same.

POSTAGE.

47. Postage necessary for the transmission of any process, order, notice, or other matter, by the clerk or judge, shall be paid in the first instance, by the party on whose behalf the proceeding is required, and shall be costs in the cause.

WITNESS FEES.

48. On application made to him in that behalf, the judge shall determine, what number of witnesses shall be allowed on taxation of costs; the allowance for whose attendance shall be according to the scale in the schedule, unless otherwise ordered; but in no case to exceed such scale, except the witness attends under *subpœna* from the superior courts (*b*); and, before allowing disbursements to witnesses, the clerk shall be satisfied that the witnesses attended, and that the claim for fees is just (*bb*).

See No. 14 of schedule.

(*a*) Form 7 shews sufficiently the commencement and conclusion of affidavits in general.

See forms 7 (a), &c., for special jurats in different cases.

(*b*) The fees in such case are given in note (*h*) to sec. 100.

(*bb*) Sec. 36 authorises the clerk to "take costs subject to the revision of the judge."

Any person giving evidence before the judge is entitled to his witness fees, whether attending under a subpœna or not. And if in the opinion of the judge, a witness is material, he would, if at-

ABATEMENT.

49. Where one or more of several plaintiffs or defendants shall die before judgment, the suit shall not abate, if the cause of action survive to or against such parties.

50. Where one or more of several plaintiffs or defendants shall die after judgment, proceedings thereon may be taken by the survivors or survivor, without leave of court.

JUDGMENT.

51. Every judgment, order, and decree of the court, shall be entered by the clerk in the procedure

---

tending on a subpœna, be entitled to be paid even though it should not be found necessary to call him.

The latter part of the rule gives the clerk a *quasi* judicial position, and requires that he should act with judgment and caution. He must be satisfied,—

1st. That the witness for whom fees are claimed has actually been paid, not that he *is* to be paid.

2nd. That he actually attended and was present in court when the case was under investigation, and ready to be examined if called, though he might not have been actually examined.

3rd. That he was a material and necessary witness, of which the fact of his being examined before the judge would be sufficient evidence, unless the judge should state that what he had to testify had nothing to do with the case, or for any other reason order that he should not be allowed witness fees. If the witness were not examined, and no order made by the judge on the subject, it would devolve upon the clerk to exercise his judgment as to whether the evidence of the person could be considered material or necessary. To satisfy himself on this point it would generally be necessary for him to have before him the statements on oath of the plaintiff or defendant, and such other evidence and explanations as could be adduced.

4th. That he attended only in the one case in which fees are claimed, for if he was a witness in more than one, the fees paid to him should be apportioned amongst the different suits.

5th. That the sums paid are within the scale allowed in the schedule (form 14), or in the Superior Court tariff, as the case may be, or are in accordance with the terms of any special order that the judge might make.

If the witness travelled by rail or other public conveyance, the judge would probably order that he should only be allowed his actual travelling expenses, if such sum were less than the 6*d.* a mile *one* way, allowed by the tariff.

In nearly every case the clerk will find it to his advantage, both for his information and as a protection against fraud to insist upon the production of an affidavit of disbursements by the plaintiff or defendant claiming witness fees. Such affidavit may be in the form 14 (a), given in the schedule.

ook, according to the forms given in the schedule; r to the like effect; and when any order is made for e payment of any debt, damages, costs, or other m of money, the same shall be payable at the office f the clerk of the court, forthwith, or at such periods s the court shall order.

See Nos. 16, 17, 18, 27, 31, 33, 34, 35, 36, 37, 38, 39, 40, 44, 47, 48, 59, 60, 61 and 64 of schedule.

NEW TRIAL.

52. Application for new trial (*c*) may be made *viva* oce, and determined on the day of hearing, if both arties be present; but if made when both parties re not present, it shall be in writing, and show riefly the grounds on which it is made (which rounds, if matters of fact requiring proof, shall be upported by affidavit), and a copy thereof, and of very such affidavit, shall be served by the party, aking the application, on the opposite party or his gent, or left at his usual place of abode or business, f within the division,—or if without the division, hen with the clerk, who shall transmit the same orthwith to the opposite party; and the application nd affidavits (if any) together with an affidavit of he service thereof, shall be delivered to the clerk, ithin fourteen days after the day of trial, to be by im, on receiving the fees and necessary postage, ransmitted to the judge, with a copy of the original laim, and other papers necessary to the proper nderstanding of the case, which delivery to the lerk shall operate as a stay of proceedings, until the udge's final decision on the application is communiated to the clerk; and the judge after receiving uch papers shall delay for six days deciding upon he application, to enable the opposite party to answer he same in writing or by affidavit, if facts stated by he applicant in his affidavit are disputed; and the ecision or judgment of the judge (*d*) shall be transmitted to the clerk by mail, who shall, if a new trial e ordered, notify the parties thereof by mail or otherwise, and the suit shall be tried at the next sitings of the court, unless the judge shall otherwise order; and if the application be refused, or if the

See No. 10 of schedule.

(*c*) See sec. 107 and notes. (*d*) See form 19.

party applying shall fail to comply with the terms imposed by the judge, the proceedings in the suit shall be continued as if no such application had been made; provided always, that the judge, instead of deciding upon the application after the end of the six days aforesaid, may, in his discretion, decide to hear the parties on the matter of such application, at the next sittings of the court, or at such other time and place as he may appoint, which decision shall be sent to the clerk, and be by him communicated to the parties in like manner as aforesaid.

INTERPLEADER.

53. When any claim shall be made to, or in respect to, any goods or chattels, property, or security, taken in execution, or attached under the process of any Division Courts or the proceeds or value thereof, by any landlord for rent, or by any person, not being the party against whom such process has issued, and summonses have been issued on the application of the officer, charged with the execution of such process, such summonses shall be served in such time and manner, as by the "Upper Canada Division Courts Act of 1850," is directed for service of an original summons to appear (*e*), and the claimant shall be deemed the plaintiff, and the execution creditor the defendant: and the claimant shall, five clear days before the day on which the summonses are returnable, leave at the office of the clerk of the court, a particular of any goods or chattels, property or security, alleged to be the property of the claimant, and the grounds of his claim, set forth in ordinary and concise language; or, in case of a claim for rent, the amount thereof, for what period, in respect to what premises the same is claimed to be due, and the terms of holding. And any money paid into court shall be retained by the clerk, until the claim shall be adjudicated upon; provided that, by consent, an

See Nos. 28 & 29 of schedule.

See No. 30 of schedule.

(*e*) See sections 75, 76 and 77. The mode of service would, it is presumed, be guided by the value of the goods or proceeds thereof, in dispute, as provided by sec. 77 There are distinct forms of summonses to plaintiffs and claimants Nos. 28 & 29.

interpleader claim may be tried, although the above rule may not have been complied with; and the summonses, the particulars, and the order thereon shall be according to the forms in the schedule, or to the like effect (*f*). See Nos. 31 & 32 of schedule.

54. Where the claim to any goods or chattels, property or security taken in execution or attached, or the proceeds or value thereof shall be dismissed, the costs of the bailiff shall be retained by him out of the amount levied, unless the judge shall otherwise order.

WARRANT OF COMMITMENT.

55. Warrants for commitment (*g*), whenever issued, shall bear date on the day on which the *order* for commitment was entered in the procedure book, and shall continue in force for three calendar months from such date, and no longer; but no *order* for commitment shall be drawn up or served. See Nos. 56 57 & 62 of schedule.

PROCEEDINGS AGAINST EXECUTORS AND ADMINISTRATORS.

56. A party suing an executor or administrator, may charge in the summons, in the form in the schedule, that the defendant has assets, and has wasted them. See Nos. 42 & 43 of schedule.

57. In all cases, if the court shall be of opinion that the defendant has wasted the assets, the judgment shall be, that the debt or damages and costs shall be levied *de bonis testatoris si, &c., et, si non, de bonis propriis* (*h*), and the non-payment of the amount of the demand immediately, on the court finding such demand to be correct, and that the defendant is chargeable in respect of assets, shall be conclusive evidence of wasting to the amount with which he is so chargeable. See No. 34 of schedule.

(*f*) No. 31 is the form of the minute in the procedure book, and No. 32 of an execution against the claimant for the costs incurred by his disallowed claim.

(*g*) See secs. 165, *et seq.* and forms 55 (a) *et seq.*

(*h*) That is to say, of the goods and chattels of the testator, if he has any, but if not, then of the goods of the defendant, the executor or administrator, himself.

58. Where an executor or administrator denies his representative character, or alleges a release to himself of the demand, whether he insists on any other ground of defence or not, and the judgment of the court is in favour of the plaintiff, it shall be, that the amount found to be due, and costs, shall be levied *de bonis testatoris si, &c., et, si non, de bonis propriis.*

See No. 35 of schedule.

59. Where an executor or administrator admits his representative character, and only denies the demand, if the plaintiff prove it, the judgment shall be, that the demand and costs shall be levied *de bonis testatoris si, &c., et, si non*, as to costs, *de bonis propriis.*

See No. 33 of schedule.

60. Where the defendant admits his representative character, but denies the demand, and alleges a total or partial administration of assets, and the plaintiff proves his demand, and the defendant proves the administration alleged, the judgment shall be, to levy the costs of proving the demand *de bonis testatoris si, &c., et, si non, be bonis propriis ;* and as to the whole or residue of the demand, judgment of assets *quando acciderint* (*i*)*;* and the plaintiff shall pay the defendant's costs of proving the administration of assets.

See No. 37 of schedule.

61. Where the defendant admits his representative character, but denies the demand, and alleges a total or partial administration of assets, and the plaintiff proves his demand, but the defendant does *not* prove the administration alleged, the judgment shall be, to levy the amount of the demand, if such amount of assets is shown to have come to the hands of the defendant, or such amount as is shown to have come to them, and costs, *de bonis testatoris si, &c., et, si non*, as to the costs, *de bonis propriis ;* and as to the residue of the demand, if any, judgment of assets, *quando acciderint.*

See No. 38 of schedule.

62. Where the defendant admits his representative character and the plaintiff's demand, but alleges a total or partial administration of the assets, and

(*i*) That is, when they shall have come into his hands.

proves the administration alleged, the judgment shall be for assets *quando acciderint*, and the plaintiff shall pay the defendant's costs of proving the administration of assets. See No. 39 of schedule.

63. Where a defendant admits his representative character, and the plaintiff's demand, but alleges a total or partial administration of the assets, but does not prove the administration alleged, the judgment shall be, to levy the amount of the demand, if so much assets is shown to have come to the defendant's hands, or so much as is shown to have come to them, and costs, *de bonis testatoris si, &c., et, si non*, as to the costs, *de bonis propriis;* and as to the residue of the demand, if any, judgment of assets, *quando acciderint*. See No. 40 of schedule.

64. Where judgment has been given against an executor or administrator, that the amount be levied upon assets of the deceased, *quando acciderint*, the plaintiff, or his personal representative, may issue a summons in the form in the schedule; and if it shall appear, that assets have come to the hands of the executor or administrator since the judgment, the court may order that the debt, damages and costs be levied *de bonis testatoris si, &c., et, si non*, as to the costs, *de bonis propriis;* provided, that it shall be competent for the party applying to charge in the summons that the executor or administrator has wasted the assets of the testator or intestate, in the same manner as in rule 56; and the provisions of rule 57 shall apply to such enquiry: and the court may, if it appears that the party charged has wasted the assets, direct a levy to be made, as to the debt and costs, *de bonis testatoris si, &c., si non, et de bonis propriis*. See No. 41 of schedule. See No. 44 of schedule.

65. Where a defendant admits his representative character, and the plaintiff's demand, and that he is chargeable with any sum in respect of assets, he shall pay such sum into court, subject to the rules relating to payment into court in other cases.

66. In actions against executors and administrators, for which provision is not hereinbefore specially

made, if the defendant fails as to any of his defences, the judgment shall be for the plaintiff, as to his costs of disproving such defence, and such costs shall be levied *de bonis testatoris si, &c., et, si non, de bonis propriis.*

REVIVING JUDGMENTS. (*k*)

67. No warrant of execution, nor summons for commitment shall, without leave of the judge, issue

---

(*k*) There has been no decision as to the duration of judgments recovered in Division Courts; nor does there appear to be any generally received opinion on the subject. Different judges of equal experience take opposite views, some holding that they are on the same footing as judgments of courts of record, others that they have no greater vitality than simple contract debts; others again, that they are voidable, though not void, after the lapse of six years.

The common law places no limit to the time within which an action may be brought upon any demand nor any limit to the duration of any judgment; nor does any statute declare that a simple contract debt or a specialty debt shall become *extinct* at the end of any specified period of time. What the statutes of limitation do, (at all events so far as they apply to the matter in hand,) is only to prevent actions being brought upon certain debts after certain specified periods.

There are two courses which may be taken to enforce a judgment: either by execution to be issued on the judgment, according to the practice of the court, and after any revivor of the judgment that the law may require, or by an action of debt on the judgment. In the former case there would seem to be no limit to the duration of a Division Court judgment for the purposes of execution thereon, except such rules as regards a rebuttable presumption of payment (in analogy to the rule of the Superior Courts hereinafter referred to) after the lapse of twenty years. But considerable difficulty exists in the latter case, and this difficulty is caused by the fact that Division Courts are *not* courts of record (sec. 5).

The reference in the Division Courts Act and rules to the revival of judgment are sec. 140, and rules 67 and 68, but they say nothing as to the duration of such judgments either by way of execution or action.

The statute 21 Jac. cap. 16, sec. 3, provides, that "all actions of debt grounded upon any lending or contract without specialty, &c., shall be commenced and sued, &c., within six years next after the cause of action or suit, and not after." And our statute of 7 Wm. IV. cap. 3 (C. S. U. C. cap. 78, sec. 7) limits actions of covenant or debt upon bonds or specialties, recognizances, &c., to twenty years, and all other actions to six years.

It has been uniformly considered that actions of debt on judgments do not come within the statute of James (1 Saund. 37; 2 *Ib.* 64, &c.; 2 Keb. 93; 1 Lev. 191); but these decisions were with reference to judgments of courts of record—debts of record being of a higher degree than

on a judgment more than a year old, unless an instalment has been paid on such judgment, or a warrant of execution against the goods, or a warrant of com-

---

specialties, in fact the highest species of debts known to the law, and judgments of courts of record being first paid in the order of payment of debts of a deceased person, though *not* so with judgments not of record (Wms. on Exrs. p. 899). If Division Courts were courts of record they would of course be entitled to the same privilege; but the statute expressly says that they shall not be held to constitute courts of record; and the statutes of limitation do not seem to have any reference to them or to cover them in any way, such courts probably not being thought of at the time. The only case on the point that the writer has been able to find are in the American reports, one of which expressly decides that an action can be brought on a judgment of a justice's court (not being a court of record) after the lapse of six years (*Pease* v. *Howard*, 14 Johns. 477), and this case is approved of in *Dudley* v. *Lindsey*, 9 B. Mon. 489.

So much for the only cases which appear to refer expressly to the subject, and now to return to the statutes. If such an action is not an action of debt grounded on contract without specialty, and is not a bond or other specialty, does it come within the statutes at all? Apparently not, unless indeed it is one of the "all other actions," which the statute of Wm. IV. says are barred by lapse of six years. But if so, would not actions on judgments of courts of record also come under these words? They are not however so barred, and this brings us back again to the question—do the words of sec. 5 of the Division Courts Act, that the said courts "shall not be held to constitute Courts of Record," operate to take their judgments out of the rule laid down with reference to other courts, which were in fact courts of record—though not necessarily following from this that a similar rule should not obtain, respecting courts constituted as are our Division Courts.

It may well be contended, that so far as certainty in concluding a matter in litigation between parties is concerned, no judgment of any Court of Record could be more effectual than are Division Court judgments. The decision of the judge is "final and conclusive between the parties," and the claim has the solemnity of judicial investigation by a tribunal from which there is no appeal. Can it not therefore be said that such a judgment, though not matter of record, is in the nature of a specialty, though not perhaps a specialty in the strict technical sense of the word. It can scarcely be said to be a contract without a specialty under the statute of James. In *Dudley* v. *Lindsey, ante*, it is said that, "a judgment for money is not strictly a contract; but it imposes a civil liability, and is more conclusive evidence of indebtedness than a contract by specialty; and therefore an action upon it is not embraced by the Statute of Limitations." The statutes of limitations being in restraint of right must be construed strictly, and the settled construction of them is, that they apply only to actions of debt founded upon contracts *in fact*, as distinguished from those arising by construction of law. (See *Pease* v. *Howard, ante.*)

mitment has been issued within a year from the time of obtaining such judgment; but no notice to the defendant, previous to applying for such leave, shall be necessary.

68. The mode of reviving a judgment, under the 73rd section of the "Upper Canada Division Courts

---

It is also asserted that, as judgments of a foreign court are only simple contract debts, Division Court judgments are no more. But in answer to this it may be asked, could the defendant in an action on a Division Court judgment plead any matters which would have been a defence to the original suit? Certainly not, if the decision on such suit was "final and conclusive," and the statute says it shall be so. Again, if a suit were brought for a cause of action which had been already adjudicated upon, or was then pending in a Division Court (as to whether such an action could be so brought in a Superior Court, see sec. 115 and note thereto), would not such fact be an answer to the action? This part of the argument is thus put in *Pease* v. *Howard*: "A foreign judgment being *primâ facie* evidence of a debt only has been considered as of no higher nature than a simple contract. But a judgment of a Justice's Court is of a higher nature than a foreign judgment, because its merits cannot be controverted in a suit founded on it."

The language used in the above case is so apt and forcible that it will be well to quote it more at length. After referring to Lord Mansfield's judgment in *Walker* v. *Witter*, Dougl. 1, the learned judge says: "From this it would seem to follow that if the judgment (being, in the case referred to, a foreign judgment) had been *conclusive* evidence of the debt, it would have been a specialty, and therefore not barred by the statute. This view of the question seems to derive great weight from the nature and effect of a specialty, which being under seal imports a consideration, and the want of one cannot be alleged by plea. . . . . But it may be shewn that a specialty is founded upon an illegal consideration, and it is not always conclusive evidence. In this respect it is inferior to a Justice's judgment, and the solemnities attending the rendition of the judgment are equal, at least to the sealing and delivery of a specialty. A Justice's judgment is a debt of a higher nature than a simple contract debt, and is as much a specialty as a judgment obtained in this court (the Supreme Court of New York), which clearly is not barred by the Statute of Limitations."

Upon the whole therefore the writer with great deference submits, that—whether we look upon Division Court judgments in the light of specialties, and therefore, under our statute, good for twenty years, or whether they are not within the words of the statutes at all, and therefore only barred at the end of twenty years by a presumption of payment analagous to that said to exist with regard to specialties and judgments of record at the end of that period (see *Oswald et al.* v. *Legh*, 1 T. R. 270; Wilkinson on Lim. p. 8)—actions may be brought upon judgments obtained in Division Courts within a period of twenty years from their entry.

Act of 1850," (*l*) shall be by summons on the judgment in the nature of a *sci. fa.*, the proceedings on which shall be the same as in ordinary cases. See Nos. 45, 46, 47, 48, 50, & 51 of schedule.

GENERAL RULE.

69. Where the excess is abandoned, it must be done, in the first instance, on the claim or set-off (*m*).

Claims by husbands in their own right may be joined with claims, in respect to which the wife must be joined as a party.

Where the court gives leave to take any proceeding, such leave shall be minuted in the procedure book, but it shall not be necessary to draw up any order.

In cases where the hearing is by jury, the judge has the same power to non-suit, as in ordinary cases.

Under the 9th section of the "Upper Canada Division Courts Extension Act of 1853" (*n*) the leave to be granted for issuing a summons shall be by the judge, before whom the action is to be tried under the order; but no leave shall be given to bring a suit in a division, other than one adjacent to the division in which the party to be sued resides; but the division may be in the same, or an adjoining county.

After an award is made and filed (with an affidavit of the due execution thereof), under the 4th section of the "Upper Canada Division Courts Extension Act of 1853," (*o*) the duty of the clerk is, forthwith to enter the judgment on such award, and issue execution thereon, at the request of the party entitled to such execution, without any order from the judge. See Nos. 25, 26 & 27 of schedule.

The court has no jurisdiction to try an action upon a note of hand, whether brought by the payee, or any other person, the consideration, or any part of the consideration of which, was any gambling debt, or for spirituous or malt liquors, or other like liquors, drunk in a tavern or ale house (*p*).

(*l*) Sec. 140 of present act.
(*m*) See sec. 59, note (*g*).
(*n*) Sec. 72 of present act.
(*o*) Secs. 109, 110 & 111 of present act.
(*p*) See sec. 54, note (*y*).

INTERPRETATION.

70. In construing these rules and forms, the word "person" or "party" shall be understood to mean a body politic or corporate, as well as an individual; and the word "executor" or "executrix," or both (when used), shall be held to embrace and mean "of the last will and testament," and extend to parties acting as such of their own wrong; and the word "administrator" or "administratrix," or both (when used) shall be held to embrace and express "of the goods and chattels, rights and credits, which were, &c.;" and every word importing the singular number shall, where necessary to give full effect to the rules and forms herein, be understood to mean several persons or things, as well as one person or thing; and every word importing the masculine gender shall, where necessary, be understood to mean a female, as well as a male; and the words "on oath" shall be understood to mean *viva voce*, or by affidavit, or affirmation; and the words "judge" and "clerk," respectively (when used) shall be taken to extend and be applied to the deputy judge or deputy clerk (as the case may be or require); and the words plaintiff" and "defendant," respectively, shall be mutually transposed, where necessary, for the proper application and construction of any of these rules or the forms herewith, or for giving effect thereto; and the word "county" shall include any two or more counties united for judicial purposes; and in any form or proceeding, the words "united counties," shall and may be introduced according to law, and circumstances rendering the same necessary.

[NOTE.—See th

1. *Affidavit*

In the —— Di

A. B., of —
he (*or* E. F., o
maketh oath a
of action again
in the —— D
deponent (*or* t
of the County
ponent's resid
the place whe
and to the pl
Division of th
that the dista
place where t
resides is abo
court is held
and this Divis
more easy an
cause tried in

Sworn, &c.

SCHEDULE OF FORMS.

[NOTE.—See the explanatory note at the commencement of the Rules.]

1. *Affidavit for leave to sue a party residing in an adjoining division.* See rule No. 20.

In the —— Division Court for the County of ———.

A. B., of ———, yeoman, maketh oath and saith, that he (*or* E. F., of ———, yeoman, agent for A. B., of, &c., maketh oath and saith, that the said A. B.) hath a cause of action against C. D. of ———, yeoman, who resides in the —— Division of the County of ———, that this deponent (*or* the said A. B.) resides in the —— Division of the County of ———, that the distance from this deponent's residence (*or* from the said A. B.'s residence) to the place where this Court is held is about —— miles, and to the place where the Court is held in the —— Division of the County of ——— is about —— miles; that the distance from the said C. D.'s residence to the place where the court is held in the Division where he resides is about —— miles, and to the place where this court is held about —— miles; that the said Division and this Division adjoin each other, and that it will be more easy and inexpensive for the parties to have this cause tried in this Division, than elsewhere.

A. B. (*or* E. F.)

Sworn, &c.

2. *Affidavit for leave to sue in a division adjoining one in which debtors reside, where there are several.*

ee rule No. 20.

In the —— Division Court of the County of ———.

A. B. of ———, yeoman, maketh oath and saith, that he (*or* E. F. of ———, agent for A. B. of, &c., maketh oath and saith, that the said A. B.) hath a cause of action respectively against each of the debtors named in in the first column of the schedule on this affidavit endorsed; that the columns in the said schedule numbered respectively 1st, 2nd, 3rd, 4th, 5th, 6th, and 7th, are truly and correctly filled up, according to the best of this deponent's knowledge and belief; that the Divisions named in the second and third columns of the said schedule, opposite each debtor's name respectively, adjoin each other; and that it will be more easy and inexpensive for the parties to have the said causes respectively tried in this Division than elsewhere.

A. B. (*or* E. F.)

Sworn, &c.

Schedule referred to in the within Affidavit.

COLUMNS.

1st.	2nd.	3rd.	4th.	5th.	6th.	7th.

Schedule referred to in the within Affidavit.

COLUMNS.

1st.	2nd.	3rd.	4th.	5th.	6th.	7th.
Debtor's name, place of residence, and addition.	Division in which suit is to be commenced.	Division in which debtor resides.	No. of miles from creditor's residence to where Court held in division in which dobtor resides.	No. of miles from creditor's residence to where Court held in division in which suit to be commenced.	No. of miles from debtor's residence to where Court held in division where suit to be commenced.	No. of miles from debtor's residence to where Court held in division where debtor resides.
John Doe, of Saltfleet, of the United Counties of Wentworth and Halton, yeoman.	Division No. 3 in the United Counties of Lincoln and Welland.	Division No. 1 in the United Counties of Wentworth & Halton.	22	1	5	17
Richard Roe, of Mono, County Simcoe, Esq.	Division No. 3 of the County of Simcoe.	Division No. 8.	28	11	18	4

A. B. (or E. F.)

13

See rule No. 15.

3. *Particulars in cases of contract.*

A. B. (*a*), of ———, claims of C. D., of ———, the sum of —— [the amount of the following account, *or* the amount of the note (a copy of which is underwritten) together with interest thereon]: *or* for that the said C. D. promised (*here state shortly the promise*) which undertaking the said C. D. hath not performed: —*or*, for that the said C. D. by deed under his seal, dated, ——, covenanted to, &c., and that the said C. D. hath broken said covenant, whereby the said A. B. hath sustained damages to the amount aforesaid (*b*).

A. B.

(*a*) If the plaintiff sues in a special or representative character it should be so stated. See note to form 22.

(*b*) By rules 56 & 64, in actions against executors or administrators, the plaintiff may charge that the defendant has wasted the goods of deceased, as in forms 41 & 43.

The following concise forms will be found useful by non-professional persons, though the multiplicity of causes of action that are continually arising prevents the possibility of providing a form to meet every case.

STATEMENTS OF CAUSES OF ACTION ON CONTRACTS.

For that the defendant is indebted to the plaintiff in the sum of $—— for (*general commencement*).

For goods sold.]—Goods bargained and sold by the plaintiff to the defendant.

For goods sold and delivered.]—Goods sold and delivered by the plaintiff to the defendant.

For money on exchange of horses.]—Money agreed by the defendant to be paid by the plaintiff together with a horse of the defendant, in exchange for a horse of the plaintiff delivered by the plaintiff to the defendant.

For crops sold.]—Crops bargained and sold by the plaintiff to the defendant.

For outgoing tenants rights.]—For and in respect of the plaintiff's having relinquished and given up to, and in favour of the defendant, at his request, the benefit and advantage of work done and materials found and provided and monies expended by the plaintiff, in and about the farming, sowing, cultivating and improving of certain land and premises.

For the use of a house and land.]—The defendant's use by the plaintiff's permission of messuages and lands of the plaintiff.

For the use of pasture land and eatage of grass.]—The defendant's use of pasture land of the plaintiff, and the eatage of the grass and herbage thereon by the plaintiff's permission.

For wharfage and warehouse room.]—The wharfage and warehouse room of goods deposited, stowed and kept by the plaintiff in and upon a wharf, warehouse, and premises of the plaintiff for the defendant at his request.

For horse keep, stabling, &c.]—Horse-meat, stabling, care and attendance provided and bestowed

4. *Particulars in cases of tort.*

See rule No. 15.

A. B., of ———, states that C. D., of ———, did, on or about the —— day of ——, A. D. 18—, at the township of ———, unlawfully [take and convert one cow and one calf, the property of the said A. B.: *or* break and injure a waggon of the said A. B.: *or* keep a dog, which the said C. D. knew was accustomed to bite mankind or sheep, and that the said dog did, on the day and at the place aforesaid, bite and lacerate the arm of the said A. B., *or* kill, *or* injure two sheep, the property of the said A. B.: *or* assault and beat the said A. B., (*or, as the case may be, stating the tort sued for*

---

by the plaintiff in feeding and keeping of horses for the defendant at his request.

For work and materials.]—Work done and materials provided by the plaintiff for the defendant at his request.

For a witness's expenses.]—For expenses necessarily incurred by the plaintiff in attendang as a witness for the defendant at his request, to give evidence upon the trial of an action at law then depending in the ———, wherein the defendant was plaintiff and one E. F. defendant.

For money lent.]—Money lent by the plaintiff to the defendant.

For money paid.]—Money paid by the plaintiff for the defendant at his request.

For money received.] — Money received by the defendant for the use of the plaintiff.

On an account stated.]—Money found to be due from the defendant to the plaintiff on accounts stated between them.

Warranty of a horse.]—That the defendant by warranting a horse to be then sound and quiet to ride sold the said horse to the plaintiff, yet the said horse was not then sound and quiet to ride.

On a guarantee.]—That the defendant in consideration that the plaintiff would supply E. F. with goods on credit promised the plaintiff that he, the defendant, would be answerable to the plaintiff for the same, that the plaintiff did accordingly supply the said E. F. with goods to the price of £—— and upwards on credit, that such credit has elapsed, yet neither the said E. F. nor the defendant has as yet paid for the said goods.

Upon a lease for rent.]—That the plaintiff let to the defendant a house for seven years to hold from the —— day of ——, A. D. ——, at £—— a year, payable quarterly, of which rent —— quarters are due and unpaid.

On a mortgage deed for principal and interest.]—That the defendant by deed covenanted with the plaintiff to pay to the plaintiff £—— on the —— day of ——, A. D. ——, together with interest thereon at the rate of £5 per centum per annum, but did not pay the same.

The above forms are given merely as forms of statement of causes of action, and the claim must state such further particulars as the facts of the case require.

in concise language)]; The said A. B. hath sustained thereby damages to the amount of ——, and claims the same of the said C. D.

A. B.

5. *Particulars in actions against a clerk or bailiff, and his sureties.*

See rule No. 16.

A. B., of ———, claims of C. D., clerk (*or* bailiff), of the —— Division Court for the county of ———, and of E. F., of ———, and G. H., of ———, (sureties for and parties with the said C. D. to a covenant for the due performance of the duties of his said office) the sum of ——— for moneys had and received by the said C. D. as such clerk (*or* bailiff) as aforesaid, in a certain cause in the said —— Division Court, wherein the said A. B. was plaintiff, and one H. H. was defendant, to and for the use of the said A. B., the payment whereof the said C. D. unduly withholds. And also (*stating in like manner any other similar claim*)—[*or*, the sum of ——— for damages sustained by the said A. B. through the misconduct (*or* neglect) of the said C. D. in the performance of the duties of his said office: For that on the —— day of ——, at ——, (*describe in ordinary language the neglect or misconduct, whereby the damage was occasioned*)].

A. B.

6. *Summons to appear.*

In the —— Division Court for the county of ———.

No. ——, A. D., 18—.

Between A. B., plaintiff;
and
C. D., defendant.

To C. D., the above-named defendant.

See rules Nos. 9, 14, 18, 21 & 22.

You are hereby [as before (*or*, as often before) you were] summoned to be and appear, at the sittings of this court to be holden at ———, in the township of ———, in the said county of ———, on the —— day of ——, A. D. 18—, at the hour of —— in the forenoon, to answer the above-named plaintiff in an action on contract (*or*, in an action for tort) for the causes set forth in the plaintiff's statement of claim hereunto annexed; and, in the event of your not so appearing, the

plaintiff may proceed to obtain judgment against you by default.

Dated the —— day of ——, A. D. 18—.

By the court.

Claim ——. ——, Clerk.

Costs, exclusive of mileage, ——

NOTICE.

Take notice, that if the defendant desires *to set off any demand against the plaintiff* (*if the action be for tort omit the words in italics*) at the trial or hearing of this cause, (*or*) to take the benefit of any Statute of Limitations, or other statute, notice thereof in writing, *and if a set-off containing the particulars of such set-off* (*omit the words last in italics, if the action be for tort*), must be given to the plaintiff, or left at his usual place of abode, if living within the division, or left with the clerk of the said court, if the plaintiff reside without the division, at least six days before the said trial or hearing.

7. *Affidavit of service of summons.*

In the —— Division Court for the County of ——.

Between A. B., plaintiff;

and

C. D., defendant.

E. F., bailiff of the —— Division Court of the said County of ——, (*or* of the said court) maketh oath and saith, that he did, on the —— day of ——, 18 —, duly serve the said C. D. with a true copy of the annexed summons and statement of claim, by delivering the same personally to the said C. D., (or if the service was not personal, state how and on whom served) and that he necessarily travelled —— miles to make such service. *See sec. 80, and rule 46.*

E. F.

Sworn before me at ——,
this —— day of ——, 18 —.

Clerk —— Division Court.

Or,

This form may be used, when the affidavit is endorsed on the summons:—

I swear that this summons and claim annexed thereto were served by me on the —— day of ——, by delivering

a true copy of both, personally, to the defendant, (*or* to the wife *or* servant of the defendant, *or* to a grown up person, being an inmate of and at the defendant's dwelling,) and that I necessarily travelled —— miles to do so.

Sworn, &c. E. F., bailiff.

* 7 (a). *Jurat to affidavit by illiterate deponent.*

See sec. 104 and rule 46.

Sworn by the above named deponent, A. B., at—— in the county of ——, on ——, and I certify that the affidavit was first read in my presence to said A. B., who seemed perfectly to understand the same and wrote his signature (*or* made his mark) thereto in my presence.

——, Clerk, &c.

Or as the case may be.

* 7 (b). *Affirmation by Quakers, &c., and jurat thereto.*

(Court and style of cause.)

I, A. B., of ——, &c., do solemnly, sincerely and truly declare and affirm that I am one of the Society called Quakers (*or* Menonists, Tunkers, Unitas Fratrum, or Moravians, *as the case may be*), and I do also do solemnly, sincerely and truly declare and affirm as follows, that is to say (*state the facts*).

Solemnly affirmed at ——, in the county of ——, on ——, before me. } A. B.

——, Clerk, &c.

Or as the case may be.

8. *Notice of set-off.*

In the —— Division Court for the county of ——.

Between A. B., plaintiff;

and

C. D., defendant.

See rule No. 29.

Take notice, that the defendant will set-off the following claim on the trial, viz.: ——

Dated this —— day of ——, 18—.

C. D.

To A. B., the plaintiff.

9. *Notice of defence under statute.*

In the —— Division Court for the County of ———.

Between A. B., plaintiff;
and
C. D., defendant.

See rule No. 29.

The plaintiff is required to take notice, that upon the hearing of this cause, the defendant intends to give in evidence, and insist upon the following ground of defence, namely, that the claim, for which he the defendant has been summoned, has been barred by the Statute of Limitations (*or as the case may be*).

Dated this —— day of ——.

To A. B., the plaintiff. C. D.

N. B.—This notice may be embodied with notice of set-off.

10. *Notice of admission to save unnecessary expense in proof.*

In the —— Division Court for the county of ———.

Between A. B., plaintiff;
and
C. D., defendant.

See rule No. 30.

The plaintiff is required to take notice, that the defendant will admit, on the trial of this cause, the first, second and third items of the plaintiff's particulars to be correct [*or*, the signing and endorsement of the promissory note sued upon (*or as the case may be*)].

Dated the —— day of ——, A. D. 18—.

C. D.

N. B.—*This notice may be embodied with notice of set-off, or of other defence.*

11. *Confession of debt after suit commenced.*

In the —— Division Court for the county of ———.

Between A. B., plaintiff;
and
C. D., defendant.

I acknowledge that I am indebted to the plaintiff in the sum of ——, and consent that judgment for that amount and costs may be entered against me in this cause.

See sec. 117, *and rule* 31.

C. D.

Dated the —— day of ——, 18—.

Witness ———, clerk (*or* bailiff).

12. *Affidavit of execution of confession.*

In the —— Division Court for the county of ——.

Between A. B., plaintiff;

and

C. D., defendant.

See sec. 118, and rule 31. E. F., clerk (*or* bailiff) of the —— Division Court for the said —— of —— (*or* of the said court), maketh oath and saith, that he did see the above (*or* annexed) confession duly executed by the said defendant, and that he is a subscribing witness thereto, and that he deponent, has not received, and is not to receive any, thing from the plaintiff or defendant, or any other person, except his lawful fees, for taking such confession, and that he has no interest in the demand sought to be recovered in this action.

E. F.

Sworn before me, at ——, on the —— day of ——, 18—.

——.

Clerk, &c., *or* a commissioner in B. R. in and for the said ——.

13. *Summons to witness to attend sitting of court.*

In the —— Division Court for the county of ——.

Between A. B., plaintiff;

and

C. D., defendant.

See sec. 97. You are hereby required to attend at the sittings of the said court, to be holden at ——, on the ——, 18—, at the hour of —— in the forenoon, to give evidence in the above cause, on behalf of the above-named —— [and then and there to have and produce (*state particular documents required*) and all other papers relating to the said action, in your custody, possession or power].

Given under the seal of the court, this —— day of ——, 18—.

——,

To ——. Clerk.

* 13 (a). *Summons to witness to attend before arbitrator.*

In, &c.,

See sec. 97. You are hereby required to attend before ——, the arbitrator (*or* arbitrators) to whom this cause stands

referred, at the house of ———, in the township of——, on the —— day of ——, A. D. 18—, at —— of the clock in the (*fore*)noon of that day, being the place and time appointed by the said arbitrator for a meeting upon the said reference, to give evidence in the above cause on behalf of the above named ———, &c. (*conclude as in form No.* 13.)

14. *Allowance to witnesses.*

Attendance per day in court ..... 50 cts.
Travelling expenses, per mile, one way.... 10 "

See rule No. 48, *and see.* 100 *and notes.*

*14 (a). *Affidavit of disbursements.*

In the, &c.

Between A. B., plaintiff;
and
C. D., defendant.

A. B., of &c., *Yeoman*, (*or* E. F. of &c., agent for the above named plaintiff,) maketh oath and saith, That ———, ———, and ———, did attend under a subpœna as witnesses in this cause, on the part of the plaintiff, at the last sittings of this court, and were each, in the judgment and belief of deponent, necessary and material witnesses on his (*or* the plaintiff's) behalf; that the said witnesses did each necessarily travel —— miles in coming to (*or* returning from) the place where the said court was held, and that the said witnesses have been paid on behalf of this deponent (*or* the plaintiff) —— shillings each for their attendance in court and travelling expenses.

See rule 48, *and notes.*

A. B. (*or* E. F.)

Sworn, &c.

15. *Summons to jurors.*

In the —— Division Court for the County of ———.

You are hereby summoned to appear and serve as a juror in this court, to be holden at ——— on ——, at the hour of ——. Herein fail not at your peril.

Given under the seal of the court, this —— day of ——, 18—.

To ———.

———,
Clerk.

* 15 (a). *Oath to juror.*

s. 131. You shall well and truly try the matters in difference (*or if jury called under sec.* 132 *say*, the facts controverted in this cause), between the parties, do justice between them according to the best of your skill and ability and a true verdict give according to the evidence: So help you God.

* 15 (b). *Affirmation to juror.*

You do solemnly, sincerely, and truly declare and affirm, that you are one of the Society called Quakers (*or as the case may be, see form* 7 b), (*substance of oath as above*), and this to do you solemnly, sincerely, and truly declare and affirm.

16. *Minute in Procedure Book of judgment of nonsuit, or dismissal for want of prosecution.*

See rule No. 51. Judgment of nonsuit (*or*, that the cause be dismissed) (*or*) "and that plaintiff pay —— for defendant's costs," (*or*) —— for defendant's trouble, and —— for his costs; to be paid in —— days."

17. *Minute in Procedure Book of judgment against defendant for debt or damages.*

See rule No. 51. Judgment for the plaintiff for —— debt (*or* damages) and —— costs; to be paid in —— days (*when an excess has been abandoned, add the words* "being in full discharge of his cause of action").

18. *Minute in Procedure Book of judgment for defendant.*

See rule No. 51. Judgment for the defendant (*or* for the defendant for —— costs; *or* for —— on set-off, *or* for his trouble and loss of time, and also —— for his costs; to be paid forthwith,) (*where an excess in the set-off has been abandoned, add the words* "being in full discharge of his claim, including the excess abandoned").

19. *Order for new trial.*

In the —— Division Court for the county of ———.

Between A. B., plaintiff;
and
C. D., defendant.

It is ordered, that the judgment rendered in this cause, and all subsequent proceedings, be set aside, and a new trial be had between the parties on (*set out the terms or conditions, if any, on which the order is made*). See rule No. 52.

———, Judge.

Dated ——, 18—.

20. *Execution against the goods of defendant.*

In the —— Division Court for the county of ———.

No. ——, A. D., 18—.

Between A. B., plaintiff;
and
C. D., defendant.

Whereas, at the sittings of the said court, holden on ——, at ——, by the judgment of the said court, the said plaintiff recovered against the said defendant the sum of —— for a certain debt (*or* for certain damages) with —— for costs, which said debt (*or* damages) and costs were ordered to be paid by the said defendant, at a day now past; and whereas the defendant has not made such payment: these are therefore [as before, (*or* as often before)] to command you forthwith to make and levy by distress and sale of the goods and chattels of the said defendant, wheresoever the same may be found (except those by law exempt from seizure), the said debt (*or* damages) and costs, amounting together to the sum of —— and your lawful fees on the execution of this precept, and also, and if necessary for that purpose, to seize and take any money, or bank notes, and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, of the said defendant, which may be there found, or such part thereof as may be sufficient for the satisfying of this execution, and the costs of making and executing the same, so that you may have the said sum of ——, within thirty days after the date hereof, and pay the same over to the clerk of the court for the said plaintiff. See secs. 135 & 151. See 23 Vic. cap. 25, sec. 2.

.ven under the seal of the court, this —— day of —, 18—.

———,
Clerk.

To ———,
Bailiff of the said court.

Judgment ——.
Execution ——.
Paid ———.
Levy ———.

* 20 (a). *Inventory of goods seized.*

See sec. 201. An inventory of goods and chattels (property and effects) by me this day seized and taken, in the township of ———, by virtue of a warrant of attachment issued by T. L., clerk of the —— Division Court of the county of ——— [*or as the case may be*), on behalf of A. B., for the sum of ——, against the personal estate and effects of C. D.: that is to say,—one lumber waggon, one plough, &c., (*stating all the articles seized*).

Dated this —— day of ——, A. D., 18—.

B. F.,
Bailiff of the —— Division Court, County ———.

* 20 (b). *Appraisers oath.*

See sec. 201. You and each of you shall well and truly appraise the goods and chattels, property and effects, mentioned in this inventory (*holding it up in his hand*), according to the best of your judgment. So help you God.

* 20 (c). *Appraisement to be endorsed on inventory.*

See sec. 201. We, the above named T. T. and N. N., being duly sworn by the bailiff above named to appraise the goods, chattels, property, and effects mentioned in this inventory, to the best of our judgment, and having examined the same, do appraise the said goods and chattels, &c., at the sum of ———.

Witness our hands this ——
day of ——, A.D. 18—. } T. T.
N. N.

* 20 (d). *Notice of sale.*

By virtue of —— execution issued out of the —— Division Court for the county of ———, and to me directed, against the goods and chattels of ———, at the suit of ———, I have seized and taken in execution ———. *See sec. 155.*

All which property will be sold by public auction, at ———, on —— the —— day of ——, at the hour of —— o'clock.

Office of the —— Division Court,
——, —— day of ——, 18—.

——— ———, Bailiff.

21. *Execution against goods of plaintiff.*

In the —— Division Court for the county of ———.

No. ———, A. D. 18—.

Between A. B., plaintiff;
and
C. D., defendant.

Whereas at the sittings of this court, holden on ——, at ———, judgment was given for the defendant, and for the sum of —— costs (*or*, for the sum of —— on set-off, and —— for costs; *or*, judgment of dismissal was given, and for the sum of —— for defendant's trouble, and —— for costs) to be paid at a day now past; and whereas the plaintiff has not paid the same, these are therefore to command you forthwith to make and levy, by distress and sale of the goods and chattels of the plaintiff, wheresoever the same may be found (except those which are by law exempt from seizure), the said sum of ——, or the said sum of —— and ——, amounting together to the sum of ——, and your lawful fees on the execution of this precept, and also, and if necessary for that purpose, to seize and take any money, or bank notes, and any cheques, bills of exchange, promissory notes, bonds, specialties or securities for money of the said plaintiff, which may be found, or such part thereof as may be sufficient for the satisfying of this execution, and the costs of executing the same, so that you may have the said sum of —— within thirty days after the date hereof, and pay the same over to the clerk of the court for the said defendant. *See 23 Vic. cap. 25, sec. 2*

Given under the seal of the court, this —— day of ——, 18—.

To ——, ——, Clerk.
Bailiff of the said court.

Judgment ——.
Execution ——.
Paid ——.
Levy ——.

* 21 (a). *Return of nulia bona.*

See rule 12 *and note.* The within ——, hath no goods or chattels in the county (*or* united counties) of —— whereof I can make the debt (*or* damages) to be levied as within commanded.

Dated, &c. ——, Bailiff.

* 21 (b) *Return of money made.*

See rule 12 *and note.* By virtue of the within warrant to me directed I have made of the goods and chattels of —— the debt (*or* damages) and costs within mentioned, and have paid the same to the clerk of the —— Division Court, county of ——, as within commanded.

Dated, &c. ——, Bailiff.

* 21 (c). *Return of part made, and nulla bona residue.*

See rule 12 *and note.* By virtue of within warrant to me directed I have made of the goods and chattels of ——, to the value of $——, and have paid the same to the clerk of, &c., and the said —— hath no more goods or chattels in the county of —— whereof I can make the residue of the debt (*or* damages), or costs, or any part thereof.

Dated, &c. ——, Bailiff.

* 21 (d). *Return when payments have been made by bailiff.*

See rule 12 *and note.*

See also secs. 176 *to* 180. By virtue of within warrant to me directed I have made of the goods and chattels of —— the sum of $——, part whereof I have paid to ——, landlord of said ——, for —— quarters rent in respect of premises when levy made; and a further part I have retained as fees on execution, The residue, being $——, I have paid to the clerk of, &c.

Dated, &c. ——, Bailiff.

22. *Afidavit for attachment.*

If made after suit commenced, insert style of court and cause.

A. B. of ——, in the county of ——, ——, (*or* E. F. of, &c., agent for A. B. of, &c.,) maketh oath (*or*, being one of the people called Quakers, &c., affirmeth), and saith, that C. D. of (*or* late of) ——, in the county of ——, ——, is justly and truly indebted to this deponent (*or* to the said A. B.) in the sum of —— [for goods sold and delivered by this deponent (*or* by the said A. B.) to the said C. D., at his request (*or other cause of action, stating the same in ordinary and concise language*)], and this deponent further saith, that he hath good reason to believe, and doth verily believe, that the said C. D. hath absconded from this Province, leaving personal property liable to seizure under execution for debt in the county (*or* united counties) of —— [*or*, hath attempted to remove his personal property, liable to seizure under execution for debt out of Upper Canada (*or*, from the county or united counties of —— to another county in Upper Canada) (*or*, from Upper to Lower Canada) with intent and design to defraud this deponent (*or* the said A. B.) of his said debt [*or* keeps concealed in the county or united counties of —— to avoid service of process (*or as the case may be*)] with intent and design to defraud this deponent (*or* the said A. B.) of his said debt; and this deponent further saith, that this affidavit is not made, nor the process thereon to be issued, from any vexatious or malicious motive whatever.

See sec. 190, note (c) to form 3, and forms 7 (a), &c.

Sworn before me, at —— in the County of——, this——day of ——, 18—.

——.
Clerk, &c.

A. B. (*or* E. F.)

N. B.—If the party sues in a special character, as executor, or the like, it should be stated in the affidavit in what character he claims the debt (*c*).

(*c*) The following forms may be found useful:

Surviving partner.—Is justly and truly indebted to this deponent in the sum of —— for (*goods sold and delivered*) by this deponent and one T. T. since deceased, to the said C. D. at his request.

Husband and wife.—Mary B., wife of A. B., of, &c., maketh oath and saith that C. D., of, &c., is justly and truly indebted to the said A. B. and this deponent in the sum of —— for (*goods sold and delivered*), by this deponent whilst she was sole and unmarried, to the said C. D. at his request.

Executor or administrator.—A. B., of, &c., executor (*or* adminis-

23. *Bond on seizure or sale of perishable property.*

In the —— Division Court for the county of ——.

Between A. B., plaintiff;

and

C. D., defendant.

See sec. 214. Know all men by these presents, that we, A. B., of —— (*insert place of residence and addition*), the above-named plaintiff, E. F. of, &c., and G. G. of, &c., are, and each of us is, jointly and severally held and firmly bound to —— of, &c., the above-named defendant, in the sum of —— of lawful money of Canada, to be paid to the said defendant, his certain attorney, executors, administrators and assigns, for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, and each and every of us binds himself, his heirs, executors and administrators, firmly by these presents.

Sealed with our respective seals.

Dated this —— day of —— A. D. 18—.

Whereas the above named plaintiff hath sued out of the above named court (*or* from a justice of the peace) a warrant of attachment against the goods and chattels of the above-named defendant, and hath requested that certain perishable property, to wit (*specify property*) belonging to the above-named defendant, may be seized, and forthwith exposed and sold, under and by virtue of the said warrant of attachment [*or* whereas certain perishable property, to wit, ——, belonging to the above-named defendant, hath been seized under and by virtue of a warrant of attachment, issued out of the above named court (*or* by a justice of the peace) in the above-named cause, and hath been duly appraised and valued at the sum of ——, and is now in the hands of the clerk of the said court; and whereas the said above-named plaintiff hath requested the said clerk to expose and sell the said goods and chattels as perishable property] according to the form of the statute in that behalf.

Now the condition of this obligation is such, that if the said above-named plaintiff, his heirs, executors or administrators, do repay to the said above-named defen-

---

trator) of L. M., deceased, maketh oath and saith that C. D., of, &c., is justly and truly indebted to this deponent in the sum of ——, for (*goods sold and delivered*) by the said testator (*or* intestate) L. M., in his life time, to the said C. D, at his request.

dant, his executors or administrators, the value of the said goods and chattels, together with all costs and damages that may be incurred in consequence of the seizure and sale thereof, in case judgment be not obtained by the plaintiff, according to the true intent of the 70th section of the "Upper Canada Division Courts Act of 1850," (*now say*, the 214th clause of "The Division Courts Act,") then this obligation to be void, else to remain in full force and virtue. *See sec. 214.*

Sealed and delivered in presence of } A. B. [L. S.] E. F. [L. S.] G. G. [L. S.]

24. *Bond on supersedeas to warrant of attachment.*

In the —— Division Court for the county of ——.

Between A. B., plaintiff;
and
C. D., defendant.

Know all men by these presents, that we, C. D., of (*insert place of residence and addition*) the above-named defendant, E. F. of, &c., and G. G. of, &c., are, and each of us is, jointly and severally held and firmly bound to A. B. of, &c., the above-named plaintiff, in the sum of —— of lawful money of Canada, to be paid to the said plaintiff, his certain attorney, executors, administrators and assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, and each and every of us binds himself, his heirs, executors and administrators firmly by these presents.

Sealed with our respective seals.

Dated the —— day of ——, 18—.

Whereas the above-named plaintiff hath sued out of the above-named court (*or* from a justice of the peace) a warrant of attachment against the goods and chattels of the above-named defendant, for the sum of ——, and under and by virtue of the said warrant of attachment, certain goods and chattels of the said defendant, to wit: (*specify property seized*) have been seized and attached; and the said defendant desires that the said warrant be superseded, and the said property, so attached, restored to him, under the provisions of the 67th clause of the "Upper Canada Division Courts Act of 1850," (*now say*, the 209th clause of "The Division Courts Act.") *See sec. 209.*

Now the condition of this obligation is such, that if the said defendant, his heirs, executors or administrators, do and shall, in the event of the claim in the said cause being proved, and judgment being recovered thereon, as in other cases, where proceedings have been commenced against the person, pay the same, or pay the value of the said property, so taken and seized as aforesaid, to the said plaintiff, his executors or administrators, or shall produce such property, whenever thereto required, to satisfy such judgment; then this obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of } C. D. [L. S.] E. F. [L. S.] G. G. [L. S.]

25. *Order of reference.*

In the —— Division Court for the county of ——.
Between A. B., plaintiff;
and
C. D., defendant.

See rule No. 69.

By consent of the above-named plaintiff and defendant (*or* agent, *if so*,) given in open court (*or*, produced in writing to the court), it is ordered, that all matters in difference in this cause (*and if consented to, add* "and all other matters within the jurisdiction of this court in difference between the said parties,") be referred to the award of —— (*d*) so as said award be made in writing, ready to be delivered to the parties entitled to the same, on or before the —— day of ——(*e*); and that the said award may be entered as the judgment in

(*d*) One impartial arbitrator will in general be more satisfactory and less expensive than several, but if it is desired to have two, with an umpire, the following forms, for insertion in this place, may be useful:

"To the award of E. F. of, &c., and G. H. of, &c., and of such third person as the said E. F. and G. H. may in writing, to be endorsed hereon, under their hands, appoint to act with them before proceeding on this arbitration (*or* so soon as any difference of opinion shall arise between the said E. F. and G. H.)."

(*e*) Insert if desired, "With power to the said arbitrator from time to time, by writing under his hand endorsed hereon, to enlarge the time for making said award, so as such enlargement shall not exceed the period of —— months from the said —— day of ——."

this cause (*add any special terms as*) "the costs of reference to be in the discretion of the arbitrator," (*or*) "the costs of the action to abide the event of the suit." (*g*).

Given under the seal of the court this —— day of —— 18—.

——, Clerk.

* 25 (a). *Appointment for meeting on reference.*

In the, &c.

B. v. D. } I appoint —— the —— day of —— next at the hour of —— at ——, for proceeding on this reference.

——, Arbitrator.

To (*both parties*).

*25 (b). *Oath to be administered to witness by arbitrator.* *See sec.* 113.

The evidence which you shall give before me as arbitrator touching the matters in difference in this reference shall be the truth, the whole truth, and nothing but the truth: So help you God.

* 25 (c). *Enlargement to be endorsed.*

I enlarge the time for making my award respecting the matters referred to me by the within order of reference until the —— day of ——, 18—.

——, Arbitrator.

Dated, &c.

(*g*) Or if desired any of the following clauses: "That the arbitrator may proceed *ex parte* if either party after —— days notice fails to attend without shewing good cause for such default;" "That the parties will produce before the arbitrator all books of account, &c., in their control, in any way affecting the matter in question,"—or any other which the circumstances of the case may require.

*25 (d). *Appointment of umpire to be endorsed.*

We hereby appoint ———, of, &c., as a third arbitrator with us for determining the matters in dispute within referred to us.

Or,—We hereby appoint ———, of, &c., as an umpire as to certain differences of opinion which have arisen between us as arbitrators of the matters within referred.

Dated, &c. ——— } Arbitrators.
———

26. *Award.*

The award should be endorsed on the order in the following form.

See rule No. 69. After hearing and considering the proofs laid before me (*or* us) in the matter of the within reference. and in full determination of the matters to me (*or* us) referred, I (*or* we) do award, that the within named A. B. is entitled to recover from the within named C. D. the sum of ——, together with the costs of this suit, and also ——, the costs of this reference, (*or as the case may be*), and that the same shall be paid by the said C. D. within —— days, and that judgment be entered in the within mentioned case accordingly.

———, Arbitrator.

Dated this —— day of ——, 18—.

*26 (a). *Affidavit of execution of award.*

In the —— Division Court for the county of ———.

Between A. B., plaintiff;
and
C. D., defendant.

See rule 69. E. F., of the —— of ———, in the county of ———. Yeoman, maketh oath, and saith, that on the —— day of ——, A. D. 18—, this deponent was present and did see G. G. and ——— (*or as the case may be*) duly sign and execute the above award; that the name G. G. at the foot of the said award is the proper handwriting of the said G. G., and that the name E. F. subscribed to the said award as the witness thereto is of the proper handwriting of this deponent.

Sworn before me at ——— in the —— this —— day of —— A. D. 18—.

———, E. F.
Clerk, &c.

27. *Minute in Procedure Book of judgment on award.*

Judgment for the plaintiff (*or* defendant) for —— costs (*or* for the sum of —— and —— costs) pursuant to award; to be paid in —— days. See rules Nos. 51 & 69.

* 27 (a). *Claim to goods seized under execution.*

Take notice that I claim from you certain goods and chattels (*describing them*) seized by you under a warrant of execution (*or* attachment) issued out of (*name of court*) wherein ——— is plaintiff, and ——— defendant, which said goods and chattels I claim to be my property, and not that of the said defendant, under and by virtue of (*state shortly the way in which the party claims the goods*), and further that I shall hold you responsible for the same or for any loss which may accrue to me owing to such seizure. *See sec.* 175 *and notes.*

To C. D., A. B.
Bailiff, &c.

Dated, &c.

* 27 (b). *Application of Bailiff for interpleader.*

In the —— Division Court for the county of ———.

Between A. B., plaintiff;
and
C. D., defendant.

By virtue of a writ of execution (*or* "attachment") in this cause, dated the —— day of ——, 185—, from this court, I did on the —— day of ——, 18—, seize and take in execution (*specify goods, chattels, &c., claimed*), as the property of the defendant, the following goods and chattels, viz., one horse and cow, &c., the whole about the value of —— pounds. E. F., of the township of ——, &c., now claims the same as his property. You will therefore be pleased to issue an interpleader summons to the plaintiff and to the said E. F., according to the statute in that behalf. *See sec.* 175 *and notes.*

To —— clerk of the —— Division Court, county ——.

———, Bailiff.

Dated, &c.

28. *Summons to plaintiff on interpleader.*

In the —— Division Court for the county of ——.

Between A. B., plaintiff;

and

C. D., defendant.

See rule No. 53.

Whereas —— of —— hath made a claim to certain goods, [*or* to certain securities *or* money (*as the case may be*,)] viz.: (*here specify*) which have been seized and taken in execution (*or* attached) under and by virtue of process, issuing out of this court, in this action (*or*, by a justice of the peace); you are therefore hereby summoned to be and appear before the judge of the said court, at ——, on ——, at the hour of ——, when the said claim will be adjudicated upon, and such order made thereupon as to the court shall seem fit.

Given under the seal of the court, this —— day of ——, 18—.

——, Clerk.

To ——,

The above-named plaintiff.

N. B.—The claimant is called upon to give particulars of his claim, which you may inspect on application at the office of the clerk of the court five days before the day of hearing.

29. *Interpleader summons to claimant.*

In the —— Division Court for the county of ——.

Between A. B., plaintiff;

and

C. D., defendant.

See rule No. 53.

You are hereby summoned and required to appear at a court, to be holden on —— at the hour of ——, at ——, touching a claim made by you to certain goods and chattels [*or* moneys, &c., *or* securities (*as the case may be*), viz.: (*here specify*) seized and taken in execution (*or* attached) under process issued out of this court in this action (*or* by a justice of the peace), and in default of your then establishing such claim, the said goods and chattels will be sold (*or*, the said moneys, &c., paid and delivered over), according to the exigency of the said process: and take notice, that you are required, five days before the said —— day of ——, to leave at the clerk's office a particular of the goods and chattels (*or as the case may be*) so claimed by you, and the grounds of your claim.

Given under the seal of the court, this —— day of ——, 18—.

——, Clerk.

To ——,
Of —— (the claimant).

30. *Particulars of claim on interpleader.*

In the —— Division Court for the county of ——.

Between A. B., plaintiff;
and
C. D., defendant.

To whom it may concern.

E. F. of —— claims as his property the following goods and chattels (*or* moneys, &c.) seized and taken in execution (*or* attached), as it is alleged, namely, (*specify the goods and chattels, or chattels or moneys, &c., claimed*); and the grounds of claim are (*set forth in ordinary language the particulars on which the claim is grounded*); and this the said E. F. will maintain and prove. See rule No. 53.

E. F.

Dated this —— day of ——, 18—.

N. B.—If any action for the seizure has been commenced, state in what court, and how the action stands.

31. *Minute in Procedure Book of adjudication on interpleader.*

Adjudged, that the goods [*or* the goods, chattels and moneys, *or* proceeds of the goods, &c. (*as the case may be*)], mentioned in the interpleader summons [*if only for a part of the goods, &c., add the words*, "hereafter mentioned, that is to say" (*here enumerate them*)] are (*or* are not) the property of E. F. (the claimant), *or* that rent to the amount of —— is due to E. F. (the claimant); ordered that ——, the costs of this proceeding be paid by (*here insert such order as to the costs or the subject in dispute, if any, as the judge shall have made*) in —— days. See rules Nos. 51 & 53.

32. *Execution against the goods of claimant on interpleader.*

In the —— Division Court for the county of ———.

Between A. B., plaintiff;
and
C. D., defendant,
E. F., claimant.

See rule No. 53.

Whereas at the sittings of the said court, holden on —— at ———, by the judgment of the said court, the said plaintiff recovered against the said defendant the sum of —— for a certain debt, before that time due and owing to the said plaintiff (*or* for certain damages sustained by the said plaintiff) and costs of suit, which said debt (*or* damages) and costs were ordered to be paid by the said defendant at a day now past; and whereas the said sum and costs not being paid, an execution issued against the goods of the said defendant, under which certain goods and chattels were seized [*if the interpleader was in respect to goods attached, omit all the preceding after the word* "claimant," *and say in lieu thereof as follows*—"whereas a writ of attachment was sued out of this court (*or* issued by a justice of the peace) under which certain goods and chattels, &c., were seized and attached"] to which the above-named claimant made claim, and which claim came on to be heard and decided, upon interpleader summons, at a sitting of this court held on —— at ———, and at such last mentioned court it was adjudged, touching the said claim, that the goods [*or* the goods, chattels and moneys, *or* proceeds of the goods, &c. (*as the case may be*)] mentioned in the interpleader summons [if only for a part of the goods, &c., add the words—"hereinafter mentioned, that is to say (*here enumerate them*)] were not the property of E. F. (the claimant); and it was ordered that the sum of ——, the costs of that proceeding, should be paid by the said claimant to the clerk in —— days, for the use of the said plaintiff; and whereas the said sum of —— has not been paid, pursuant to the said order; these are therefore to require you to make and levy by distress and sale of the goods and chattels of the said claimant, wheresoever the same may be found (excepting those which are by law exempt from seizure) the said sum of ——, and your lawful fees on the execution of this precept; and also, if necessary for that purpose, to seize and take any money, or bank notes, and any cheques, bills of exchange, promissory notes, bonds, specialties or securities for money of the

See 23 *Vic. cap.* 25, *sec.* 2.

said claimant, which may be found, or such part thereof as may be sufficient for the satisfying of this execution, and the costs of making and executing the same, so that you may have the said sum of —— within thirty days after the date hereof, and pay the same over to the clerk of the court for the said plaintiff.

Given under the seal of the said court this —— day of ——, 18—.

To ——, ——, Clerk.
Bailiff of the said court.

Costs,
Execution ——,
Paid ——,
Levy——.

* 32 (a). *Landlord's claim for rent under sec.* 176.

Whereas I have been informed that you have distrained the goods of C. D. of ——, on his premises at ——, to satisfy a certain judgment of the —— court, &c., against the said C. D., at the suit of A. B.; I hereby give you notice that I am the landlord of the said C. D. and that I claim $—— for rent now in arrear, being for —— quarter (*or as the case may be*), and I require you to pay the same to me before you apply the proceeds of the sale of said goods or any part thereof to satisfy the said judgment. *See sec.* 176.

Dated, &c. E. F.,
To G. H., *Landlord of said tenement.*
Bailiff of, &c.

33. *Minute in Procedure Book of ordinary judgment against executor or administrator.*

Judgment for the plaintiff for —— and —— costs, to be paid in —— days, to be levied of the goods and chattels of the deceased; failing such goods, the costs to be levied of the defendant's proper goods and chattels. See rule No. 51.

34. *Minute in Procedure Book of judgment against an executor or administrator, who has wasted assets.*

Judgment for the plaintiff for —— and —— costs, to be paid in —— days, to be levied of the goods and chattels of the deceased; failing such goods, then the whole (*or* the sum of —— and the said costs) to be levied of the defendant's proper goods and chattels; the defendant having wasted the goods of the deceased to that amount. See rules Nos. 51 & 57

35. *Minute in Procedure Book of judgment against an executor or administrator, who has denied his representative character, or pleaded a release to himself.*

See rules Nos. 51 & 58.

Judgment for the plaintiff for ——, and —— costs, to be paid in —— days, to be levied of the goods and chattels of the deceased; failing such goods, then to be levied of the defendant's proper goods, the defendant having pleaded a release to himself, (*or* "the defendant having denied his representative character") and this plea being found against him.

36. *Minute in Procedure Book of judgment against an executor or administrator, who admits his representative character, and denies the demand.*

See rules Nos. 51 & 59.

See form No. 33.

The same as in ordinary judgment against executor or administrator.

37. *Minute in Procedure Book of judgment against executor or administrator, where he admits his representative character, but denies the demand, and alleges total or partial administration of assets: and the plaintiff proves his demand, and the defendant proves administration.*

See rules Nos. 51 & 60.

Judgment for the plaintiff for —— debt, and also —— costs, to be paid in —— days; the plaintiff's demand having been proved, which was denied, and full (*or* partial) administration also having been proved, which was denied, the said costs to be levied of the goods and chatters of the deceased; failing such goods, then of the defendant's proper goods; the said debt to be levied of the goods and chattels of the deceased, hereafter to come to the defendant's hands to be administered; and ordered that ——, the costs of proving such administration, be paid by the plaintiff in —— days.

N. B.—If the defendant is shown to have some assets, the judgment must be for the amount "*de bonis testatoris*," and for the residue, "*quando acciderint.*"

38. *Minute in Procedure Book of judgment against executor or administrator, where the defendant admits his representative character, but denies the demand, and alleges total or partial administration of assets, and the plaintiff proves his demand, and the defendant does not prove administration.*

Judgment for the plaintiff for ——, debt, and also ——, costs to be paid in —— days, to be levied of the goods and chattels of the deceased; failing such goods, then the said costs to be levied of the defendant's proper goods, and the debt to be levied of the goods and chattels of the deceased, hereafter to come to the defendant's hands to be administered, the plaintiff's demand having been proved, which was denied, and administration, which was alleged, not having been proved. See rules Nos. 51 & 61.

39. *Minute in Procedure Book of judgment against executor or administrator, who admits his representative character, and the plaintiff's demand, but alleges a total or partial administration of assets, and proves the administration.*

Judgment for the plaintiff for ——, to be paid in —— days; to be levied of the goods and chattels of the deceased, hereafter to come to the defendant's hands to be administered:—the debt not being denied; and full (*or* partial) administration, which was denied, having been proved, ordered, that the plaintiff pay ——, for the defendant's costs in —— days. See rules Nos. 51 & 62.

40. *Minute in Procedure Book of judgment against executor or administrator, who admits his representative character, and the plaintiff's demand, but alleges a total or partial administration of assets, and does not prove the administration.*

Judgment for the plaintiff for ——, debt and ——, costs, to be paid in —— days; full (*or* partial) administration, which was alleged, and disputed, not having been proved, ordered, and the said sums be levied of the goods and chattels of the deceased; failing such goods, then the debt, of the goods and chattels, hereafter to come to the defendant's hands to be administered; and the said costs to be levied of the defendant's proper goods. See rules Nos. 51 & 63.

41. *Summons to executor or administrator, where plaintiff intends to apply to the court, alleging that assets have come to the defendant's hands since judgment.*

In the —— Division Court for the County of ———.

Between A. B., plaintiff;

and

C. D., executor (*or* administrator),
Of E. F., deceased, defendant.

See rule No. 64.

The plaintiff having learned, that property of the said deceased has come to your hands as executor (*or* administrator) since the judgment herein, to be administered (and that you have withheld and wasted the same) intends to apply at the next sitting of this court, to be holden at ——— in ——— on the —— day of —— at the hour of ——, for an order, that the debt, (*or* damages) and costs be levied of the goods and chattels of the said deceased, if you have so much thereof to be administered (and that if you have not, then that it shall be levied of your own proper goods and chattels), and that the costs be levied of your own proper goods and chattels.

You are, thereupon, hereby summoned to be and appear at the said court, at the time and place aforesaid. to answer touching the matter aforesaid.

Dated this —— day of —— A. D. 18 —.

———, Clerk.

To ———,
The above named Defendant.

42. *Suggestion of devastavit on original summons.*

See rule No. 56.

(Commence with forms of summons, same as in ordinary cases, but naming defendant as executor or administrator, and adding after the word "default") and the plaintiff alleges, that you the defendant have

See form No. 6.

money, goods, and chattels, which were the property of ———, deceased, at the time of his death, and which came to your hands as such executor (*or* administrator) to be administered; and if not, that you have withheld or wasted the same.

43. *Summons on a devastavit.*

In the —— Division Court for the County of ———.

Between A. B., plaintiff;
and
C. D., executor (*or* administrator) of
E. F., deceased, defendant.

To C. D. the above named defendant.

You are hereby [as before (*or* as often before) you were] summoned to be and appear at the sittings of this court, to be holden at ———, in the town of ——— on the —— day of ——, A. D. 18 —, at the hour of —— in the forenoon, to answer the above-named plaintiff in an action, for that you, the defendant, have withheld and wasted divers goods and chattels, which were the property of E. F., deceased, at the time of his death, and which came to the hands of you the defendant, as executor (*or* administrator) of the said E. F. to be administered, whereby a certain judgment recovered against you by the plaintiff at the sittings of this court on —— at ——— for the sum of —— remains unsatisfied; and in the event of your not appearing, the plaintiff may proceed to obtain judgment against you by default. See rule No. 56.

Dated the —— day of ——, 18 —.

———, Clerk.

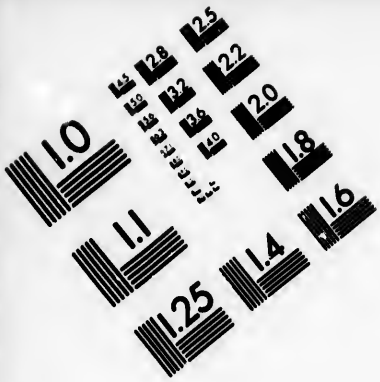
Add notice as in Form 6.

44. *Minute in Procedure Book of judgment against executor or administratar on devastavit after judgment.*

Judgment that the defendant has wasted goods and chattels of —— deceased to the sum of ——, whereby a judgment, recovered against him by the plaintiff in the —— Division Court for the county of ——— on the —— day of ——, remains unsatisfied; and that the plaintiff now recover against the defendant the first named sum, and also —— costs; to be paid in —— days. See Rules Nos. 51 & 64.

———, Judge.

Dated this —— day of ——, 18 —.



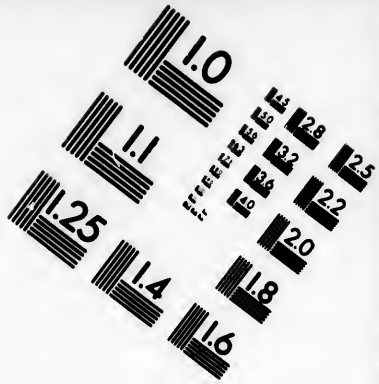
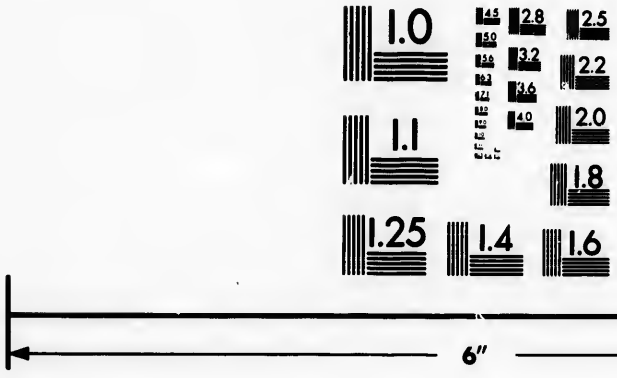
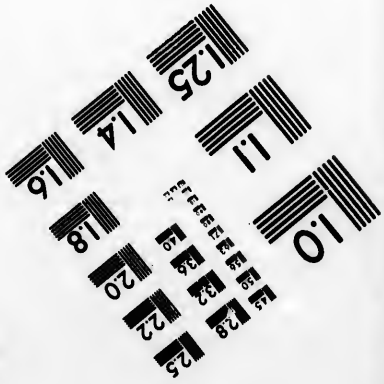


IMAGE EVALUATION TEST TARGET (MT-3)





Photographic Sciences Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

45. *Summons on behalf of executor or administrator to revive a judgment.*

In the —— Division Court for the County of ———.

No. ——, A. D. 18 —.

Between A. B., executor of C. D., deceased, plaintiff;

and

E. F., defendant.

To E. F., the above named defendant.

See Rule No. 68. Whereas at the sittings of this court (*or* the —— Division Court, &c.,) held at ——— on ——, the above-named C. D. in his lifetime, obtained a judgment against you for the sum of ——, and costs, which judgment, a transcript of which is hereto annexed, still remains

See Form 52. unsatisfied, and the said plaintiff, as executor as aforesaid, claims to have execution thereof; you are hereby summoned to appear at the sittings of this court to be holden at ——— on —— at —— in the forenoon, to show cause, if any you have, why the said plaintiff, executor as aforesaid, should not have execution against you of the said judgment, according to the force and effect of the said recovery: and, in the event of your not appearing, judgment will be entered against you by default.

By the court,

———, Clerk.

Dated this —— day of ——, 18 —.

Claim ——.

Costs exclusive of mileage ——.

46. *Summons to revive judgment against an executor.*

In the —— Division Court for the county of ———.

No. —— A. D., 18 —.

Between A. B., plaintiff;

and

C. E., executor of E. F., deceased, defendant.

See Rule No. 68. Whereas at the sittings of this court (*or* the —— Division Court for, &c.) held at ——— on ——, &c., the said plaintiff recovered against the said E. F., in his lifetime, the sum of ——, which judgment, a transcript whereof is hereto annexed, still remains unsatisfied;

See form No. 52. and the said plaintiff claims to have execution thereof against you, as executor of the said E. F.; you are hereby summoned to appear at the sittings of this court, to be holden at ———, on ——, at the hour of ——, to

show cause, if any you have, why the said plaintiff should not have execution of the said judgment against you, as executor as aforesaid, to be levied of the goods and chattels of the said E. F., deceased, in your hands to be administered; and in the event of your not appearing, judgment herein will be entered against you by default.

Dated this —— day of ——, 18 —.

By the court,

———, Clerk.

Amount claimed ——.
Costs, exclusive of mileage ——.

47. *Minute in Procedure Book of judgment for executor to revive a judgment.*

Judgment for plaintiff, that he have execution against the defendant of a judgment of this court (*or* of the —— Division Court, &c.) whereby the said C. D. in his lifetime, on ——, recovered against the said defendant the sum of ——. See Rules Nos. 51 & 68.

48. *Minute in Procedure Book of judgment to revive a judgment against an executor.*

Judgment for the plaintiff, that he have execution against the defendant, as executor of E. F., deceased, of a judgment of this court (*or* of the —— Division Court, &c.,) whereby the plaintiff, on ——, recovered against the said E. F. in his lifetime the sum of ——, to be levied of the goods and chattels of the said deceased, in the hands of the said defendant to be administered. See Rules Nos. 51 & 68.

49. *Execution against goods of testator.*

In the —— Division Court for the county of ———.

Between A. B., plaintiff;
and
C. D., executor (*or* administrator of E. F., deceased, defendant).

Whereas at a sitting of the said court, holden on —— at —— by the judgment of the said court, the said plaintiff recovered against the said defendant as executor (*or* administrator) of E. F. deceased, the sum of ——, for a certain debt, with ——, for costs, to be

levied of the goods and chattels of the deceased; failing such goods, the costs to be levied of the defendant's proper goods and chattels, which said debt and costs were ordered to be paid at a day now past, and the defendant has not paid the same: these are therefore to command you, forthwith to make and levy, by distress and sale of the goods and chattels, which were the property of the said E. F. in his lifetime, in the hands of the defendant to be administered, wheresoever the same may be found, the said debt and costs, amounting together to the sum of ——, together with the costs of this execution; and also, and if necessary for that purpose, to seize and take any money, or bank notes, and any cheques, bills of exchange, promissory notes, bonds, specialties or securities for money, which were the property of the said E. F. in his lifetime, in the hands of the said defendant to be administered, which may be found, or such part thereof as may be sufficient for the satisfying of this execution, and the costs of making and executing the same, if the defendant have so much thereof in his hands to be administered; and if he hath not so much thereof in his hands to be administered then that you make and levy of the proper goods, notes and chattels, money, &c. [*repeat*] of the defendant the sum of —— for the costs aforesaid, and the costs of this execution and levying the same, so that you may have the said moneys within thirty days after the date hereof, and pay the same over to the clerk of the court, for the said plaintiff.

Given under the seal of the court this —— day of ——, 18—.

——, Clerk.

To ——,
Bailiff of the said court.

Debt ——.
Costs ——.
Execution ——.
Paid ——.
Levy ——.

N.B.—Warrants of execution upon the judgment given in other cases against executors may be drawn from this form, with the requisite alterations.

50. *Execution for an executor on judgment revived in his favor.*

In the —— Division Court for the County of ———.
Between A. B., executor of C. D., deceased, plaintiff;
and
E. F., defendant.

You are hereby commanded (*or* as before *or* as often before) to make and levy by distress and sale, of the goods and chattels of the said defendant (except those which are by law exempt from seizure) the sum of ——, which C. D. in his lifetime in this court (*or* the —— Division Court, &c.) on ——, recovered against the said defendant for his debt (*or* damages) and costs, and whereof it was on ——, &c., in this court (*or* the —— Division Court, &c.,) adjudged that the said plaintiff, as executor of the said C. D., should have execution, together with the costs of execution herein, and bailiff's fees; and also, and if necessary for that purpose, you are to seize and take any money, or bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, of the said defendant, or such part thereof as may be sufficient for the satisfying of this execution; so that you may have the said moneys within thirty days, and pay the same over to the clerk of the court, for the use of the said plaintiff, as executor as aforesaid. See Rule No. 68. *See* 23 *Vic. cap.* 25, *sec.* 2.

Given under the seal of the court, this —— day of —— 18—.

———, Clerk.

To ———,
Bailiff.
Due on judgment ——.
Execution ——.
Bailiff's fees ——.

51. *Execution on judgment revived against executor or administrator.*

In the —— Division Court for the county of ———.
Between A. B., plaintiff;
and
C. D., executor of E. F., deceased, defendant.

You are hereby commanded (*or* as before, *or* as often before) to make and levy by distress and sale of the goods and chattels of E. F., deceased, in the hands of the said defendant, as his executor (*or* administrator) See Rule No 68.

to be administered, the sum of ——, which the said plaintiff in this court (*or* in the —— Division Court, &c.), on —— recovered against the said deceased in his lifetime for the said plaintiff's debt (*or* damages) and costs, and whereof it was on —— adjudged in this court (*or* in the —— Division Court, &c.), that the said plaintiff should have execution against the said defendant as executor (*or* administrator) of the said deceased, to be levied of the goods and chattels of the said deceased, in the said defendant's hands to be administered, together with the costs of execution herein, and bailiff's fees; and also, and if necessary for that purpose, you are to seize and take any money or bank notes, cheques, bills of exchange, promissory notes, bonds, specialties or securities for money, which were the property of the said deceased, or such part thereof as may be sufficient for the satisfying of this execution; so that you may have the said moneys within thirty days, and pay the same over to the clerk of the court, for the use of the said plaintiff, as executor (*or* administrator) as aforesaid.

Given under the seal of the court, this —— day of ——, 18—.

——, Clerk.

To ——,
Bailiff.

Due on judgment ——.
Interest ——.
Execution costs ——.
Bailiff's fees ——.

52. *Transcript of judgment (to County Court).*

In the —— Division Court for the county of ——.

Between A. B., plaintiff;
and
C. D., defendant.

The following proceedings were had:

See secs. 142 *&* 143.

On the —— day of ——, a summons, requiring the defendant to answer the plaintiff's claim, for a debt (*or* for damages) amounting to ——, was issued out of this court in this cause, according to the statute in that behalf: on the —— day of ——, the said defendant was duly served with a copy of the said summons, and of the particulars of the plaintiff's claim: at the sittings of the said court holden on the —— day of ——, at ——, the said cause came on to be tried, and the following judgment was then and there rendered [by the court

(*here copy the minute of judgment from the Procedure Book*): on the —— day of ——, a writ of execution upon the said judgment was duly issued out of the said court by the clerk thereof, which said writ of execution was directed to ———, a bailiff of the said court, and commanded him to levy the sum of —— of the goods and chattels of the said defendant: on the —— day of ——, the said bailiff returned the said writ of execution, with a return thereto, in the following words: (*copy bailiff's return*).

Pursuant to the [142nd section of the Division Courts Act]; I ———, clerk of the said Division Court for the ———, do hereby certify and declare, that the foregoing is a faithful transcript of the judgment and proceedings in the above cause, as shown, and as appears, by the original entries and records of the court.

Given under the seal of the said court, this —— day of ——, 18—.

———, Clerk.

N. B.—The above form may be adopted, when the judge certifies a judgment into another county. *See sec. 137 & next form.*

*52 (a). *Transcript of judgment from one Division Court to another.*

In the —— Division Court for the county of ———.

Transcript of the entry of a judgment rendered by the said court, at the sittings thereof, held at ———, in the said county, on the —— day of ——, A.D. 18—, in a suit numbered ——, A.D. 18—. *See sec. 139 & notes.*

Between ———, plaintiff;
and
———, defendant.

Amount of judgment:
Debt £
Costs £
——— £

Additional costs:
£
£
——— £

Total..... £

Amount paid:
186
186
——— £

Amount due, £ ———

Judgment for plaintiff for —— pounds —— shillings —— pence, and —— costs, to be paid in —— days; execution issued —— day of ——, 18—, and returned —— day of ——, 18—, *nulla bona*, &c. (*or as the case may be*). Pursuant to the provisions of the Division Courts Act, I, ———, clerk of the said Division Court, do certify that the above transcript is correct, and duly taken from the procedure book of the said court, and that judgment in the above cause was recovered at the date above stated, viz., the——

day of ——, A. D. 18—; and further, that the amount unpaid on the said judgment is ——— pounds, ——— shillings and ——— pence, as stated in the margin hereof.

Given under the seal of the said court, this —— day of ——, A.D. 18—.

———, Clerk.

To ———,
Clerk.

* 52 (b). *Execution on above transcript.*

In the —— Division Court for the county of ——.

Between ———, plaintiff;

and

[L. S.] ———, defendant.

See sec. 139.

Debt, $

Costs, $

Paid, $

Levy, $

with interest from

See 23 *Vic. cap.* 25, *sec.* 2.

A.D. 18—.

Whereas at the sitting of the —— Division Court for the —— county of —— holden at —— in the said —— county on the —— day of —— 18—, by the judgment of the said court, the said plaintiff recovered against the said defendant the sum of —— for —— debt, with —— for costs; which said debt and costs were ordered to be paid by the said defendant at a day now passed, as appears by a transcript of the entry of such judgment, attested by the seal of the said court, certified and signed by ——— the clerk thereof, and sent and addressed to the clerk of this Division Court of the county of ———, pursuant to the provisions of section 139 of the Division Courts Act: And whereas it further appears, by certificate at the foot of the said transcript, attested, certified, signed, sent, and addressed as aforesaid, that the amount unpaid upon the said judgment is ——, which said transcript and certificate is duly entered in the book of this court. These are therefore to command you forthwith to make and levy, by distress and sale of the goods and chattels of the said defendant, wheresoever the same may be found (excepting those which are by law exempt from seizure), the said debt and costs amounting together to the sum of —— and your lawful fees on the execution of this precept; and also, if necessary for that purpose, to seize and take any money or bank notes, and any cheques,

bills of exchange, promissory notes, bonds, specialities or securities for money, of the said defendant, which may be there found, or such part thereof as may be sufficient for the satisfying of this execution, and the costs of making and executing the same, so that you may have the said sum of —— within thirty days after the date hereof, and pay the same over to the clerk of the court for the said plaintiff.

Given under the seal of the court this —— day of —— one thousand eight hundred and ——.

————, Clerk.

To ————,
Bailiff of the said court.

* 52 (c). *Return of transcript.*

In the —— Division court for the county of ————.

Between ————, plaintiff;
and
————, defendant.

Received transcript in above suit from ————, clerk of the said court, on the —— day of —— 18—, for the sum of $——, besides the interest. Issued execution, and handed to ———— bailiff of the Division Court of the county of ————, and on the —— day of ——, 18—, the following return was made by the said ———— bailiff, viz.: *See note to sec. 139.*

Given under the seal of this Division Court for the county of ————, this —— day of ——, A.D. 18—.

————, Clerk,

* 52 (d). *Plaintiff's order to remit money.*

To ————,
Clerk of Division Court.

Sir,—Be pleased to send as soon as collected, by Post Office order or cheque, payable to the order of ————, clerk Division Court, ——, the amount of suit, ———— *v.* ————. *See note to sec. 139.*

No.——, A. D. 18—.

————, Plaintiff.

53. *Certificate of judgment for registration.*

[Rendered nugatory by 24 Vic. cap. 41, which does away with the registration of judgments.]

54. *Application for judgment summons.*

To R. B., clerk of the —— Division Court for the county of ———.

See rule No. 17 and form No. 55.

Be pleased to summon ———, of, &c., to answer according to the statute in that behalf, touching the debt due me by the judgment of the —— Division Court on my behalf, a minute whereof is hereunto annexed.

A. B., plaintiff.

55. *Summons to defendant after judgment.*

In the —— Division Court for the county of ———.

No.——, A. D. 18—.

Between A. B., plaintiff;
and
C. D., defendant.

To C. D., the above-named defendant.

See rule No. 17.

Whereas, at the sittings of this court (*or* the —— Division Court for, &c.), held at ———, on, &c., the above named plaintiff obtained a judgment against you for the payment of the sum of ——, which said judgment still remains unsatisfied; you are therefore hereby summoned to appear [*or if a second summons has been issued under sec.* 166, *say*, (as before you were)] at the sittings of this court, to be holden at ———, on the —— day of ——, at the hour of ——, to be then and there examined by the judge of the said court, touching your estate and effects, and the manner and circumstances under which you contracted the said debt, (or incurred the damages or liability) which was the subject of the action, in which the said judgment was obtained against you, and as to the means and expectations you then had, and as to the property and means you still have of discharging the said debt (*or* damages, *or* liability), and as to the disposal you may have made of any of your property: And take notice that if you do not appear, in obedience to this summons, you may, by order of this court, be committed to the common gaol of the county.

Given under the seal of the court this —— day of ——, 18—.

By the court.

———. Clerk.

Amount of judgment———.
Costs of this summons———.

*55 (a). *Summons to defendant on default of payment pursuant to order made on a judgment summons.*

No. 50 of 1858, or No. 302 of 1857, or No. 192 of 1857.

Between ———, plaintiff;
and
———, defendant.

Whereas at the sittings of this court (*or* of, &c.), holden at the —— in the town —— of ———, in the county of ———, on the —— day of ——, 18—, the above named plaintiff obtained a judgment against you for the sum of —— pounds and —— shillings (*or* dollars and cents) for debt, besides interest thereon and —— costs to be paid ——, and which said judgment remained unsatisfied. *See sec. 165 & note (i).*

And whereas by a summons bearing date the —— day of ——, 18—, you were summoned to appear at the then next sittings of this court, holden at the —— in the —— of —— in the county of ——, on the —— day of ——, 18—, at the hour of —— of the clock in the forenoon, to be then and there examined by the judge of the said court touching your estate and effects, and the manner and circumstances under which you contracted the said debt, which was the subject of the action in which the said judgment was obtained against you, and as to the means and expectations you then (at the time of contracting) had, and as to the property and means you still had (at the said last day aforesaid) of discharging the said debt, and as to the disposal you may have made of any of your property. (*If debtor did not appear upon the first but did upon a second summons recite accordingly.*)

And whereas upon your appearing thereto, and upon examination and hearing of both parties (*or* of you, and the evidence, *if any*), it appeared to the satisfaction of the said judge, that you then had (*or* had since the judgment obtained against you, *as the case may be*) sufficient means and ability to pay the said debt and the interest thereon, and costs so recovered against you; and the said judge did then and there order and direct that you should pay to the said plaintiff the sum of —— debt, and interest then accrued, and —— costs, and also —— costs of the said last mentioned summons, to be paid as follows, that is to say, the sum of —— to be paid on the —— day of ——, 18—, the further sum of —— to be paid on the —— day of ——, 18—, or forthwith (*as the case may be*).

And whereas the plaintiff alleges that you have not paid the —— and —— instalments of —— each, (*or* the said sums) so ordered to be paid.

You are therefore hereby summoned to appear at the next sittings of this court, to be holden at the —— in the town —— of ——— in the county of ———, on the —— day of ——, 18—, at the hour of —— of the clock in the forenoon, to be then and there examined by the judge of the said court touching your estate and effects, *and the manner and circumstances under which you contracted the said debt, which was the subject of the action in which the said judgment was obtained against you, and as to the means and expectations you then had, and as to the property and means you still have, of discharging the said debt, and as to the disposal you may have made of any of your property*, and as to the reasons why you have not paid to the plaintiff the said —— and —— instalments of —— each of the said debt, so ordered to be paid by you, as last above mentioned and recited, pursuant to the said order of the judge.

And also to shew cause why you should not be committed to the common jail of the county for not complying with the said order of the said judge.

Given under the seal of the court, this —— day of ——, 18—.

By the court,

———, Clerk.

Amount of judgment, £——
" instalment, £——
Cost of this summons, £——.

NOTE—*The latter part in italics may be superfluous, but cannot vitiate. Clerks may omit or adopt, as the judge of the county directs.*

—•—

Or the following (which is used in some counties, though it is not considered so correct a form as that given above).

In the —— Division Court for the county of ———.

Between ———, plaintiff;

and

———, defendant.

To ———, the above-named defendant.

You are hereby ——— summoned to be and appear at the sittings of the court, to be holden at ———, in the said county of, on the —— day of ——, 18—, at

the hour of —— o'clock in the forenoon, to show cause why you should not be committed to the common jail of the said county for not complying with an order from the court, of the ———.

Dated the —— day of ——, A. D. 18—.

By the court

———, Clerk.

Amount of judgment, £——
" instalment, £——
Costs of this summons, £——.

—•—

* 55 (b). *Warrant of commitment for non-attendance on above summons.*

In the —— Division Court for the county of ———.

Between ———, plaintiff;

and

———, defendant.

To —— bailiff of the said court, and to all constables and peace officers of the county of ——— and to the jailer of the common jail for the said county.

Whereas, at the sittings of this court, holden at ——, on the —— day of ——, A.D. 18—, the above named plaintiff, by the judgment of the said court, in a certain suit wherein the court had jurisdiction, recovered against the above-named defendant the sum of —— pounds —— shillings and —— pence, currency, for his debt, damages, and costs, which were ordered to be paid at a day now past; And whereas the defendant not having made such payment, upon application of the plaintiff, a summons was duly issued from and out of this court, against the said defendant, by which said summons the defendant was required to appear at the sittings of this court, holden at ———, on the —— day of ——, A.D. 18—, to answer such questions as might be put to him, touching his estate and effects, and the manner and circumstances under which he contracted the said debt, or incurred the damages or liability which was the subject of the action in which the said judgment was obtained against him, and as to the means and expectations he then had, and as to the property and means he might have had, and as to the disposal he might have made of any of his property: And whereas the defendant having duly appeared at the said court, pursuant to the said summons, was examined touching the said matters: And whereas it appeared, on such examination, to the satisfaction of the judge of the said court, that the said ——— did not incur the said debt or

See sec. 167 *& rules* 10, 13 *& 55.*

liability under false pretences, or by breach of trust or fraud; and thereupon it was ordered, by the judge of the said court, that the said ——— should pay the amount of the debt and costs, in monthly instalments of —— the first payment to be made on the ——, A.D. 18—; And whereas the defendant not having made such payments, upon application of the plaintiff, a summons was duly issued from and out of this court against the said defendant, by which said summons the defendant was required to appear at the sittings of this court, holden at ———, on the —— day of ——, A.D. 18—, to shew cause why the order of judgment, dated on the —— day of ——, A.D. 18—, for the monthly payment of —— was not obeyed: And whereas it was duly proved upon oath, that the said defendant was duly served with the said summons: And whereas the defendant did not appear to shew cause as required by such summons (*or* on appearing to said summons did not shew sufficient cause why an order of committal should not be made against him pursuant to said summons), and thereupon it was ordered by the judge of this court, that the said defendant should be committed for the term of —— days to the common jail of the said county, according to the form of the statute in that behalf, or until he should be discharged by due course of law. These are therefore to require you, the said bailiff, and others, to take the said defendant and to deliver him to the jailer of the common jail of the said county. And you, the said jailer, are hereby required to receive the said defendant, and him safely keep in the said common jail, for the term of —— days from the arrest under this warrant, or until he shall be sooner discharged by the due course of law, according to the provisions of the Act of Parliament in that behalf, for which this shall be you sufficient warrant.

Given under the seal of the court, this —— day of ——, A.D. 18—.

———, Clerk.

56. *Warrant of commitment in default of appearance.*

In the —— Division Court for the county of ———.

No. —, A.D. 18—.

Between A. B., plaintiff;
and
C. D., defendant.

To ———, bailiff of the said court, and to all constables and peace officers of the county of ———, and to

the jailer of the common jail of the said county of ——.

Whereas at the sittings of this court (*or* of the —— Division Court for, &c.), holden at ——, on the —— day of ——, the above-named plaintiff, by the judgment of the said court, in a certain suit wherein the court had jurisdiction, recovered against the above-named defendant, the sum of ——, for his debt (*or* damages) and costs of suit, which were ordered to be paid at a day now past; and whereas the defendant, not having made such payment upon application of the plaintiff, a summons was duly issued from and out of this court, against the said defendant, by which said summons the defendant was required to appear at the sittings of this court, holden at ——, on, &c., to answer such questions as might be put to him, touching (*set out as in the summons*): and whereas it was duly proved, on oath, at the said last mentioned sittings of this court, that the said defendant was personally served with the said summons: and whereas the said defendant did not attend, as required by such summons, nor allege any sufficient cause for not so attending [(*then by a similar recital shew that a second summons has been issued as required by sec.* 166, *upon which also the defendant did not appear*), or *if the non-attendance on first summons has been wilful, then say*, and whereas upon the return of the said summons, it was proved on oath to the satisfaction of the judge of the said court that the non-attendance of the said —— was wilful)]: and thereupon it was ordered, by the judge of this court, that the said defendant should be committed, for the term of —— days, to the common jail of the said county, according to the form of the statute in that behalf, or until he should be discharged by due course of law: these are therefore to require you, the said bailiff and others, to take the said defendant, and to deliver him to the jailer of the common jail of the said county: and you, the said jailer, are hereby required to receive the said defendant, and him safely to keep in the said common jail for the term of —— days from the arrest under this warrant, or until he shall be sooner discharged by due course of law, according to the provisions of the Act of Parliament in that behalf: for which this shall be your sufficient warrant.

See rules Nos. 10, 13 and 55.

See form No. 55.

Given under the seal of the court, this —— day of ——, 18—.

——, Clerk.

57. *Warrant of commitment after examination.*

In the —— Division Court for the county of ———.

No. —, A.D. 18—.

Between A. B., plaintiff;
and
C. D., defendant.

To ———, bailiff of the said court, and to all constables and peace officers of the county of ———. and to the jailer of the common jail for the said county.

See rules Nos. 10, 13 and 55.

Whereas, at the sittings of this court (*or* the —— Division Court for, &c.), holden at ———, on the —— day of, &c., the above-named plaintiff, by the judgment of the said court, in a certain suit wherein the court had jurisdiction, recovered against the above-named defendant the sum of ——, for his debt (*or* damages) and costs, which were ordered to be paid at a day now past: and whereas the defendant not having made such payment, upon application of the plaintiff, a summons was duly issued from and out of this court against the said defendant, by which said summons the defendant was required to appear at the sittings of this court, holden at ———, on, &c., to answer such questions as might be put to him, touching (*set out as in the summons, and if defendant did not attend on first summons and a second was issued upon which he did attend, recite accordingly*): and whereas the defendant having duly appeared

See form No. 56.

at the said court, pursuant to the said summons, was examined touching the said matters: and whereas it appeared, on such examination, to the satisfaction of the judge of the said court, that [*here insert the particular ground of commitment in the language used in the statute, e. g.*, "C. D., the said defendant, incurred the debt (*or* liability), the subject of this action, under false pretences," (*or* by means of fraud *or* breach of trust")]:

See form *55 (a).

and thereupon it was ordered by the said judge, that the said defendant should be committed for the term of —— days to the common jail of the said county, according to the form of the statute in that behalf, or until he should be discharged by due course of law: these are therefore to require you, the said bailiff and others, to take the said defendant, and to deliver him to the jailer of the common jail of the said county; and you, the said jailer, are hereby required to receive the said defendant, and him safely keep, in the said common jail, for the term of —— days from the arrest under this warrant, or until he shall be sooner discharged by due course of law, according to the provisions of

the Act of Parliament in that behalf; for which this shall be your sufficient warrant.

Given under the seal of the court, this —— day of ——, 18—.

———, Clerk.

58. *Certificate for discharge of a party from custody.*

In the —— Division Court for the county of ———.

No. —, A.D. 18—.

Between A. B., plaintiff;
and
C. D., defendant.

I do hereby certify, that the defendant, now in your custody under warrant of commitment in this cause, has, since the issuing of the said warrant, to wit, on the —— day of ——, paid and satisfied the judgment, for the non-payment whereof he was so committed, together with all costs and charges due and payable by him in respect thereof; and the said defendant may, in respect of such warrant, be forthwith discharged from and out of your custody. *See sec. 109.*

Given under the seal of the court, this —— day of ——, 18—.

———, Clerk.

To the jailer of the common jail of the county of ———.

59. *Minute in Procedure Book of imposition of fine on witness.*

Adjudged that H. H. was duly summoned to appear as a witness in this action, at the sittings of this court here this day [and also to produce (*as the case may be*)], that payment (*or* a tender of payment] of his reasonable expenses was made to him, and that he did not appear [*or* having appeared, did wilfully refuse to be sworn, and give evidence in this action (*or* to produce such, &c.)]. *Or* adjudged, that H. H. being before this court, now holden, and called upon to give evidence in this cause, did wilfully refuse to be sworn and give evidence. And further adjudged, that the said H. H. pay a fine of —— for such neglect (*or* refusal) in —— days (*or* forthwith); and that the sum of ——, part of the said fine, be paid by the clerk to the plaintiff (*or* defendant) being the party injured by such neglect or refusal. *See rule No. 51.* *Also sec. 99.*

60. *Minute in Procedure Book of order for imposition of fine for contempt.*

See rule No. 51.

Also secs. 182 & 184.

It is adjudged, that E. E., at the sittings of this court how holden, in open court is guilty of a contempt of the said court, by wilfully insulting ———, judge (*or* deputy judge) of the said court [*or* "in view of the court, by wilfully insulting ———, clerk (*or* bailiff) of the said court, during his attendance at such court" (*or* "by wilfully interrupting the proceedings of the said court")], and it is ordered, that the said E. F. forthwith pay a fine of —— for such offence, and in default of payment, be committed to the common jail of this county, for —— days, unless such fine, the costs herein, and the expense attending the commitment, be sooner paid.

61. *Minute in Procedure Book of imposition of fine on a juror for non-attendance.*

See rule No. 51.

Also sec. 126.

Adjudged, that G. H. was duly summoned to attend this court now holden, as a juror; that he hath made default therein; that he pay a fine of ——, for such default, in —— days (*or* forthwith).

62. *Warrant of commitment for contempt.*

In the —— Division Court for the county of ———.

To ———, bailiff of the said court, and to all constables and peace officers of the county of ——, and to the jailer of the common jail of the said county of ———.

See rules Nos. 10, 13 & 55.

Also secs. 182 & 184.

Whereas at the sittings of this court, holden on —— at ——, it was adjudged that E. F., did then and there in open court, wilfully insult me ———, judge (*or* deputy judge) of the said court [*or* did, in view of the court, wilfully insult ———, clerk (*or* bailiff) of the said court, during his attendance at such court (*or* did unlawfully interrupt the proceedings of the said court)]; and it was ordered, that the said E. F. should forthwith pay a fine of ——, for such offence, and in default of payment, be committed to the common jail of the county of —— for —— days; and whereas the said E. F. did not pay the said fine, in obedience to the said order; these are therefore to require you, the said bailiff and others, to take the said E. F., if he shall be found within the ——, and deliver him to the said jailer of the common jail of the county of ———; and you the said jailer are hereby required to receive the said E. F., and

him safely keep in the common jail aforesaid, for the term of —— days from the arrest under this warrant, unless the said fine and costs, the costs amounting to ——, and also the expenses attending the commitment, amounting together to the sum of ——, be sooner paid.

Given under my hand and seal this —— day of ——, 18—.

———, Judge. [L. S.]

Sealed with the seal of the court, [L. S.]
———, Clerk.

63. *Warrant to levy fine upon witness.*

In the —— Division Court for the county of —— -.

Between A. B., plaintiff;
and
C. D., defendant.

Whereas at the sittings of this court, holden on——, at ———, it was adjudged, that H. H. was duly summoned to appear as a witness in this action, at a sittings of this court [and also to produce (*as the case may be*)]; that payment (*or* a tender of payment) of his reasonable expenses was made to him, and that he did not appear [*or* having appeared did wilfully refuse to be sworn and give evidence in this action (*or* to produce such, &c.)]: [*where a witness in court refuses to give evidence, instead of the foregoing, commence,* "Whereas ———, being before the court at a sittings thereof, and called upon to give evidence in the above cause, did wilfully refuse to be sworn and give evidence"]; and thereupon it was adjudged, that the said ——— should pay a fine of —— for such neglect (*or* refusal) in —— days (*or* forthwith): and whereas the said ——— hath not made such payment: these are therefore [as before *or* as often before] to command you forthwith to make and levy by distress and sale of the goods and chattels of the said ———, wheresoever the same may be found, (excepting those which are by law exempt from seizure) the said fine and costs amounting together to the sum of ——, and your lawful fees on the execution of this precept; and also to seize and take any money, or bank notes, and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, of the said- —, which may be then found, or such part thereof, as may be sufficient for the satisfying of this execution, and the costs on the same; so that you may have the said sum of —— within thirty days after the date hereof, and pay the same over to the clerk of the court.

See sec. 99.

See 23 Vic. cap. 25, sec. 2.

Given under the seal of the court, this —— day of ——, 18—.

By order of the judge,

To ——, ——, Clerk.
Bailiff of the said court.

Fine, ——
Costs, ——
Execution, ——.

64. *Procedure Book.*

—— Division Court for the ——,
Ensuing sittings, 26th February, 1851.

No. 1. A. D. 18—.

JOHN DOE vs. THOMAS ROE,
Town of ——, Township of ——.

See rule No. 4.

1851.	
1st Jan.	Received particulars of plaintiff's demand (on contract) for £2, and plaintiff paid 1s. 8d. towards costs.
11th "	Issued summons to bailiff, costs 1s. 8d., and mileage.
24th "	Summons returned served the —— day of ——.
28th "	Defendant paid £2 1s. 8d., demand and costs.
10th Feb.	Paid plaintiff £2 1s. 8d., demand and costs, deposited.

No. 2. A. D. 18—.

JOHN DEN vs. THOMAS FEN,
Township of ——, Town of ——.

1851.	
10th Jan.	Received particulars of plaintiff's demand (for tort) for £5; plaintiff paid on account of costs 15s., and directed two subpœnas, and gave notice to try by jury.
12th "	Issued summons to bailiff, costs 5s. 9d., and mileage.
20th "	Summons returned served the ——day of——.
8th Feb.	Issued jury summons and subpœnas to bailiff.
13th "	Jury summonses returned served, 10 miles travel, subpœnas served also.
20th "	Both parties appeared, cause tried, judgment for plaintiff on verdict for ten pounds, ten shillings and ten pence damages, and —— pounds —— shillings and —— pence costs, to be paid in —— days.
20th March	Defendant paid —— pounds, ——, ——, in full of judgment and costs.

No. 3. A. D. 18—.

JAMES JONES *v.* THOMAS THOMPSON,

Township of ———, Town of ———.

11th Jan.	Received particulars of plaintiff's demand (of contract) for £25, and 6s. 6d. on account on costs from James Patton, plaintiff's attorney.
12th "	Issued summons to G. G., bailiff; costs 6s. 6d. and mileage.
1st Feb.	Summons returned, served the —— day of ——, 9 miles travel.
3rd "	Defendant executed cognovit for £25.
20th "	Judgment for plaintiff—twenty-five pounds debt, and —— pounds ——, —— costs, to be paid in —— days.
10th March	Defendant paid £—— debt and costs.

N.B.—The proceedings in a suit may be continued from page to page, giving a reference from one to another; and the sums of money may be in decimal currency, pursuant to 16 *Vic. cap.* 158, *if so ordered.*

See rule No. 4.

65. *Cash Book.*

CASH BOOK—RECEIPTS.

Account of suitors' money paid into the —— Division Court for the —— commencing the 1st of January, 1851.

No.	Style of Clause.	When Received.	From whom Received.	Amount. £	s.	d.
36	Doe vs. Roe	24th Jan., 1851	Defendant	10	0	0
100	Den vs. Fen et al.....	27th " "	Bailiff	5	10	0
250	James ats. Jones.....	28th Feb. "	Plaintiff	0	18	4
154	Thomas vs. Roe et al.	10th April, "	Wm. Roe.....	20	11	8
	Receipts up to 30th April .....£			37	0	0
	Paid to suitors as per payment account.....			27	0	0
	Balance in court 30th April, carried to next Quarter...			10	0	0
	To Cash Balance remaining in Court 30th April.....			10	0	0
357	Johnston ats. Wilson &c.	3rd Sept., 1851. &c.	From plaintiff.. &c.	2	7	6

CASH BOOK—PAYMENTS.

Account of suitors' money paid out of the —— Division Court for the —— commencing the 1st of January, 1851.

No.	Style of Cause.	When Paid.	To whom Paid.	Amount. *£	s.	d.
100	Den vs. Fen et al.....	1st Feb., 1851	Plaintiff	5	10	0
153	Thomas vs. Roe et al.	29th April, "	Plaintiff's att'y	20	11	8
250	James ats. Jones	29th " "	Defendant	0	18	4
	Payment up to 30th of April .....£			27	0	0
357	Johnston ats. Wilson &c.	20th Sept. 1851 &c.	Defendant, &c.	2	7	6

* N.B.—Or the amount may be in decimal currency, pursuant to 16th Vic. ch. 158, if so ordered.

Return of [illegible] for the —— day o [illegible] inclusive, [illegible] Division Co [illegible] 41 of the Di [illegible]

Entering every [illegible] issuing summ [illegible]

Copy of summ [illegible] particulars of [illegible] off, when no [illegible] plaintiff or [illegible]

Summons to [illegible] Adjournment [illegible]

Entering set [illegible] fance, requ [illegible] the plaintif [illegible]

Entering ove [illegible]

Every search [illegible] Taking confe [illegible]

Every warra [illegible] or executi [illegible]

Every copy [illegible] county ; [illegible] Drawing af [illegible] bailiff ... [illegible]

N. B.— [illegible] *pursuant*

66. *Clerk's return of emoluments.*

Return of ——, clerk of the —— Division Court for the ——, of all fees and emoluments from the —— day of ——, to the —— day of ——, both days inclusive, made in pursuance of the "Upper Canada Division Courts Act of 1850," section 110, [*now* section 41 of the Division Courts Act]. See rule No. 5.

On what.		No.	Rate. At s. d.	Amount Curren'y
Entering every account and issuing summons.	Not Exceeding £2		0 6	
	Exceeding £2		0 9	
	" £5		1 0	
	" £10		1 3	
	" £15		1 6	
Copy of summons, and particulars of demand or set-off, when not furnished by plaintiff or defendant.	Not Exceeding £2		0 6	
	Exceeding £2		1 0	
	" £5		1 0	
	" £10		1 0	
	" £15		1 0	
Summons to witness			0 3	
Adjournment of any cause	Not Exceeding £2		0 3	
	Exceeding £2		0 6	
	" £5		0 9	
	" £10		0 9	
	" £15		0 9	
Entering set off, or other defence, requiring notice to the plaintiff.	Not Exceeding £2		0 6	
	Exceeding £2		0 9	
	" £5		1 0	
	" £10		1 0	
	" £15		1 0	
Entering every judgment	Not Exceeding £2		0 6	
	" £2		0 9	
	" £5		1 0	
	" £10		1 0	
	" £15		1 0	
Every search into a proceeding over a year old			0 0	
Taking confession of judgment	Not Exceeding £2		0 6	
	" £2		0 6	
	" £5		0 6	
	" £10		0 9	
	" £15		1 0	
Every warrant of attachment or execution	Not Exceeding £2		0 6	
	" £2		1 0	
	" £5		1 6	
	" £10		1 6	
	" £15		1 6	
Every copy or certificate of judgment to another county			1 3	
Drawing affidavits, and administering oaths to bailiff			0 9	

N. B.—The sums of money may be in decimal currency, pursuant to the 16th Vic., ch. 158, if so ordered.

357 | Johnston ats. Wilson &c. | 3rd Sept., 1851. | From plaintiff &c. | 2 | 7 | 6

357 | Johnston ats. Wilson &c. | 20th Sept. 1851 | Defendant, &c. | 2 | 7 | 6

* N.B.—Or the amount may be in decimal currency, pursuant to 16th Vic. ch. 158, if so ordered.

I, ——, above named, make oath and say, that the foregoing return contains a full and correct statement in every particular, to the best of my knowledge and belief, of the fees and emoluments of my office, received or receivable on business done during the period above mentioned.

——, Clerk.

Sworn before me, at ——, &c.

67. *List of unclaimed moneys.*

See rule No. 6.

List of all sums of money belonging to suitors in the —— Division Court for the——, which remain unclaimed for six years before the last day of December last past, applicable as part of the General Fee Fund of the Division Courts.

Published in pursuance of the 13th section of the "Upper Canada Division Courts Extension Act of 1853" [*now* sec. 45 of the Division Courts Act].

For whom or on whose account money paid into court.	When Paid.	Style and No. of Suit.	Amount. *£	s.	d.

Dated

Clerk's Office, —— January, 18—.

——, Clerk.

* *Or the amount may be in decimal currency, pursuant to 16th Vic. ch. 158, if so ordered.*

68. *Bailiff's return.*

Return of A. B., bailiff of the —— Division Court for the ——, made in pursuance of the rules of practice, touching all warrants precepts and writs of execution, acted on or in hand, between the —— day of ——, and the —— day of ——. See rules Nos. 7 & 12.

Number.	Style of cause.	Nature of process.	When received.	Amount to be made.	Amount levied.	When levied.	Amount of bailiff's charges.	Amount paid to clerk.	When paid.	Remarks.

A. B. above named maketh oath and saith, that the foregoing return is full, true and correct, in every particular.

Sworn before me at ——, in the ——, this—— day of ——, 18—.
E. F., Clerk.

* 68 (a). *Form of bond under section* 24.

Know all men by these presents, that we, (1) ——, of ——, clerk of the —— Division Court of the said —— of ——, and —— of ——, are held and firmly bound unto our Sovereign Lady Queen Victoria, her heirs and successors, in manner and in the sums following, that is to say:—the said (2)—— in the sum of (3) —— of lawful money of the Province of Canada; the said (4)—— in the sum of (5) —— of

(1) Here insert names in full of the clerk and sureties, together with places of residence, (such as township, town, &c.,) and professions, callings, &c. *Directions for execution.*

(2) Name of the clerk.

(3) Insert a sum double that of ordinary receipts for one year, more or less, at the discretion of the county judge.

(4) Name of first surety.

(5) One-half of the sum mentioned in note 3.

See sec. 24.

like lawful money; and the said (6) ——— in the sum of (7)—— of like lawful money, to be paid to our Sovereign Lady the Queen, her heirs and successors. For which payments, to be well and faithfully made, we severally, and not each for the other, bind ourselves, our heirs, executors and administrators, and each of us binds himself, his heirs executors and administrators, firmly by these presents. Sealed with our seals, this (8)—— day of ——, in the year of our Lord one thousand eight hundred and ——.

Whereas, the above bounden ———, as clerk of one of the Division Courts of the said —— county of ——— has been required, according to law, to give security for the due performance of the duties of his office;

Now the condition of this obligation is such,—That if the said (9)——— shall duly and regularly keep and render all accounts and returns, which, pursuant to any Act of the Legislature now passed, or hereafter to be passed, ought to be kept and rendered by him, and shall account for, and duly and regularly pay over to the parties entitled thereto, and particularly to the County Attorney, for the time being of the said —— county if authorized to receive the same, or to such other officer as may by law in that behalf be authorized, all and every such sum and sums of money as shall come into his hands as clerk of the said Division Court, and which should be so paid over, and shall well, truly and faithfully, in all other respects, fulfil, perform and discharge all and every the duties of his said office, whether such duties be regulated or imposed by any act now passed or hereafter to be passed by the Legislature of Canada, and whether extended, increased or otherwise altered by any such act or acts then this obligation to be null and void, otherwise to remain in full force, virtue and effect.

Sealed and delivered in the presence of (10) } ——— [L. s.]

Approved (11)———.
Judge of the —— county of ———.

Directions for execution.

(6) Name of second surety.
(7) One half of the sum mentioned in note 3.
(8) Day on which bond is signed, in words at length.
(9) Name of clerk.
(10) To be signed in the presence of at least one witness, who must subscribe his name, place of residence and calling or profession.
(11) County judge to certify approval.

Affidavit of sufficiency.

Province of Canada, County of (1)———, (*or* United Counties of) *To wit:*— } We (2)——— and ——— the sureties in the annexed bond named, do severally make oath and say, as follows:—

First, I, deponent (3) ——— for myself, do make oath, and say, that I am a (4)——— holder, residing at (5)———, and that I am worth property to the amount of (6) —— over and above what will pay my just debts. *See form 68 (a).*

Secondly, I, deponent (7) ——— for myself, do make oath, and say, that I am a (8)—— holder, at (9)——— and that I am worth property to the amount of (10)—— over and above what will pay my just debts.

(11) ——— ———,
——— ———.

Sworn before me, at the —— of ———, in the said —— coun——(12) of ———, this —— day of ——, 18—.

———,
A commissioner, B. R., &c.

(1) County or union of counties.
(2) Insert names in full of both sureties.
(3) Name of first surety.
(4) Insert whether a freeholder or mere householder.
(5) Some definite description, as street, town or township.
(6) A sum not less than that for which he is surety.
(7) Name of second surety.
(8) See note 4, above.
(9) See note 5, above.
(10) See note 6, above.
(11) Signatures of deponents.
(12) See note 1, above.

Directions for execution

* 68 (b). *Appointment of deputy clerk by the clerk.*

I, ———, clerk of the —— Division Court of the county of ———, being prevented by ("*illness*" *or* "*unavoidable accident*") from acting in my said office, do hereby, with the approval of ———, judge of the County Court of the said county, appoint ——— of the ——— of ——— in the said county ("*Gentleman, &c.*") to be my deputy during the period of such ("*my illness*" *or* "*unavoidable accident*") according to the tenth sec- *See sec. 33 and note.*

tion of the Division Courts Act of 1850 (*now* sec. 33 of the Division Courts Act).

Given under my hand this —— day of —— A.D 18—.

———,
Clerk of the said court,

Approved by me,
———, Judge, &c.

* 68 (c). *Plea of tender and payment into court.*

(Style of court and cause.)

See sec. 87, & rule 29 and note.

The defendant says, that as to the sum of $—— he was always ready and willing to pay to the plaintiff the said sum of ——, part of the plaintiff's claim, and that before action he tendered and offered to pay the same to him but he refused to accept it, and the defendant now therefore brings into court the said sum of $——, ready to be paid to the plaintiff.

Dated, &c. C. D.

Toronto, 28th June, 1854.

(Signed) S. B. Harrison,
M. O'Reilly,
E. C. Campbell,
Geo. Malloch,
Jas. Robt. Gowan.

Approval of Rules and Forms.

Approved as amended 8th July, 1854.

(Signed) Jno. B. Robinson, C. J.
J. B. Macaulay, C. J. C. P.
W. H. Draper, J.
Robert E. Burns, J.
Wm. B. Richards, J.

APPENDIX.

PROCEEDINGS IN REPLEVIN IN DIVISION COURTS

(CON. STAT. U. C. CAP. 29, & 23 VIC. CAP. 45.)

A limited jurisdiction in replevin was conferred on Division Courts on the 19th May, 1860, by 23 Vic. cap. 45, which is entitled "An Act to amend the law of replevin in Upper Canada." The same statute also provides that that act and the consolidated act relating to replevin (Con. Stat. U. C. cap. 29) shall, so far as any suit brought in a Division Court is concerned," be read as if they formed part of the act respecting Division Courts." It will therefore be necessary, to make the subject complete, to give these two acts *in extenso*. It will be noticed that many of these provisions are not strictly applicable to the proceedings of the courts that we are treating of, but they will be found useful in framing an analogous practice. The consolidated act gives a form of writ, bond and assignment thereof, and *capias* in withernam. These have been altered to suit proceedings in Division Courts, and appear together with some other useful forms at the end of the two acts, which are as follows:

(CON. STAT. U. C. CAP. XXIX.)

An Act relating to Replevin.

HER MAJESTY, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

WHEN GOODS REPLEVIABLE.

I. Whenever any goods, chattels, deeds, bonds, debentures, promissory notes, bills of exchange, When goods may be replevied.

books of account, papers, writings, valuable securities or other personal property or effects have been wrongfully distrained under circumstances in which by the law of England replevin might be made, the person complaining of such distress as unlawful may obtain a writ of replevin in the manner prescribed by this act; or in case any such goods, chattels, property or effects have been otherwise wrongfully taken or detained, the owner or other person, or Corporation capable at the time this act takes effect of maintaining an action of trespass or trover for personal property, may bring an action of replevin for the recovery thereof, and for the recovery of the damages sustained by reason of such unlawful caption and detention, or of such unlawful detention, in like manner as actions are brought and maintained by persons complaining of unlawful distresses. 4 W. 4, c. 7, s. 1; 14, 15 V. c. 64, s. 1.

GOODS IN EXECUTION NOT REPLEVIABLE.

Goods seized in execution not to be replevied.

II. The provisions herein contained shall not authorize the replevying of or taking out of the custody of any sheriff or other officer, any personal property seized by him under any process issued out of any Court of Record for Upper Canada (*a*). 18 V. c. 118.

REPLEVIN IN COUNTY COURTS.

County Courts may grant replevin where value does not exceed $200.

III. In case the value of the goods or other property or effects distrained, taken or detained, does not exceed the sum of two hundred dollars, and in case the title to land be not brought in question, the writ may issue from the County Court of any county wherein such goods or other property or effects have been distrained, taken or detained. 19 V. c. 90, s. 20; 4 W. 4, c. 7, s. 7.

PROCEDURE.

Proceedings necessary to entitle a party to replevy.

IV. Before any writ of replevin issues, the person claiming the property, his servant or agent shall make an affidavit, entitled and filed in the court out

(*a*) See sec. 8 of cap. 45 (amendment act, *post.*)

of which the writ issues, and sworn before any person entitled to administer an affidavit, therein, stating:

Affidavit to be made.

1st. That the person claiming the property is the owner thereof, or that he is lawfully entitled to the possession thereof, describing the property in the affidavit;

To state value, &c.

2nd. The value thereof to the best of his belief; and such description of the property and the value shall be stated in the writ (*b*). 14, 15 V. c. 64, s. 2.

How writs to be tested.

V. The writ shall be tested in the same manner as a writ of summons, under the Common Law Procedure Act, and be returnable on the eighth day after the service of a copy thereof, and may be in the form A, or otherwise adapted to the circumstances of the case (*c*). 14, 15 V. c. 64, s. 1.

Copy of writ to be served.

VI. A copy of such writ shall be served on the defendant personally, or if he cannot be found, by leaving the copy at his usual or last place of abode, with his wife or some other grown person, being a member of his household, or an inmate of the house wherein he resided as aforesaid. 14, 15 V. c. 64, s. 1.

Sheriff not to serve writ until he has replevied.

VII. The sheriff (*d*) shall not serve a copy of the writ until he has replevied the property, or some part of the property therein mentioned, if he cannot replevy the whole in consequence of the defendant

---

(*b*) The amendment act, as will be seen, requires the order of a judge in ordinary cases before a writ can issue (sec. 1, 1st clause). But the two last clauses of that section permit a plaintiff to issue a writ if he can, in addition to what is required by the first part of that section (which is similar to the requirements of the section before us), make oath to the facts set out in them.

See forms of affidavits given in schedule, Nos. 1 and 2.

The affidavit must be sufficient to enable the sheriff by it to identify the property to be replevied. (*Jones* v. *Cook*, 2 U.C. Prac. R. 396.)

(*c*) The Division Court writ will of course be returnable on a court day, and be served ten days before the court, as in ordinary cases. The mode of service, however, must be regulated by the next section.

See form 3 for this writ as made applicable to Division Courts, and form 4 for affidavit of service to be endorsed.

(*d*) For "sheriff" read "bailiff" wherever the former word occurs in these acts.

having cloigned the same out of his county (*e*), or because the same is not in the possession of the defendant, or of any person for him. 14, 15 V. c. 64, s. 1.

Sheriff, before he replieves, to take bond.

VIII. Before the sheriff replevies he shall take a bond in treble the value of the property to be replevied as stated in the writ, which bond shall be assignable to the defendant, and the bond and assignment thereof may be in the form B, the condition being varied to correspond with the writ (*f*). 4 W. 4, c. 7, s. 2; 14, 15 V. c. 64, s. 4.

If property to be replevied is concealed in any house, &c., how sheriff to act.

IX. In case the property to be replevied or any part thereof be secured or concealed in any dwelling-house or other building or enclosure of the defendant, or of any other person holding the same for him, and in case the sheriff publicly demands from the owner and occupant of the premises deliverance of the property to be replevied, and in case the same be not delivered to him within twenty-four hours after such demand, he may, and if necessary shall, break open such house, building or enclosure for the purpose of replevying such property or any part thereof, and shall make replevin according to the writ aforesaid. 14, 15 V. c. 64, s. 10.

If concealed about the person.

X. If the property to be replevied, or any part thereof, be concealed either about the person or on the premises of the defendant, or of any other person holding the same for him, and in case the sheriff demands from the defendant or such other person aforesaid deliverance thereof, and deliverance be neglected or refused, he may, and if necessary, shall search and examine the person and premises of the

(*e*) That is to say, fraudulently removed them. For a remedy in cases of this kind see sec. 20.

(*f*) The defendant will be entitled to an assignment of this bond upon the plaintiff making default in the conditions of it, and the defendant may thereupon maintain an action upon it in his own name (*Bacon* v. *Langton*, 9 U. C. C. P. 410; *Myers* v. *Maybee*, 10 U. C. Q. B. 200).

Two further conditions are imported into this bond by section 5 of the amending act, which are incorporated with the form given by this act, and the whole made applicable to Division Courts in form No. 5.

defendant or of such other person for the purpose of replevying such property or any part thereof, and shall make replevin according to the writ. 14, 15 V. c. 64, s. 10.

When writ to be returned.

XI. The sheriff shall return the writ at or before the return day thereof, and shall transmit annexed thereto (*g*):

With schedule annexed.

1st. The names of the sureties in, and the date of the bond taken from the plaintiff, and the name or names of the witnesses thereto;

2nd. The place of residence and additions of the sureties;

What schedule to contain.

3rd. The number, quantity and quality of the articles of property replevied; and in case he has replevied only a portion of the property mentioned in the writ and cannot replevy the residue by reason of the same having been eloigned out of his county by the defendant, or not being in the possession of the defendant, or of any other person for him, he shall state in his return the articles which he cannot replevy and the reason why not. 14, 15 V. c. 64, s. 6.

If defendant having been served does not appear.

XII. In case the defendant has been duly served with a copy of the writ, and does not enter his appearance in the suit at the return thereof, the plaintiff may, on filing the writ and affidavit of its due service, enter a common appearance for the defendant, and proceed thereon as if he had appeared. 14, 15 V. c. 64, s. 3.

Where venue to be laid.

XIII. When the replevin is brought for goods, chattels or other personal property distrained for any cause, the venue shall be laid in the county in which the distress has been made, but in other cases it may be laid in any county (*h*). 14, 15 V. c. 64, s. 5.

XIV. [Refers only to mode of pleading to issue in the Superior Courts.]

(*g*) The return may be in form 7 or to the like effect.

(*h*) Controlled, as far as Division Courts are concerned, by sec. 6 of the amending act.

What pleas defendant may plead.

XV. The defendant shall be entitled to the same pleas in abatement or bar as heretofore, and may plead as many pleas in defence as he thinks necessary, each of which, if the action was trespass and the taking complained of, or detinue and the detention only complained of, would constitute a legal defence. 14, 15 V. c. 64, s. 9.

When a defence on equitable grounds may be pleaded, and how.

XVI. Any plaintiff or defendant in replevin, who, if judgment were obtained, would be entitled to relief against such judgment on equitable grounds, may plead the facts which entitle him to such relief by way of defence, and the court shall receive such defence by way of plea; but such plea must begin with the words "for defence on equitable grounds," or words to the like effect (*i*). 19 V. c. 43, s. 287; 20 V. c. 57, s. 11; 20 V. c. 58, s. 2.

Form of declaration for wrongful detention, &c.

XVII. When the action is founded on a wrongful detention and not on the original taking of the property, the declaration shall conform to the writ, and may be the same as in an action of detinue. 14, 15 V. c. 64, s. 8.

Form of declaration for wrongful taking, &c.

XVIII. When the action is founded on a wrongful taking and detention of the property, it shall not be necessary for the plaintiff to state in his declaration a place certain within the city, town, township or village, as the place at which the property was taken. 14, 15 V. c. 64, s. 8.

When defendant to state a place certain in his avowry.

XIX. If the defendant justifies or avows the right to take or distrain the property, in or upon any place in respect of which the same might be liable to forfeiture, or to distress for rent, or for damage feasant, or for any custom, rate or duty, by reason of any law, usage or custom at the time when, existing and in force, he shall state in his plea of justification or avowry a place certain within the city, town, township or village within the county, as the place at which such property was so distrained or taken. 14, 15 V. c. 64, s. 8.

(*i*) This section is unnecessary as far as Div. Courts are concerned, as they are constituted courts of equity and good conscience.

If sheriff returns the property eloigned, a writ in withernam may issue.

XX. If the sheriff makes such a return of the property distrained, taken or detained, having been eloigned, as would warrant the issuing of a capias in withernam by the law of England, then upon the filing of such return, such a writ shall be issued by the officer who issued the writ of replevin, in the form C (*k*) and before executing such writ the sheriff shall take pledges according to the law of England in that behalf in like manner as in cases of distress. 4 W. 4, c. 7, s. 3.

XXI. [Authorising judges of Superior Courts to make rules, which have not been made.]

(23 VIC. CAP. XLV.)

An Act to amend the Law of Replevin in Upper Canada.

[Assented to 19th May, 1860.]

Preamble.

WHEREAS it is expedient to amend the law relating to replevin, so as to prevent the same being perverted to purposes of injustice: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:—

On what conditions only the writ of replevin shall issue.

I. No writ of replevin shall issue, (*l*)—

Allegations in affidavit.

1. Unless an order is granted for the writ, on an affidavit by the person claiming the property, or some other person, showing to the satisfaction of the court or judge, the facts of the wrongful taking or detention which is complained of, as well as the value and description of the property, and that the person claiming it is the owner thereof, or is lawfully entitled to the possession thereof (as the case may be).

(*k*) See form 8.

(*l*) See sec. 4 of former act. In practice it will be found most convenient for the judge to endorse his *fiat* or order for the issue of the writ on the back of the affidavit filed.

Further allegations in affidavit.

2. Or unless the affidavit for the writ states, in addition to what is required by the fourth section of the act relating to replevin, that the property was wrongfully taken out of the possession of the claimant, or was fraudulently got out of his possession, within two calendar months next before the making of the affidavit, and that the deponent is advised and believes that the claimant is entitled to an order for the writ, and that there is good reason to apprehend that unless the writ is issued without waiting for an order, the delay would materially prejudice the just rights of the claimant in respect to the property.

If the property was distrained for rent or damage feasant.

3. Or, in case the property was distrained for rent or damage feasant, the writ of replevin may issue without an order, if the affidavit states, in addition to what is required by the fourth section of the act relating to replevin, that the property was distrained and taken under color of a distress for rent or damage feasant, and in such case the writ shall state that the defendant hath taken and unjustly detains the property, under color of a distress for rent or damage feasant (as the case may be).

What the sheriff shall do when the writ issues without a judge's order.

II. In case the writ issues without an order, the sheriff shall take and detain the property, and shall not replevy the same to the claimant without the order of a judge or a rule of the court in that behalf; but may, within fourteen days from the time of his taking the same, re-deliver it to the defendant, unless in the meantime the claimant obtains and serves on the sheriff a rule or order directing a different disposition of the property; but this section shall not apply in case of a distress for rent or damage feasant, under the third sub-section of the first section of this act.

Proviso.

Discretionary power of the court or judge when an application for an order is made

III. When an application for an order is made, the court or judge may proceed on the *ex parte* application of the claimant, or may grant a rule or order on the defendant to show cause why the writ should not issue; and may, on the *ex parte* application, or on the return of the rule or order to show cause, grant or refuse the writ, or direct the sheriff to take a bond in less or more than treble the value

of the property, or may direct him to take and detain the property until the further order of the court, instead of at once replevying the same to the plaintiff; or may impose any terms or conditions in granting the writ, or in refusing the same (on the return of a rule or order to show cause), as, under the circumstances in evidence, appear just.

Defendant may apply for a rule to show cause why the writ, &c., should not be discharged, &c.

IV. In case a writ of replevin is issued, whether with or without an order, or in case any rule or order is made under the preceding section, the defendant may, at any time, or from time to time, apply to the court or judge, on affidavit or otherwise, for a rule or order on the plaintiff to show cause why the writ, or why the rule or order respecting the same, should not be discharged, or why the same should not be varied or modified, in whole or in part, as therein specified, or why all further proceedings under the writ should not be stayed, or why any other relief, to be referred to in the rule or order so applied for, should not be granted to the defendant, with respect to the return, safety or sale of the property or any part thereof, or otherwise; and the court or judge may make such rule or order thereon, as, under all the circumstances, best consists with justice between the parties.

Further conditions of the bond to be taken by the sheriff before acting on the writ.

V. Before the sheriff acts on any writ of replevin he shall take a bond, conditioned not only to the effect mentioned in form B, appended to the above cited act, but also that the plaintiff do pay such damages as the defendant shall sustain by the issuing of the writ of replevin, if the plaintiff fails to recover judgment on the suit; and further, that the plaintiff do observe, keep and perform all rules and orders made by the court in the suit (*m*).

In cases under $40, writ may issue from Division Court.

VI. In case the value of goods or other property or effects distrained, taken or detained, does not exceed the sum of forty dollars, the writ may issue from the Division Court for the division within which the defendant or one of the defendants resides, or carries on business, or where the goods or other pro-

(*m*) See sec. 8 of former act and note.

perty or effects have been distrained, taken or detained (*n*).

Procedure in Division Court.

VII. But the matter shall be disposed of without formal pleadings, and the powers of the courts and officers, and the proceedings generally in the suit shall be, as nearly as may be, the same as in other cases which are within the jurisdiction of Division Courts; and this act and the act relating to replevin shall, so far as any such suit is concerned, be read as if they formed part of the act respecting Division Courts. (Consolidated Statutes for U. C., chapter nineteen.)

Goods taken under process from Division Court not replevisable.

VIII. The act relating to replevin shall not hereafter authorize the replevying or taking out of the custody of any bailiff any personal property seized by him under any process issued out of a Division Court in Upper Canada (*o*).

IX. [Relates to certain proceedings in the Superior Courts.]

(*n*) But the goods may have been taken into another county, wherein the defendant does not reside. A writ from one court cannot, it is apprehended, be directed to and acted upon by the bailiff of another, and a bailiff has in general only jurisdiction in his own county. A difficulty would seem to arise under these circumstances which is not provided against.

(*o*) An important provision, which has got rid of some troublesome questions with reference to the right of replevin where goods are in the custody of the bailiff on an execution, and probably also on a warrant of attachment, though the section only speaks of the custody of the *bailiff*, and says nothing of the *clerk*, whereas the goods seized by a bailiff under an attachment are to be delivered into "the custody and possession of the clerk," who shall take the same "into his charge and keeping" (See sec. 208). And some difficulty may possibly arise in cases where the bailiff seizes goods under an execution and makes a levy at the same time for rent under sections 176, &c.

FORMS IN REPLEVIN.

1. *Affidavit to obtain judges order for writ of replevin.*

In the —— Division Court for the county of ———.

County of ——, } I, A. B., of ———, make oath and
To wit. } say:

1st. That I am the owner of (*describe property fully*) Forms.
at present in the possession of C. D.

Or, That I am entitled to the immediate possession of (*describe property*), as lessee (bailee, *or* agent), of E. F., the owner thereof (*or* as trustee for E. F.) (*or as the case may be*), at present in the possession of C. D.

2nd. That the said goods, chattels, and personal property are of the value of —— dollars.

3rd. That on or about the —— day of ——, the said goods, chattels, and personal property, were lent to the said C. D., for a period which has expired (*or* were delivered to the said C. D. for a special purpose, namely, ——), and that although the said goods, chattels, and personal property have been demanded from the said C. D., he wrongfully withholds and detains the same from me, the said A. B.

Or, That on or about the —— day of ——, the said C. D., wrongfully took the said goods out of my possession (*or* out of the possession of E. F.), and withholds and detains the same from me.

Or, That on or about the —— day of ——, the said C. D., fraudulently obtained possession of the said goods, chattels, and personal property, by falsely representing that ——, and now wrongfully withholds and detains the same from me.

Or, That the said goods, chattels, and personal property were on the —— day of ——, last, distrained or taken by the said C. D.. under color of a distress for rent, alleged to be due by me, to one E. F., when in fact no rent was due by me to the said E. F. (*or as the case may be.*)

4th. That the said C. D. resides (*or* carries on business), at ———, within the limits of the —— Division Court of the county of ———. (*Or*, that the said goods, chattels, and personal property were distrained), (*or* taken and detained), (*or* detained), at ———, within the limits of the —— Division Court of the county of ———.

Sworn, &c. A. B.

2. *Affidavit to obtain writ without order in first instance* (*p*.)

[*The first four sections will be as above and the following must be stated in addition*]:

Forms.

5th. That the said personal property was wrongfully taken (*or* fraudulently got) out of my possession within two calendar months before the making of this affidavit that is to say, on the —— day of —— last.

6th. I am advised and believe that I am entitled to an order for the writ of replevin now applied for, and I have good reason to apprehend, and do apprehend, that unless the said writ is issued without waiting for an order, the delay will materially prejudice my just rights in respect to the said property.

[*Or if the property was distrained for rent or damage feasant, then the statement given in the last alternative under the 3rd clause of form No.* 1, *will be sufficient to obtain writ without order.*]

3. *Writ of replevin.*

No. —, A.D. 18—.

In the —— Division Court for the county of ———.

You are hereby commanded that without delay you cause to be replevied to ——— his goods, chattels and personal property following, that is to say (*describe property*); which said ——— alleges to be of the value of ——, and which ——— hath taken and unjustly detains, as it is said, in order that the said ——— may have his just remedy in that behalf. And to summon the said ———, by serving a copy of this writ upon him, to appear at the sittings of this court, to be holden at ———, on the —— day of ——, A.D. 18—, at the hour of —— o'clock in the forenoon, to answer to the said ——, in an action for unjustly taking and detaining his goods, chattels and personal property aforesaid. And to return this writ, and what you shall have done in the premises, to the clerk of the court forthwith. And herein fail not.

Given under the seal of the court this —— day of ——, 18—.

To ———, ———, Clerk.

Bailiff the said court.

(*p*) Though a writ may issue upon these allegations without an order it is always better to obtain an order in the first instance, unless the delay would be prejudicial to the rights of the claimant.

4. Affidavit of service of writ to be endorsed.

I swear that this summons was served by me on the ——— day of ——— A.D. 186 , by delivering a true copy, personally, to the defendant, and that I necessarily travelled ——— miles to do so. *Forms.*

———, Bailiff.

Sworn at —— on the —— day of —— A.D. 186 .

———, Clerk.

5. Replevin bond.

Know all men by these presents, that we, A. B., of &c., W. B., of &c., and J. S., of &c., are jointly and severally held and bound to W. P., of, &c., bailiff of the —— Division Court, in the county of ———, in the sum of ——, of lawful money, to be paid to the said bailiff, or his certain attorney, executors, administrators or assigns, for which payment to be well and truly made we bind ourselves, and each and every of us in the whole one and each, and every of our heirs, executors and administrators, firmly by these presents, sealed with our seals.

Dated this —— day of ——, A.D. 18—.

The condition of this obligation is such, that if the above bounden A. B. do prosecute his suit with effect, and without delay against C. D. for the taking and unjustly detaining (*or* unjustly detaining, *as the case may be*) of his cattle, goods and chattels, to wit: (*here set forth the property distrained, taken or detained*) and do make a return of the said property, if a return thereof shall be adjudged, and also do pay such damages as the said C. D. shall sustain by the issuing of the writ of replevin, if the said A. B. fails to recover judgment in the suit; and further, do observe, keep and perform, all rules and orders made by the court in the suit; then this obligation shall be void, or else remain in full force and effect.

Signed, sealed and delivered,	A. B.	[L. S.]
in presence of	W. G.	[L. S.]
(1 *or* 2 *witnesses.*)	J. S.	[L. S.]

6. *Form of assignment to be endorsed, if required.*

Forms.

Know all men by these presents that I, ———, bailiff of the Division Court for the county of ——, have at the request of the within named ——— (*defendant*), assigned over this replevin bond unto the said ———, pursuant to the statute in such case made and provided.

In witness whereof I have hereunto set my hand and seal of office this —— day of ——, 186 .

Signed, sealed and delivered in presence of }

7. *Return to writ.*

In the —— Division Court of, &c.

Between A. B., plaintiff;
and
C. D., defendant.

As bailiff of this court, to whom is directed the annexed writ of replevin, and in pursuance of sec. 11 of 22 Vic. cap. 20, and sec. 5 of 23 Vic. cap. 45, I have taken from said plaintiff a bond, conditioned as by said acts required, made by him and two sureties namely ———, of the —— of —— in the county of ———, yeoman (*or as the case may be*), *or*, of the same place, yeoman (*or as the case may be*), which bond bears date the —— day of ——, 18—, and is witnessed by ——— and ——— (*if more than one*).

And by virtue of this writ to me directed, I have seized and delivered to the plaintiff the goods mentioned in said writ, that is to say (*describing the goods by number, quantity and quality, or if only a part have been replevied say*, a portion of said goods in writ mentioned, that is to say (*describing them*), and I cannot make replevin of the residue of said goods, namely (*shortly describing them*), as by said writ commanded by reason of the same having been eloigned out of this county by the defendant (*or as the case may be*).

PROCEEDINGS IN DIVISION COURTS ON ATTACHMENT OF DEBTS IN JUDGMENTS IN SUPERIOR OR COUNTY COURTS.

(CON. STAT. U. C. CAP. XXII. SEC. 222, *et seq.*)

By a provision of the above act (Common Law Procedure Act) a judgment creditor in the Superior and County Courts may obtain what is called a *garnishing* order, which has the effect of attaching debts due from a third person, called the *garnishee*, to the judgment debtor to be applied towards satisfaction of the judgment debt. If any of these debts so attached are within the jurisdiction of a Division Court, the statute provides that any dispute as to whether such debts are really due or not shall be tried, and, if found to be due, the debts shall be recoverable as in an ordinary Division Court suit.

The enactments are as follows:—

When garnishee to appear before County Court Judge in cases in Superior Courts.

CCXCII. In cases in the Superior Courts, when the amount claimed as due from any garnishee is within the jurisdiction of a County or Division Court, the order to appear made under the two hundred and eighty-ninth section shall be for the garnishee to appear before the judge of the County Court of the county within which the garnishee resides—at some day and place within his county to be appointed in writing by such judge—and written notice thereof shall be given to the garnishee at the time of the service of the order. 20 V. c. 57, s. 16.

Execution from County or Division Court, if the garnishee does not dispute the debt.

CCXCIII. If the garnishee does not forthwith pay the amount due by him, or an amount equal to the judgment debt, and does not dispute the debt due or claimed to be due from him to the judgment debtor, or if he does not appear before the judge named in the order at the day and place appointed by such

judge, then such judge on proof of service of the order and appointment having been made four days previous, may make an order directing execution to issue out of the County Court, or out of a Division Court, according to the amount due, and such order shall, without any previous writ or process, be sufficient authority for the clerk of either of such courts to issue execution for levying the amount due from such garnishee. 20 V. c. 57, s. 16.

The sheriff or bailiff to levy the amount with costs and fees.

CCXCIV. The sheriff or bailiff to whom such writ of execution is directed, shall levy the amount mentioned in the said execution, towards satisfaction of the judgment debt, together with the costs of the proceeding, to be taxed, and his own lawful fees, according to the practice of the court from which such execution has issued. 20 V. c. 57, s. 16.

Proceedings if he disputes the debt.

CCXCV. If the garnishee disputes his liability, then such judge of the County Court may order that the judgment creditor shall be at liberty to proceed against the garnishee according to the usual practice of the County or Division Court, as the case may require, for the alleged debt or for the amount due to the judgment debtor if less than the judgment debt, and for costs of suit. 20 V. c. 57, s. 16.

Proceedings in County Courts when amount within the jurisdiction of Division Courts.

CCXCVI. In cases in the County Courts when the amount claimed as due from any garnishee is within the jurisdiction of a Division Court, the order to be made under the two hundred and eighty-ninth section, shall be for the garnishee to appear before the clerk of the Division Court within whose Division the garnishee resides, at his office, at some day to be appointed in the said order by the judge of the County Court; and the said order shall be served on such garnishee, and if the garnishee do not forthwith pay the amount due by him or an amount equal to the judgment debt, and do not dispute the debt due or claimed to be due from him to the judgment debtor, or if he do not appear before the Division Court clerk named in the order at his office at the day appointed by such judge, then such judge, on proof of the service of the order having

been made four days previous, may make an order directing execution to issue out of the Division Court of the division in which such garnishee resides, according to the amount due, and such order shall without any previous summons or process, be sufficient authority for the clerk of the said Division Court to issue execution to levy the amount due from such garnishee, and the bailiff to whom such writ of execution is directed shall be thereby authorized to levy and shall levy the amount mentioned in the said execution towards satisfaction of the judgment debt, together with the costs of the proceeding to be taxed, and his own lawful fees; but if the garnishee disputes his liability, then such judge may order that the judgment creditor in the said County Court shall be at liberty to proceed against the garnishee, according to the practice of the said Division Courts, for the alleged debt or for the amount due to the judgment debtor if less than the judgment debt, and for costs of suit. 20 V. c. 58, s. 4.

DUTIES OF DIVISION COURT OFFICERS WITH RESPECT TO AWARDS BY FENCE VIEWERS.

(CON. STAT. U. C. CAP. LVII.)

The above statute provides for the inspection of line fences and water-courses by fence viewers, who are authorised amongst other things to ascertain the amount payable to any person who, under the authority of the act, makes or repairs a fence or water-course, which another person should have done. Sec. 16 of the act provides a mode of enforcing payment of the amount due. At the request of the person claiming payment, a justice of the peace shall issue a summons to the person in default, which summons is to be served also upon the fence viewers, who shall thereupon award what sum (if any) should be paid to the plaintiff, and shall report their determination in writing under their hands to the justice who issued the summons.

It is then provided by sec XVI., sub-sec. :—

Who shall send the same to the clerk of the Division Court.

10. The justice to whom the determination of the fence viewers is returned, shall transmit the same to the clerk of the Division Court having jurisdiction over that part of the municipality, and shall certify and transmit a copy thereof to the clerk of the municipality, to be entered in the book in which the municipal proceedings are recorded; 8 V. c. 20, s. 7.

Who after forty days may issue execution thereon.

11. After the expiration of forty days, from the time of the determination, the clerk of the Division Court shall issue an execution against the goods and chattels of the defendant, in the same manner as if the party in whose favor the determination has been made had recovered judgment in the Division Court for the sum which the fence viewers have determined him to be entitled to receive with costs. 8 V. c. 20, s. 7.

Fees.

XVII. The following fees, and no more, may be received under this act, by the persons mentioned, that is to say:

To the Justice of the Peace:

For summons to fence viewers, twenty-five cents;

For subpœna, which may contain three names, twenty-five cents;

For transmitting copy of fence viewers' determination to Division Court and to clerk of the municipality, twenty-five cents.

To the Fence Viewers:

One dollar per day each: if less than half a day employed, fifty cents.

To the Bailiff or Constable employed:

For serving summons or subpœna, twenty cents.
Mileage—per mile, six and two-thirds cents.

To witness—per day, each, fifty cents. 8 V. c. 20, s. 16.

Disbursements.

XVIII. Upon the party in whose favor the determination of the fence viewers has been made, making an affidavit, which the clerk of the Division Court may administer, that such fees have been duly paid and disbursed to the persons entitled thereto, the clerk shall include the amount thereof in the execution, and when collected, shall pay over the same to the said party. 8 V. c. 20, s. 17.

PROVISIONS RESPECTING APPEALS FROM DIVISION COURTS IN MATTERS PERTAINING TO COMMON SCHOOLS.

(CON. STAT. U. C. CAP. LXIV., SEC. 108 *et seq.*)

Uniformity of decisions in Division Courts.

CXVIII. It being highly desirable that uniformity of decision should exist in cases within the cognizance of the Division Courts and tried in such courts, in which the superintendents, trustees, teachers and others acting under the provisions of this act are parties, the judge of any Division Court wherein any such action may be tried may, at the request of either party order the entering of judgment to be delayed for a sufficient time to enable such party to apply to the Chief Superintendent of Education to appeal the case, and after notice of appeal has been served as hereinafter provided, no further proceedings shall be had in such cases until the matter of the appeal has been decided by a Superior Court. 16 V. c. 185, s. 24.

Judgment of Division Court may be delayed.

Chief Superintendent may appeal from such court to Superior Courts of Law.

CIX. The Chief Superintendent may, within one month after the rendering of judgment in any such case, appeal from the decision of the Division Court judge to either of the Superior Courts of Law at Toronto, by serving notice in writing of such appeal upon the clerk of the Division Court appealed from, which appeal shall be entitled, "The Chief Superintendent of Education for Upper Canada, Appellant, in the matter between (A. B. & C. D.)." 16 V. c. 185, s. 24.

Title of appeal.

Judge to send papers to Superior Court.

CX. The judge whose decision is appealed from shall thereupon certify under his hand, to the Superior court appealed to, the summons and statement of claim and other proceedings in the case, together with the evidence and his own judgment thereon, and all objections made thereto.

CXI. The matter shall be set down for argument at the next term of such Superior Court, and such court shall give such order or direction to the court below, touching the judgment to be given in the matter, as law and equity require, and shall also in its discretion, award costs against the appellant, which costs shall be certified to and form part of the judgment of the court below. Superior Court to give such order as law and equity require.

CXII. Upon receipt of such order, direction and certificate, the judge of the Division Court shall forthwith proceed in accordance therewith. Proceedings in Division Court thereon.

DUTIES OF DIVISION COURT CLERKS UNDER ASSESSMENT ACT, ON APPEALS FROM THE COURT OF REVISION, AND FROM MUNICIPAL COUNCILS, UNDER ACT OF 1861.

(CON. STAT. U. C. CAP. LV., SECS. 63, *et seq.*)

Parties dissatisfied with decision of Court of Revision may appeal to judge of County Ct., and in what manner and on what terms.

LXIII. If a person be dissatisfied with the decision of the Court of Revision, he may appeal therefrom, in which case—

1. He shall, within three days after the decision, in person or by attorney or agent, serve upon the clerk a written notice of his intention to appeal to the judge of the county court; 22 V. c. 82, s. 4, No. 3.

2. The clerk shall thereupon give notice to all the parties appealed against in the same manner as is provided for notice of complaint by the sixtieth section of this act.

3. The party appealing shall, at the same time and in like manner, give a written notice of his appeal to the clerk of the Division Court for the division within the limits of which the municipality is situated, and shall deposit with him the sum of two dollars for each party appealed against as security for the costs of the appeal; 22 V. c. 82, s. 4, No. 3, *at the end.*

4. The judge shall appoint a day for hearing the appeal;

5. The clerk of the Division Court shall cause a conspicuous notice to be posted up at the place where the Division Court is held, containing the names of all the appellants and the parties appealed against, ranged under the several municipalities, if there be more than one municipality in the division,

together with the date at which a court will be held to hear the appeal;

6. At the court so holden, the judge shall hear the appeals, and may adjourn the hearing from time to time and defer the judgment thereon at his pleasure, so that a return can be made to the clerk of the municipality before the fifteenth day of July. 22 V. c. 82, s. 4, No. 3.

Assessment roll to be produced to the Court of Revision.

And amended according to the decision of the judge.

LXIV. At the court so holden, the clerk of the municipality, or other person having the charge of the assessment roll passed by the Court of Revision, shall appear and produce such roll, and also all papers and writings in his custody, connected with the matter of appeal; and when such roll is so produced in court, the same shall be altered and amended according to the decision of the judge (if then given), who shall write his initials against any part of the said list in which any mistake, error or omission is corrected or supplied, or if the said roll be not then produced, or the decision be not then given by the judge, or if so ordered by the judge, such decision and judgment shall be certified by the Division Court clerk to the clerk of the municipality, who shall forthwith, alter and amend the roll according to the same, and shall write his name against every such alteration or correction.

Amendments how certified.

LXV. [County judge to have power to examine on oath, &c.]

Costs to be apportioned by the judge and how enforced.

LXVI. The cost of any proceeding before the county judge as aforesaid, shall be paid by, or apportioned between the parties in such manner as the judge shall think fit, and costs ordered to be paid by any party claiming or objecting, or objected to, or by any Assessor, clerk of a municipality or other person, may be enforced by execution from the Division Court in the same manner as upon an ordinary judgment recovered in such court. 20 V. c. 82, s. 4, No. 3.

LXVII. The costs shall be taxed according to the schedule of fees under the Division Courts Act, as

By what scale of fees costs to be taxed.

in suits for the recovery of sums exceeding forty and not exceeding sixty dollars in the said courts. 16 V. c. 182, s. 28.

(24 VIC. CAP. XXXVIII., SEC. 4.)

Appeals from decisions under this act.

IV. All decisions of municipal councils under this act may be appealed from, tried and decided, as provided by the sixty-third and following sections of the said act, for appeals from Courts of Revision under the said act, which shall apply, as nearly as may be practicable, to appeals under this act, save and except the restriction as to the time contained in the sixth sub-section of the said sixty-third section.

ACT RESPECTING STAMPS ON LAW PROCEEDINGS.

(27 & 28 VIC., CAP. V.)

The following sections of the above Act are here inserted, as more or less affecting proceedings in Division Courts:

Stamps to be issued under order in Council.

I. Upon, from and after the first day of October next, stamps shall be issued by order of the Governor in Council in such form and subject to such other directions as shall be thereby and as shall thereafter be from time to time by the like order provided, for the purposes hereinafter mentioned.

For what purposes they shall be used in Upper Canada.

II. In Upper Canada such stamps shall be used in lieu and in payment of the law fees and charges which are due and payable to the Crown under and by virtue of the Consolidated Statutes for Upper Canada, that is to say: chapters fifteen, sixteen, nineteen, &c.

No account required of fees paid by stamps.

VI. It shall not be necessary that any account be rendered to the Minister of Finance, of any fees of office, taxes or duties collected by means of stamps under the provisions of this Act.

No money to be received for such fees.

XI. Upon, from and after the day in the first section mentioned, no money shall be paid to or shall be received by any court, or to or by any officer entitled to receive any such fees as aforesaid, for any such fee due and payable to the Crown, under any of the said Acts.

No proceedings on which such fees are payable to be valid until all dues are paid by stamps.

XII. Upon, from and after the said day, no matter or proceeding whatever upon which any fee is due or payable to the Crown as aforesaid, shall be issued or shall be received or acted upon by any court or by any officer entitled to receive any such fee until a stamp or stamps under this Act for the sum corresponding in amount with the amount of the fee so due or payable to the Crown as aforesaid, for, upon

or in respect of such matter or proceeding, and in lieu of such sum so due and payable to the Crown, shall have been attached to or impressed upon the same.

Proceedings not duly stamped to be void.

XIII. Every matter and proceeding whatever, upon which any such fee is due or payable to the Crown as aforesaid, and which is not so duly stamped shall, if not afterwards stamped under the provisions of this Act, be absolutely void for all purposes whatsoever.

No unstamped process, &c., to be served.

XV. No sheriff or other officer or person shall serve or execute any writ, rule, order or proceeding, or the copy of any writ, rule, order or proceeding upon which any such fee or charge is due or payable, and which is not duly stamped under this Act, and every such service and execution contrary to this Act shall be void, and no recompense shall be allowed therefor.

Another stamp required whenever another charge is due.

XVI. No matter or proceeding which may have been duly stamped for the purpose for which it may have been used, shall be considered as stamped for any other purpose, in case another fee or charge is due or payable thereon for any other or further use of the same matter or proceeding.

Court to take notice of want of stamp, though no objection is made.

XVII. The court in which any such matter or proceeding is, or is pending, which ought to be, but is not so duly stamped, shall not, nor shall any judge of such court take or allow any matter or proceeding to be had or taken upon, or in respect of such matter or proceeding, although no exception be raised thereto by any of the parties, until such matter or proceeding has been first duly stamped.

Court may allow stamps to be affixed on certain terms.

XVIII. Any party to any matter or proceeding in any court which ought to be, but is not so duly stamped, may apply to the court in which such matter or proceeding is pending, or to any judge having jurisdiction in the case, for leave to have the same duly stamped, and in case this act has not been knowingly and wilfully violated, the application shall on payment of costs be granted for the duly stamping

of such matter or proceeding with stamps of such amount beyond the fee due thereon as may be thought reasonable, not exceeding ten times the amount of the stamp.

Retroactive effect of order.

XIX. The affixing of such stamp or stamps, under any order made for that purpose, shall have the same effect as if the said matter or proceeding had been duly stamped in the first instance.

Stamp used to be obliterated, so as not to be used again.

XX. In every case in which a stamp or stamps has or have, under this act, been attached to or impressed upon any matter or proceeding, it shall be the duty of the officer who may issue or who may receive such matter or proceeding, forthwith upon the issue or upon the receipt thereof, to cancel the same by writing or stamping or impressing in ink on such stamp his name and the date thereof, so as effectually to obliterate and cancel the stamp, and so as not to admit of its being used again.

Fees or dues to the Crown increased in certain cases.

XXI. All fees now payable or hereafter at any time to become payable shall, after the passing of this act, or after they shall become payable, be at the following rates: all such fees up to ten cents shall be made and paid at ten cents; all from ten cents to twenty cents, at twenty cents; all from twenty cents to thirty cents, at thirty cents; and so in like manner all other fees which are not multiples of ten cents, shall be stated and payable at the multiple of ten cents next above the sum at which they are so stated.

Allowance for stamps spoiled or returned.

XXVII. The Governor in Council may, from time to time, make such regulations as may be thought expedient, for an allowance for such stamps issued under this act as may have been spoiled or rendered useless or unfit for the purposes intended, or for which the owner may have no immediate use, or which through mistake or inadvertence may have been improperly or unnecessarily used; and such allowance shall be made either by giving other stamps in lieu of the stamps so allowed for, or by repaying the amount or value to the owner or holder

thereof, after deducting the discount (if any) allowed on the sale of stamps of the like amount.

Penalty for issuing, &c., any writ or proceeding without having it duly stamped.

XXIX. Every person who shall knowingly issue, or shall knowingly receive, procure or deliver, or who shall knowingly serve or execute any writ, rule, order, matter or proceeding upon which any fee is due or payable to the Crown as aforesaid, without the same being first duly stamped under this act, for the fee payable thereon, shall be subject for the first offence, to a fine not exceeding ten dollars, for the second offence, to a fine not exceeding fifty dollars, and for the third and every subsequent offence, to a fine of two hundred dollars; and in default of payment of such fines to an imprisonment not exceeding one month for the first offence, three months for the second offence, and one year for the third and any subsequent offence.

For not properly obliterating stamp

XXX. Every person who shall fail or omit to obliterate and cancel any stamp in the manner and at the time hereinbefore provided, shall be subject to a fine not exceeding twenty dollars, and in default of payment thereof, to imprisonment for a period not exceeding two months.

TABLE OF

DIVISION COURTS AND LIMITS

IN UPPER CANADA.

ALGOMA DISTRICT.

Judge—Hon. John Prince, Sault Ste. Marie.

CLERKS OF DIVISION COURTS.

I.—Wm. F. Moore, Sault Ste. Marie.
II.—J. Coatsworth, Bruce Mines.
III.—A. M. Ironsides, Manitowaning.
VI.— —— ———, Fort William.

COUNTY OF BRANT.

County Judge—Stephen James Jones, Esq., Brantford.

DIVISION COURTS AND LIMITS.

I.—Comprising the Town of Brantford and that part of the Township of Brantford not included in the other Divisions hereinafter described. *Clerk*—Henry Racey, Brantford P. O.

II.—Comprising the Town of Paris, and that part of South Dumfries west of the line, between Lots 18 and 19, and that part of the 1st Concession of the Township of Brantford lying west of a continuation of the last mentioned line. *Clerk*—Henry Penton, Paris P. O.

III.—Comprising the remainder of the Township of South Dumfries and of the 1st Concession of the Township of Brantford. *Clerk*—Samuel Stanton, St. George P. O.

IV.—Comprising the ten northern Concessions of the Township of Burford, and that part of the 2nd, 3rd, 4th and 5th Concessions of the Township of Brantford west of the line between Lots Nos. 10 and 11, and that portion of the Kerr tract west of a continuation of the last mentioned line. *Clerk*—Wm. H. Serpell, Burford P. O.

V. Comprising the Township of Oakland, the four southern concessions of the Township of Burford, and Lots Nos. 1 to 5 inclusive, in the Ranges east and west of the Mount Pleasant Road, in the Township of Brantford, adjoining the Township of Oakland. *Clerk*—Alonzo Foster, Scotland P. O.

VI.—Comprising the Townships of Onondaga and Tuscarora, and that part of the Township of Brantford lying south of the main road from Brantford to Hamilton, and east of Fairchild's Creek. *Clerk*—Matthew Whiting, Onondaga P. O.

COUNTY OF CARLETON.

County Judge—CHRISTOPHER ARMSTRONG, ESQ., Ottawa.

DIVISION COURTS AND LIMITS.

I.—Comprising the City of Ottawa; that part of the Township of Nepean, west of the River Rideau to the Concession line between the 1st and 2nd Concessions Rideau Front, and to the boundary line between Lots 25 and 26 Ottawa Front; the Township of Gloucester to Lot 15 inclusive, Rideau Front, and Concessions 1 to 6 inclusive, Ottawa Front, with the Islands in the Ottawa opposite thereto. *Clerk*—George R. Burke, Ottawa P. O

II.—Comprising the Township of Goulburn; the 8th, 9th and 10th Concessions of the Township of Marlborough; and all that portion of Nepean south of the River Goodwood, and the 4th, 5th and 6th Concessions thereof, north of the same river to the boundary line between Lots 20 and 21 in the last mentioned Concession. *Clerk*—John A. Bryson, Richmond P. O.

III.—Comprising the Townships of March and Huntley. *Clerk*—John Fenton, South Huntley P. O.

IV.—Comprising the Towhships of Fitzroy and Tarbolton. *Clerk*—Wm. D. Pigott, Fitzroy Harbour P. O.

V.—Comprising the Township of North Gower, Long Island in the Rideau River, and the 1st, 2nd, 3rd, 4th, 5th, 6th and 7th Concessions of Marlborough. *Clerk*—Wm. Cowan, North Gower P. O.

VI.—Comprising the Township of Osgoode; the 7th, 8th and 9th Concessions, Ottawa Front; and from Lots 16 to 30, inclusive, Rideau Front of the Township of Gloucester. *Clerk*—Ira Morgan, Metcalfe, Osgoode.

VII.—Comprising that portion of the 2nd and 3rd Concessions Rideau front of Nepean lying south of the River Goodwood; the 4th, 5th and 6th Concessions Rideau front, from Lots 21 to 35, inclusive; Concessions A. and B., and the 1st and 2nd Concessions Ottawa front to Lot 25, inclusive, being all that portion of Nepean not included in the 1st and 2nd Divisions. *Clerk*—Frederick W. Harmer, Bell's Corners P. O.

COUNTY OF ELGIN.

County Judge—D. J. HUGHES, ESQ., St. Thomas.

DIVISION COURTS AND LIMITS.

I.—Comprising the Township of Bayham. *Clerk*—Simon Newcomb, Vienna P. O.

II.—Comprising the Townships of Malahide and South Dorchester. *Clerk*—Henry C. Hughes, Aylmer P. O.

III.—Comprising the Township of Yarmouth, and all that portion of the Township of Southwold which lies to the north east and east of the following line, that is to say, commencing on the Township and County line between the Townships of Delaware and Southwold, where the Mill road meets the said line; thence along the Mill road south-easterly to where it meets the road in front of the second range of lots north of the Union road; thence easterly along the said road in front of the said second range of lots as aforesaid until it meets the River road; thence southerly along the River road until it meets the north shore of Lake Erie. *Clerk*—James Farley, St. Thomas P. O.

IV.—Comprising all that part of the Township of Southwold not included in the Third Division, together with so much of the Township of Dunwich as lies to the north-east and east of the side line or dividing line between Lots numbered six and seven in the said Township of Dunwich. *Clerk*—Daniel Eccles, Iona P. O.

V. Comprising all that part of the Township of Dunwich not included in the Fourth Division, together with the Township of Aldborough. *Clerk*—Finlay MacDiarmid, Aldborough P. O.

COUNTY OF ESSEX.

County Judge—G. W. LEGGATT, ESQ., Sandwich.

DIVISION COURTS AND LIMITS.

I.—Comprising the Town of Sandwich and the Township of Sandwich West. *Clerk*—Thos. McKee, Sandwich P. O.

II.—Comprising the Town of Amherstburg and Townships of Malden and Anderdon. *Clerk*—A. Botsford, Amherstburg P. O.

III.—Comprising Township of Gosfield. *Clerk*—James King, Kingsville P. O.

IV.—Comprising Township of Colchester. *Clerk*—James Bell, Colchester P. O.

V.—Comprising Township of Mersea. *Clerk*—Jonathan Wigfield, Woodslee P. O.

VI.—Comprising Townships of Rochester and West Tilbury. *Clerk*—F. Graham, Rochester P. O.

VII.—Comprising Town of Windsor and Townships of Sandwich East and Maidstone. *Clerk*—James L. G. Elliott, Windsor P. O.

COUNTY OF FRONTENAC.

County Judge—WILLIAM GEO. DRAPER, ESQ., Kingston.

DIVISION COURTS AND LIMITS.

I.—The City of Kingston, the Township of Howe Island, the Village of Portsmouth, and all that part of the Township of Pittsburgh south and west of the rear of the fifth Concession thereof. *Clerk*—John Duff, Kingston P. O.

II.—The Township of Kingston, except that part of the western addition lying north of Mud Lake. *Clerk*—Peter McKim, Waterloo P.O.

III.—The Townships of Loughborough and Bedford. *Clerk*—Edward Upham, Sydenham P. O.

IV.—The Townships of Portland, Hinchinbrooke, Olden, Oso, Clarendon and Palmerston. *Clerk*—Samuel Stewart, Harrowsmith P. O.

V.—The Township of Storrington and all that part of the Township of Kingston north of the rear of the fifth Concession. *Clerk*—David J. Walker, Inverary P. O.

VI.—The Township of Wolfe Island. *Clerk*—Thomas Dawson, Wolfe Island P. O.

COUNTY OF GREY.

County Judge—HENRY MACPHERSON, Esq., Owen Sound.

DIVISION COURTS AND LIMITS.

I.—Comprising the Town of Owen Sound, Town plot of Brooke, and Townships of Derby, Keppel, Sydenham, and Sarawak. *Clerk*—Chas. R. Wilkes, Owen Sound P. O.

II.—Comprising the Townships of Bentinck and Glenelg, and all that part of the Township of Normanby situate north of the centre of the allowance for road between 11th and 12th Concessions, and between Lots 35 and 36 in the 2nd and 3rd Concessions, and between Lots 12 and 13 in the 1st Concession west of the Garafraxa road; and all that part of the Township of Egremont north of the centre of the allowance for road between Lots 12 and 13 in 1st Concession, and Lots 28 and 29 in the 2nd and 3rd Concessions east of the Garafraxa Road, and between the 15th and 16th Concessions. *Clerk*—William Jackson, Durham P. O.

III.—Comprising the Township of St. Vincent, and the west half of the Township of Euphrasia. *Clerk*—John Williams, Meaford P. O.

IV.—Comprising the Township of Collingwood, the east half of Euphrasia, and east half of Osprey. *Clerk*—Thos. J. Rourk, Collingwood P. O.

V.—Comprising the Townships of Artemesia, Proton, and Melancthon, the west half of Osprey, and the ranges lying parallel to the Toronto and Sydenham Road, in the Township of Glenelg. *Clerk*—John W. Armstrong, Artemesia P. O.

VI.—Comprising the Townships of Holland and Sullivan. *Clerk*—Henry Cardwell, Chatsworth P. O.

VII.—Comprising all that part of the Township of Normanby situate south of the centre of the allowance for road between the 11th and 12th Concessions, and between Lots 35 and 36 in the 2nd and 3rd Concessions, and between Lots 12 and 13 in the 1st Concession west of the Garafraxa road; and all that part of the Township of Egremont lying south of the centre of the allowance for road between Lots 12 and 13 in the 1st Concession east of the Garafraxa road, and between the 15th and 16th Concessions of Egremont aforesaid. *Clerk*—J. N. Yeomans, Mount Forest P. O.

COUNTY OF HALDIMAND.

County Judge—J. G. Stevenson, Esq., Cayuga.

DIVISION COURTS AND LIMITS.

I.—All the Township of Seneca except the first and second Concessions, the Young Tract, and the property of Richard Martin and Robert Wier; all the Township of Oneida except the first range north of the Cayuga line, the Dennis Tract, and the lots southerly of said Tract. *Clerk*—James Aldridge, Caledonia P. O.

II.—The whole of the Township of North Cayuga except that portion thereof lying north-east of side line between lots 12 and 13; the first and second concessions of the Township of Seneca, excepting that portion thereof lying north-east of the side line between lots 12 and 13, the Young Tract, and the lands of Robert Wier and Richard Martin, Esquires; the first range of Oneida north of Cayuga, also the Dennis Tract and lots lying south. *Clerk*—George S. Cotter, Cayuga P. O.

III.—The Townships of Moulton, Sherbrooke and Dunn. *Clerk*—John Armour, Dunnville P. O.

IV.—The Townships of South Cayuga and Rainham. *Clerk*—Isaac Honsberger, Rainham P. O.

V.—The Township of Canborough and those portions of North Cayuga and Seneca not included in the other Divisions. *Clerk*—Seth Smith, Canboro' P. O.

VI.—Township of Walpole. *Clerk*—E. Bowen, Nanticoke.

COUNTY OF HALTON.

County Judge—Joseph Davis, Esq., Milton.

DIVISION COURTS AND LIMITS.

I.—Comprising all that part of the Township of Trafalgar from the line between the 5th and 6th Concessions of the new survey, west to the Township line, and from the line between Lots 18 and 19, in the old survey, also westerly to the Town line. *Clerk*—John Holgate, Milton P. O.

II.—Comprising the remaining part of the Township of Trafalgar. *Clerk*—Robert Balmer, Oakville P. O.

III.—Comprising the five easterly Concessions of the Township of Esquesing. *Clerk*—Robert Young, Georgetown P. O.

IV.—Comprising the six westerly Concessions of the Township of Esquesing. *Clerk*—James Matthews, Acton P. O.

V.—Comprising the Township of Nassagaweya. *Clerk*—Samuel R. Lister, Nassagaweya P. O.

VI.—Comprising the Township of Nelson. *Clerk* — Algernon McCay, Nelson P. O.

COUNTY OF HASTINGS.

County Judge—Hon. George Sherwood, Belleville.

DIVISION COURTS AND LIMITS.

I.—Comprising the Town of Belleville. *Clerk*—Archibald Ponton, Belleville P. O.

II.—Comprising the Township of Sidney. *Clerk*—N. Ketcheson, Sidney P. O.

III.—Comprising the Township of Tyendinaga. *Clerk*—Hiram Holden, Shannonville P. O.

IV.—Comprising the Township of Hungerford. *Clerk*—Robert McCammon, Tweed P. O.

V.—Comprising the Township of Rawdon. *Clerk*—Wm. Judd, Stirling P. O.

VI.—Comprising the Townships of Madoc and Tudor. *Clerk*—Charles Turnbull, Madoc P. O.

VII.—Comprising the Township of Huntingdon. *Clerk*—James J Ryan, East Moira P. O.

VIII.—Comprising the Township of Thurlow. *Clerk*—John G. Farmer, Canniff's Mills P. O.

IX.—Comprising the Village of Trenton. *Clerk*—Jeremiah Simmons, Trenton P. O.

X.—Marmora. *Clerk*—Benjamin Beddome, Marmora P. O.

XI.—Elziver. *Clerk*—James Maines, Bridgewater P. O.

UNITED COUNTIES OF HURON AND BRUCE.

County Judge—Robert Cooper, Esq., Goderich.

DIVISION COURTS AND LIMITS.

I.—Comprising that part of the Township of Goderich to the north of the Cut Line and the Huron Road, until the same meets the road allowance between the 13th and 14th Concessions, then back along the Huron road to its junction with the Cut Line; then west by the road allowance between Concessions 11 and 12 to the River Maitland; then along the River Maitland to Goderich, together with the Township of Colborne. *Clerk*—P. A. McDougall, Goderich P. O.

II.—Comprising the Township of McKillop, all Tuckersmith south and east of the Mill road, and of the road between Lots 20 and 21 on the 1st and 2nd Concessions, which road runs from the Huron road to the Mill road. *Clerk*—Ludwig Meyer, Harpurhey P. O.

III.—Comprising the Village of Kincardine and the Townships of Huron, Kincardine, and that portion of the Township of Bruce lying to the west of the line between lots 15 and 16. *Clerk*—Joseph C. Barker, Kincardine P. O.

IV.—Comprising that portion of the Township of Bruce lying to the east of the side road between lots 15 and 16; that portion of Greenock north of the line between Concessions 11 and 12; that part of Brant north of the line between Concessions 11 and 12; the Township of Elderslie; and that portion of Saugeen to the south of the line between lots 28 and 29, and of the production of the town line between Arran and Elderslie, to the Saugeen river. *Clerk*—Robert Gilmour, Paisley P. O.

V.—Comprising the Townships of Stephen, Usborne, and that portion of the Township of Hay to the east of the 6th and 7th Concessions of the said Township of Hay. *Clerk*—Thomas Trivitt, Devon, London Road.

VI.—Comprising the Townships of Ashfield and Wawanosh. *Clerk*—John Cooke, Wawanosh P. O.

VII.—Comprising the Township of Stanley, and that portion of the Township of Goderich to the south of the Cut Line and the Huron road, until the same joins the road between the 13th and 14th Concessions of the Township of Goderich; thence along the said Concession road until the same joins the River Bayfield; thence along the said River to Lake Huron, together with all that portion of the Township of Hay to the west of the 6th and 7th Concessions of the said Township of Hay. *Clerk*—David H. Ritchie, Bayfield P. O.

VIII.—Comprising the Township of Carrick, and that portion of the Township of Brant south of the line between Concessions 11 and 12. *Clerk*—William Collins, Walkerton P. O.

IX.—Comprising the Village of Southampton, the Townships of Arran, Amabel, Albemarle, Eastnor, Lindsay, St. Edmond, and that portion of Saugeen north of the line between lots 28 and 29, and of the production of the town line between Arran and Elderslie, to the Saugeen river. *Clerk*—John Eastwood, Southampton P. O.

X.—Comprising the Township of Hullet, and that portion of the Maitland Concession of the Township of Goderich which is bounded on the west by a portion of the River Maitland and the road between the 11th and 12th Concessions, extending from the junction of the Cut Line to the said River Maitland; the 14th, 15th, 16th and 17th Concessions of the said Township of Goderich, and that part of the Township of Tuckersmith, bounded on the west by the London road, on the north by the Huron road, on the east by the side line between Lots 20 and 21, and on the south by the Mill road. *Clerk*—W. W Farran, Clinton P. O.

XI.—Comprising the Townships of Howick, Turnberry, and that portion of the Towhship of Morris, all north of the road allowance between the 5th and 6th Concessions of the said Township of Morris, and that portion of the Township of Grey, all north of the road allowance between the 9th and 10th Concessions of the said Township of Grey. *Clerk*—Benjamin Fralick, Ainsleyville P. O.

XII.—Comprising the Townships of Culross, Kinloss, and that portion of the Township of Greenock south of the line between Concessions 11 and 12. *Clerk*—Thomas Corrigan, Riversdale P. O.

COUNTY OF KENT.

County Judge—Wm. B. Wells, Esq., Chatham.

DIVISION COURTS AND LIMITS.

I.—Comprising the Town of Chatham, the Townships of Raleigh, East Tilbury, and Romney, and those parts of the Townships of Harwich, Chatham and Dover East, not included in the Third, Fourth and Fifth Divisions. *Clerk*—Thomas Glendinning, Chatham P. O.

II.—Comprising the south half of Orford, that part of Howard south of line between 7th and 8th Concessions, and that part of Harwich south of Talbot Street. *Clerk*—J. Duck, Morpeth P. O.

III.—Comprises the Township of Camden, with the exception of Tecumseth Village, and that part east of number one Concession B. and south of the base line of Camden aforesaid; also all that part of the Township of Chatham east of the Lindsay road; also the Gore of Camden, and that part of Dawn south of the side line between 10 & 11 in each Concession. *Clerk*—D. Wallace, Dawn Mills P. O.

IV.—Comprising all that part of the Township of Howard north of the line between the 7th and 8th Concessions; all the Township of Harwich north of Talbot Street, and east of the Communication Road, excepting that part of the same, north of the 4th Concession of Harwich from the Thames and west of said road. *Clerk*—G. Young, Harwich P. O.

V.—Comprising the Townships of Dover East and Dover West, north of the 4th Concession, all that part of the Township of Chatham lying north of 8th Concession, also the Gore of Chatham, including that part of Sombra lately annexed to the County of Kent south of the line between 4th and 5th Concessions. *Clerk*—Robert Mitchell, Wallaceburgh P. O.

VI.—Comprising the Township of Zone, the northern part of Orford not included in the 2nd Division, also that part of Camden not included in the 3rd Division. *Clerk*—J. Taylor, Bothwell P. O.

COUNTY OF LAMBTON.

County Judge—Charles Robinson, Esq., Sarnia.

DIVISION COURTS AND LIMITS.

I.—Town and Township of Sarnia. *Clerk*—Peter T. Poussett, Sarnia P. O.

II.—Township of Warwick. *Clerk*—Jas. F. Elliott, Warwick P. O.

III.—Townships of Dawn and Euphemia. *Clerk*—Wm. Webster, Florence P. O.

IV.—Township of Sombra. *Clerk*—P. Cattanach, Sombra P. O.

V.—Township of Plympton. *Clerk*—T. R. K. Scott, Errol P. O.

VI.—Township of Bosanquet. *Clerk*—Jas. C. Wyld, Widder P. O.

VII.—Township of Moore. *Clerk*—Jas. F. Baby, Mooretown P. O.

VIII. Township of Enniskillen. *Clerk*—George Adamson, Oil Springs P. O.

IX.—Township of Brooke. *Clerk*—John W. Brennan, Alvinston P. O.

UNITED COUNTIES OF LANARK AND RENFREW.

County Judge—J. G. Malloch, Esq., Perth.

DIVISION COURTS AND LIMITS.

I.—The Townships of Drummond, Bathurst, Sherbrooke, Burgess, and all that part of the Township of Elmsley north of the Rideau River, within the County of Lanark, and west of Lot No. 12 in each Concession. *Clerk*—R. Moffatt, Perth P. O.

II.—The Townships of Lanark, Dalhousie, Darling, Levant and North Sherbrooke. *Clerk*—Wm. Robertson, Lanark P. O.

III.—The Township of Beckwith, and Lots Nos. 1, 2, 3, 4, 5 and 6, in the 1st, 2nd, 3rd, 4th, 5th, 6th and 7th Concessions in the Township of Ramsay. *Clerk*—James Poole, Carleton Place P. O.

IV.—That part of the Township of Elmsley north of the Rideau River, from Lot No. 1 to Lot No. 12 in each Concession, both inclusive, and the Township of Montague. *Clerk*—Robertson Harper, Smith's Falls P. O.

V.—The Township of Pakenham, and those parts of the Townships of Bagot and Blythefield, south of the River Madawaska. *Clerk*—Richard H Davie, Pakenham P. O.

VI.—The Townships of Horton and Ross, the first three Concessions of the Township of Admaston, and those parts of the first five Concessions of the Township of Bagot, north of Madawaska River. *Clerk*—Wm. Halpenny, Renfrew P. O.

VII.—Those parts of the 6th to the 12th Concessions, both inclusive, of the Township of Bagot, north of the Madawaska River; that part of the Township of Blythefield north of the said River Madawaska; the Township of Admaston, except the first three concessions; the Townships of Broomly, Brougham, and the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th and 10th Concessions, inclusive, of the Township of Grattan, and also that part lying east of the side lines between Lots Nos. 10 and 11 in each Concession, and north to the River Bonnechere in said Township, also all that part of the Township of Wilberforce lying east of the side line between Lots Nos. 10 and 11 in the 1st to the 17th Concessions, both inclusive. *Clerk*—Andrew W. Bell, Douglas P. O.

VIII.—Townships of Westmeath, Stafford, Pembroke, Alice, Petewawa, Buchanan, Rolph, Wylie, McKay, and all that part of the Township of Wilberforce from the 18th to the 25th Concession, both inclusive. *Clerk*—Andrew Irving, Pembroke P. O.

IX.—All that part of the Township of Grattan comprising the Concession from No. 11 to No. 25, both inclusive, excepting that portion of each concession lying on the east side of the side lines between

Lots Nos. 10 and 11 in each Concession respectively. And also all that portion of the Township of Wilberforce comprising the concessions from No. 5 to No. 17 inclusive, excepting that portion of the 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th and 17th Concessions lying east of the said lines between Lots Nos. 10 and 11 in each concession respectively, and also excepting those portions of the 14th, 15th, 16th and 17th Concessions lying north of the Snake River. And also comprising the following Townships, namely, Griffith, Sebastopol, South Algona, North Algona, Fraser, Lyndoch, Raglan, Radcliffe and Brudenell. *Clerk*—S. G. Lynn, Eganville P. O.

X.—The Township of Ramsay, excepting Lots Nos. 1, 2, 3, 4, 5 and 6, on the 1st, 2nd, 3rd, 4th, 5th, 6th and 7th Concessions of the said Township. *Clerk*—John Patterson, Almonte P. O.

XI.—The Village of Arnprior and Township of McNab. *Clerk*—James Bell, Arnprior P. O.

UNITED COUNTIES OF LEEDS AND GRENVILLE.

County Judge—GEORGE MALLOCH, ESQ., Brockville.

DIVISION COURTS AND LIMITS.

I.—The 1st, 2nd, 3rd, 4th, 5th, 6th and 7th Concessions, and broken front of the Township of Elizabethtown, and the concession roads between them. *Clerk*—John B. Jones, Brockville P. O.

II.—The 1st, 2nd, 3rd, 4th and 5th Concessions and broken front, and that part of the 6th, 7th and 8th Concessions from the Town line of Edwardsburgh to Lot No. 18, inclusive, of the Township of Augusta, and the concession roads between them. *Clerk*—Thomas Harrison, Prescott P. O.

III.—The 1st, 2nd, 3rd, 4th and 5th Concessions and broken front of the Townships of Leeds and Lansdown respectively, and the Concession roads between them. *Clerk*—S. McCammon, Gananoque P. O.

IV.—The Township of South Gower; the Township of Oxford from the west side line of Lot No. 11, in all the Concessions to the eastern boundary of the Township, and the Gore of land between South Gower, Oxford and Edwardsburgh. *Clerk*—Robert Leslie, Kemptville P. O.

V.—The Township of Wolford (except the 7th and 8th Concessions and the allowance for road between them); Lots numbered one to ten inclusive in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th and 8th Concessions of the Township of Oxford, and the allowances for roads within or between them. *Clerk*—Michael Kelly, Merrickville P. O.

VI.—The Townships of Bastard and Burgess, and those parts of the Townships of Leeds and Lansdowne on the north side of the rear of the 5th Concession in each respectively. *Clerk*—Hugh McKay, Delta P. O.

VII.—The Townships of Kelley and Elmsley. *Clerk*—Hiram McCrea, Frankville P. O.

VIII.—The Townships of North Crosby and South Crosby. *Clerk*—Horace Kilborn, Newborough P. O.

IX.—That part of the Townships of Escott and Yonge in rear of the 4th Concession of Yonge, and in rear of the 6th Concession of Escott; that part of the Township of Elizabethtown in rear of the 7th Concession of and west of Lots Nos. 18 in the 8th, 9th, 10th and 11th Concessions, and the allowances for roads embraced therein. *Clerk*—David Mansell, Farmersville P. O.

X.—The Township of Edwardsburgh. *Clerk*—Thomas Robertson, Spencerville P. O.

XI.—That part of the Township of Augusta in rear of the 5th Concession and west of Lots and Nos. 18 in the 6th, 7th and 8th Concessions; the whole of the 9th and 10th Concessions of the Township of Augusta, the Gore between the Townships of Oxford, Wolford and Augusta; that part of the Township of Elizabethtown in rear of the 7th Concession, and east of the terminus between Lots Nos. 18 and 19 in the 8th, 9th and 10th Concessions, the 7th and 8th Concessions of the Township of Wolford; Lots Nos. 1 to 10 inclusive in the 9th and 10th Concessions of the Township of Oxford, and the allowances for roads embraced therein. *Clerk*—Warren Lyman, N. Augusta P.O.

XII.—The 1st, 2nd, 3rd and 4th Concessions and broken front of the Township of Yonge; the 1st, 2nd, 3rd, 4th, 5th and 6th Concessions and broken front of the Township of Escott, and the allowances for roads embraced therein. The said 1st, 2nd, 3rd and 12th Divisions respectively embrace and comprehend within their limits those portions of the River St. Lawrence and Islands therein within the exterior side lines of which such portions of said river and islands would lie and be if such exterior side lines were produced and extended in that direction to the utmost limits of the Province of Canada. *Clerk*—Alfred A. Munro, Mallorytown P. O.

UNITED COUNTIES OF LENNOX AND ADDINGTON.

County Judge—J. J. Burrowes, Esq., Napanee.

DIVISION COURTS AND LIMITS.

I.—Comprises the Town of Napanee, the Township of Richmond, all that part of North Fredericksburgh lying north of Big Creek, and those parts of North Fredericksburgh and Adolphustown lying north of Hay Bay. *Clerk*—Charles James, Napanee P. O.

II.—Comprises the 1st Concession of the Township of Ernestown, the Village of Bath, and the 2nd, 3rd and 4th Concessions of the Township of Ernestown, from the west limits thereof to the west limit of Lot No. 21 in each Concession. *Clerk*—J. D. Noble, Bath P. O.

III.—Comprises the Township of South Fredericksburgh and all that part of North Fredericksburgh and Adolphustown not included in the limits of Division No. 1. *Clerk*—Edwin Mallory, Parma P. O.

IV.—Comprises the 1st, 2nd and 3rd Concessions of the Township of Camden and the Village of Newburgh. *Clerk*—Isaac J. Lockwood, Newburgh P. O.

V.—Comprises all that part of the Township of Camden not included in the limits of Division No. 4. *Clerk*—William Whelan, Centreville P. O.

VI.—Comprises all that part of the Township of Ernestown not included in the limits of Division No. 2. *Clerk*—Henry Pultz, Wilton P. O.

VII.—Comprises the Township of Amherst Island. *Clerk*—Capt. Skene, Amherst Island P. O.

VIII.—Comprises the Townships of Sheffield, Kaladar, Anglesea, Abinger, Effingham and Denbigh. *Clerk*—D. Cameron, Tamworth P.O.

COUNTY OF LINCOLN.

County Judge—J. M. LAWDER, Esq., Niagara.

DIVISION COURTS AND LIMITS.

I.—Comprising Niagara Town and Township. *Clerk*—William B. Winterbottom, Niagara P. O.

II.—Comprising the Town of St. Catharines, Township of Grantham and Village of Port Dalhousie. *Clerk*—Wm. A. Mittleberger, St. Catharines P. O.

III.—Comprising the Township of Louth. *Clerk*—Clarke Snure, Jordan P. O.

IV.—Comprising the Township of Clinton. *Clerk*—John C. Kerr, Beamsville P. O.

V.—Comprising the Township of Grimsby. *Clerk*—R. Thompson, Smithville P. O.

VI.—Comprising the Township of Caistor. *Clerk*—Thos. Pearson, Abingdon P. O.

VII.—Comprising the Township of Gainsborough. *Clerk*—George Secord, St. Ann's P. O.

COUNTY OF MIDDLESEX.

County Judge—HON. JAMES E. SMALL, London.

DIVISION COURTS AND LIMITS.

I.—The City of London with that portion of the Township of London lying south of the line between the 4th and 5th Concessions and west of the line between Lots Nos. 4 and 5, and south of the River Thames, thence westerly to the western limits of the said Township, with that portion of the Township of Westminster which lies north of the line between the 1st and 2nd Concessions, and between Lots Nos. 15 and 16, and thence westerly to the line between Lots 42 and 43 to the River Thames. *Clerk*—John C. Meredith, London P. O.

II.—The Townships of East Williams, West Williams, with that portion of the Township of Lobo which lies north of the line between the 11th and 12th Concessions from the line between Lots Nos. 12 and 13 to the eastern boundary of the said Township. *Clerk*—Gustavus G. Hamilton, Nairn P. O.

III. The Townships of McGillivray and Biddulph. *Clerk*—John Flannagan, Lucan P. O.

IV.—The Township of Delaware with that portion of the Township of Westminster lying westerly of the line between Lots Nos. 30 and 31 in the 1st Concession, thence southerly to the line between the 2nd and 3rd Concessions, thence south and westerly of the line between Lots Nos. 20 and 21 to the southern and western boundaries of the said Township; together with all that portion of the front of the line between Lots Nos. 42 and 43 to the River Thames, and not included in division No. 1; and with that portion of the Township of Carradoc lying south of the line between the 3rd and 4th Concessions to the River Thames, with that portion of the Township of Lobo which lies south from the line between the 6th and 7th Concessions to the River Thames. *Clerk*—Wm. F. Bullen, Delaware P. O.

V.—The Townships of Ekfred and Mosa. *Clerk*—Andrew Wilson, Wardsville P. O.

VI.—The Townships of Adelaide and Metcalf, the Village of Strathroy, with that portion of the Township of Carradoc lying north of the line between the 3rd and 4th Concessions, with that portion of the Township of Lobo which lies north of the 6th Concession and west of the line between Lots Nos. 12 and 13 of the said Township. *Clerk*—Jos. C. Small, Strathroy P. O.

VII—The Township of Dorchester north and south of the River Thames, with that portion of the Township of West Nissouri which lies south of the line between Lots Nos. 14 and 15, together with that portion of the Township of London lying east of the line between Lots Nos. 4 and 5 from the line between the 4th and 5th Concessions to the River Thames; and with all that portion of the Township of Westminster lying south from the River Thames, and east of the line between Lots Nos. 15 and 16, on the line between the 1st and 2nd Concessions westerly to the line between Lots 30 and 31, thence southerly to the line between the 2nd and 3rd Concessions, and thence south on the line between Lots Nos. 20 and 21 to the southern limits of the said Township. *Clerk*—Henry LeLievre, Draney's Corners P.O.

VIII.—That all that portion of the Township of London which lies north of the line between the 4th and 5th Concessions, with that portion of the Township of Lobo which lies north of the line between the 6th and 7th Concessions, and east of the line between Lots Nos. 12 and 13 to the line between the 11th and 12th Concessions, and with all that portion of the Township of West Nissouri which lies north of the line between Lots Nos. 14 and 15. *Clerk*—Wm. B. Bernard, St. John's P. O.

COUNTY OF NORFOLK.

County Judge—William Salmon, Esq., Simcoe.

DIVISION COURTS AND LIMITS.

I.—Comprising part of the Township of Woodhouse, and the Town of Simcoe. *Clerk*—James Ermatinger, Simcoe P.O.

II.—Comprising the Township of Townsend. *Clerk*—Edward Matthews, Waterford P.O.

III.—Comprising the Township of Windham. *Clerk*—D. W. Freeman, Simcoe P.O.

IV.—Comprising the Township of Middleton. *Clerk*—T. Jenkins, Courtland P.O.

V.—Comprising the Township of Charlotteville. *Clerk*—W. Hewett, Vittoria P.O.

VI.—Comprising the Township of Walsingham. *Clerk*—Simon Pitt Mabee, Port Rowan P.O.

VII.—Comprising the Township of Houghton. *Clerk*—Thos. Chamberlin, Houghton Centre P.O.

VII.—Comprising the Village of Port Dover, and part of the Township of Woodhouse. *Clerk*—Samuel Gamble, Port Dover P.O.

UNITED COUNTIES OF NORTHUMBERLAND & DURHAM.

County Judge—GEORGE W. BOSWELL, Esq., Cobourg.

Junior Judge—G. M. CLARK, Esq., Cobourg.

DIVISION COURTS AND LIMITS.

I.—Comprising Bowmanville and Township of Darlington. *Clerk*—Charles Clark, Bowmanville P.O.

II.—Comprising Townships of Clarke and Manvers. *Clerk*—Samuel Wilmot, Newcastle P.O.

III.—Comprising Port Hope and the Township of Hope. —*Clerk* John T. Day, Port Hope P.O.

IV.—Comprising Townships of Cavan and South Monaghan. *Clerk*—Wm. Turner, Millbrook P.O.

V.—Comprising Town of Cobourg and Township of Hamilton. *Clerk*—Michael D. Cruso, Cobourg P.O.

VI.—Comprising Townships of Haldimand and Alnwick. *Clerk*—J. G. Rogers, Grafton P.O.

VII.—Comprising the Township of Cramahe. *Clerk*—Jas. H. Reid, Colborne P.O.

VIII.—Comprising the Township of Brighton. *Clerk*—George S. Burrell, Brighton P.O.

IX.—Comprising the Township of Percy. *Clerk*—J. Douglas, Warkworth P.O.

X.—Comprising the Township of Murray, *Clerk*—A. W. Gerow, Murray P.O.

XI.—Comprising the Township of Seymour. *Clerk*—Daniel Kennedy, Campbellford P.O.

XII.—Comprising the Township of Cartwright. *Clerk*—Wm. A. Loucks, Cartwright P.O.

COUNTY OF ONTARIO.

County Judge—Z. BURNHAM, Esq., Whitby.

DIVISION COURTS AND LIMITS.

I.—Comprising the Town and Township of Whitby and Village of Oshawa. *Clerk*—L. Fairbanks, Whitby P.O.

II.—Comprising the Township of Pickering. *Clerk*—Joseph Wilson, Pickering P.O.

III.—Comprising the Townships of Reach and Scugog. *Clerk*—Richard Lund, Borelia P.O.

IV.—Comprising the Townships of Uxbridge and Scott. *Clerk*—Joseph Dickey, Uxbridge P.O.

V.—Comprising the Township of Brock. *Clerk*—H. Burnham, Carrington P.O.

VI.—Composed of the Township of Thorah and the broken Concessions A B and C, and Concessions 1, 2, 3 and 4 of Mara. *Clerk*—Chas Robinson, Beaverton P.O.

VII.—Composed of the remainder of the Township of Mara and the Township of Rama. *Clerk*—H. E. O'Dell, Atherley P.O.

COUNTY OF OXFORD.

County Judge—D. S. McQUEEN, Esq., Woodstock.

DIVISION COURTS AND LIMITS.

I,—Comprising the Town of Woodstock, the Township of Blandford, the Township of East Zorra, the Township of East Oxford, and that part of North Oxford situate east of Lot No. 16, and as much of West Oxford as lies east of Lot No. 7 to the Stage Road, thence on the north side of the Stage Road to where the said road intersects the Township of East Oxford. *Clerk*—Edwin F. Gahan, Woodstock P.O.

II.—Comprising the Township of Blenheim. *Clerk*—Wm. H. Laudon, Princeton P.O.

III.—Comprising the Townships of West Zorra and East Missouri. *Clerk*—D. Matheson, Embro P.O.

IV.—Comprising the Township of Norwich. *Clerk*—Jas. Barr, Norwichville P.O.

V.—Comprising so much of the Townships of North and West Norwichville, (Oxford not included in the 1st division) the Town of Ingersoll, and that part of the two 1st concessions of the Township of Dereham west of the middle Town line. *Clerk*—David Caufield, Ingersoll P.O.

VI.—Comprising that part of the Township of Dereham, not included in the 5th division. *Clerk*—Charles Hawkins, Tilsonburg P.O.

COUNTY OF PERTH.

County Judge—Daniel H. Lizars, Esq., Stratford.

DIVISION COURTS AND LIMITS.

I.—Comprising all that part of the Township of North Easthope, west of the line between Lots 25 and 26, and south of the road between the 8th and 9th Concessions, and all that part of the Township of South Easthope west of the side line between Lots 25 and 26. All that part of the Township of Downie and Gore, north and east of the Concession line between the 10th and 11th Concessions and the Oxford road, and all the Township of Ellice from the 1st to the 13th Concession inclusive. *Clerk*—David B. Burritt, Stratford P. O.

II.—Comprising all that part of the Township of Fullarton not included in division No. 3, and the Townships of Hibbert and Logan. *Clerk*—Thomas Mathieson, Mitchell P. O.

III.—Comprising that portion of the Township of Downie west of the Oxford road and south of the Concession line between the 10th and 11th Concessions, the Township of Blanshard, all that part of the Township of Fullarton, comprising the 13th and 14th Concessions, and south of a road leading from the Mitchell road between Lots 24 and 25 east to Lot 3 in the 10th Concession, thence east along the line between the 10th and 11th Concessions to the Town line. *Clerk*—J. Coleman, St. Mary's P. O.

IV.—Comprising that part of the Township of North Easthope east of the line between Lots 25 and 26, and north to the 8th Concession inclusive, with the 9th and 10th Concessions, all that part of the Township of South Easthope not included in Division No. 1. *Clerk*—W. Cossey, Shakspeare P. O.

V.—Comprising the Township of Mornington, and all that part of the Township of Elma from Lots Nos. 53 to 72, both numbers inclusive, of the 1st Concession, and from Lots Nos. 27 to 36, both numbers inclusive, in and from the 2nd to the 18th Concessions, both concessions inclusive of said Township of Elma, and Concessions 14th, 15th and 16th of the Township of Ellice, and Concessions 11th, 12th, 13th and 14th of the Township of North Easthope. *Clerk*—Samuel Whaley, West's Corner's P. O,

VI.—Comprising the Township of Wallace, and all that part of the Township of Elma, from the 1st Concession to the 18th, both Concessions inclusive, and comprising Lots Nos. 1 to 52, both inclusive, of the 1st Concession, and Lots Nos. 1 to 26, inclusive, from the 2nd to the 18th Concesssions, both concessions inclusive. *Clerk*—D. D. Hay, Listowell P. O.

COUNTY OF PETERBOROUGH.

County Judge—R. M. Boucher, Esq., Peterborough.

DIVISION COURTS AND LIMITS.

I.—Comprising the Town of Peterborough, Village of Ashburnham, Townships of North Monaghan, 1st, 2nd, 3rd, 4th, 5th and 6th Concessions Township of Smith, 12th, 13th, 14th, 15th, 16th and 17th

Concessions of the Township of Otonabee, and the Townships of Douro and Dummer south of Lot No. 12 in each. *Clerk*—John J. Hall, Peterborough.

II.—Townships of Asphodel and Belmont. *Clerk*—John A. Butterfield, Norwood P. O.

III.—Township of Otonabee east of 12th Concession. *Clerk*—Thos. Campbell, Keene P. O.

IV.—Townships on east side of Bobcageon Road *Clerk*—S. S. Peek, Minden P. O.

V.—North parts of Douro and Dummer, and the township of Smith north of 6th concession, and the Townships of Burleigh, Chandos, Anstruther and Cardiff. *Clerk*—Edward Beatty, Lakefield, P. O.

UNITED COUNTIES OF PRESCOTT AND RUSSELL.

County Judge—JAMES DANIELL, ESQ., L'Original.

DIVISION COURTS AND LIMITS.

I.—Comprising the Township of Longueil and front Concession of the Township of Caledonia, and north-east part of the Township of Alfred. *Clerk*—John Millar, L'Original P. O.

II.—Comprising the Township of West Hawkesbury, from front of third Concession to rear of Township; also the west part of Township of East Hawkesbury, from front of 3rd concession, and bounded on the east by road allowance between Lots 30 and 31 to rear of Township. *Clerk*—Wm. McRae, Vankleek Hill P. O.

III.—Comprising the Township of East Hawkesbury—that part extending from front of 3rd Concession, and bounded on the west by road allowance between Lots 30 and 81 in each Concession to rear of Township. *Clerk*—Alex. McBain, St. Eugene P. O.

IV.—Comprising the Township of North Plantagenet and western part of South Plantagenet, and south and north-west parts of Alfred. *Clerk*—Albert Hagar, Plantaganet Mills P. O.

V.—Comprising the Townships of Cumberland and Clarence. *Clerk*—Wm. N. Dunning, Cumberland P. O.

VI.—Comprising the Townships of Russell and Cambridge. *Clerk*—James Keays, Russell P. O.

VII.—Comprising the Townships of West Hawkesbury and East Hawkesbury, those parts comprising the two front concessions of each. *Clerk*—Thomas White, Hawkesbury P. O.

VIII.—Comprising the Township of Caledonia (excepting 1st concession), and also that eastern part of South Plantagenet lying on the eastern side of the Nation River. *Clerk*—Henry Bradley, Caledonia Flats P. O.

COUNTY OF PRINCE EDWARD.

County Judge—D. L. Fairfield, Esq., Picton.

DIVISION COURTS AND LIMITS.

I.—Comprising the Town of Picton and part of the Township of Hallowell. *Clerk*—John P. Downes, Picton P. O.

II.—Comprising part of the Township of Marysbugh. *Clerk*—Thomas Cook, Milford P. O.

III.—Comprising the Township of Sophiasburgh. *Clerk*—Samuel Solmes, Northport P. O.

IV.—Comprising part of the Township of Ameliasburgh. *Clerk*—Edward Roblin, Roblin's Mills P. O.

V.—Comprising part of the Townships of Hallowell and part of Hillier. *Clerk*—William Young, Wellington P. O.

VI.—Comprising the Township of Athol. *Clerk*—Sheldon Spafford, Cherry Valley P. O.

VII.—Comprising part of the Township of Hillier, and part of the Township of Ameliasburgh. *Clerk*—Joshua M. Cadman, Consecon P. O.

VIII.—Comprising the eastern part of the Township of Marysburgh. *Clerk*—Richard Hill, Bergend's Corners P. O.

COUNTY OF SIMCOE.

County Judge—James Robert Gowan, Esq., Barrie.

DIVISION COURTS AND LIMITS.

I.—Comprising the Townships of Vespra and Innisfil, that portion of the Township of Essa lying eastward of the 4th concession in the said Township, and also that portion of the said Township of Essa northward of Lots numbered 25 in the 1st, 2nd, 3rd and 4th concessions, respectively, of the said Township; that portion of the Township of Oro lying westward in the 10th concession of the said Township; and that portion of the Township of Tosorontio lying northward of Lots numbered 25 in the 1st, 2nd, 3rd, 4th, 5th, 6th, and 7th concessions, respectively, of the said Township of Tosorontio. *Clerk*—Thomas Lloyd, Barrie P. O.

II.—Comprising the Township of West Gwillimbury. *Clerk*—John F. Davies, Bradford P. O.

III.—Comprising the Township of Tecumseth, and that portion of the Township of Adjala lying northward of Lots numbered 11 in the 6th, 7th, and 8th concessions, respectively, of the said Township of Adjala. *Clerk*—Frederick S. Stephens, Tecumseth P. O.

IV.—Comprising the Township of Nottawasaga and Sunnidale. *Clerk*—Andrew Jardine, Collingwood P. O.

V.—Comprising the Township of Flos, and that portion of the Township of Medonte lying westward of the 11th concession of same Township. *Clerk*—John Craig, Craighurst P. O.

VI.—Comprising the Township of Orillia (Northern and Southern Divisions); the Township of Matchedash; all that portion of the Township of Oro lying eastward of the 9th concession of the said Township of Oro; all that portion of the Township of Medonte lying eastward of the 10th concession of the said Township; the Townships of Muskoka, Morrison and Balaclava; and also the Islands in Lakes Simcoe and Huron, wholly or for the most part opposite to and forming part of the County of Simcoe; also the tract of land northward of the said Townships. *Clerk*—Thomas Dallas, Orillia P. O.

VII.—Comprising the Township of Mulmur; that portion of the Township of Tosorontio lying southward of Lots numbered 26 in the 1st, 2nd, 3rd, 4th, 5th, 6th, and 7th concessions, respectively, of the said Township of Tosorontio; and that portion of the Township of Essa which lies westward of the 5th concession of the said Township of Essa, except those Lots lying northward of numbers 25 in the 1st, 2nd, 3rd, and 4th concessions, respectively, of the said Township of Essa. *Clerk*—John Little, Mulmur P. O.

VIII.—Comprising the Townships of Mono and Adjala, except those Lots lying northward of Lots numbered 11 in the 6th, 7th, and 8th concessions, respectively, of the said Township of Adjala. *Clerk*—George McManus, Mono Mills P. O.

IX.—Comprising the Townships of Tiny and Tay and the Islands adjacent thereto in Lake Huron. *Clerk*—Robert James Cattley, Penetanguishene P. O.

UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARY.

County Judge—GEORGE S. JARVIS, Esq., Cornwall.

DIVISION COURTS AND LIMITS.

I.—Comprising the Township of Charlottenburgh. *Clerk*—Charles Poole, Martintown P. O.

II.—Comprising the Township of Lochiel. *Clerk*—Colin Chisholm, Alexandria P. O.

III.—Comprising the Township of Cornwall. *Clerk*—George Sherwood Jarvis, Cornwall P. O.

IV.—Comprising the Township of Osnabruck. *Clerk*—John Bockus, Dickenson's Landing P. O.

V.—Comprising the Township of Williamsburgh. *Clerk*—John W. Loucks, Williamsburgh P. O.

VI.—Comprising the Township of Matilda. *Clerk*—John Sylvester Ross, Matilda P. O.

VII.—Comprising the Township of Mountain. *Clerk*—William John Ridley, Mountain P. O.

VIII.—Comprising the Township of Finch. *Clerk*—John A. Cockburn, Berwick P. O.

IX.—Comprising the Township of Lancaster. *Clerk*—Peter Stuart, Lancaster P. O.

X.—Comprising the Township of Winchester. *Clerk*—John McCuaig, Winchester P. O.

XI.—Comprising the Township of Roxborough. *Clerk*—James McDonald, Athol P. O.

XII.—Comprising the Township of Kenyon. *Clerk*—John Angus McDougall, Kenyon P. O.

COUNTY OF VICTORIA.

County Judge—JAMES SMITH, ESQ., Lindsay.

DIVISION COURTS AND LIMITS.

I.—Comprising the 15th concession of the Township of Mariposa and the Townships of Eldon, Carden, Dalton, Ryde, Draper and Macaulay. *Clerk*—A. Ray, Goodville P. O.

II.—Comprising all of the Township of Fenelon, except that portion lying east of Scugog River and south of Sturgeon Lake and including all that part of Somerville lying west of Lots number twelve throughout the various concessions, and the Townships of Bexley, Laxton, Digby, Longford and Oakley. *Clerk*—J. C. Fitzgerald, Fenelon Falls P. O.

III.—Comprising the Township of Verulam; that part of Somerville lying east of Lot number thirteen throughout the various concessions; the Townships of Lutterworth, Anson and Hindon. *Clerk*—James M. Irwin, Bobcaygeon P. O.

IV.—Comprising the Township of Emily. *Clerk*—T. Matchett, Omemee P. O.

V.—Comprising the Town of Lindsay and the Township of Ops and that portion of Fenelon lying east of Scugog River and south of Sturgeon Lake. *Clerk*—James McKibbon, Lindsay P. O.

VI.—Comprising the Township of Mariposa except the 15th concession. *Clerk*—Wm. Taylor, Oakwood P. O.

COUNTY OF WATERLOO.

County Judge—WILLIAM MILLER, ESQ., Galt.

DIVISION COURTS AND LIMITS.

I.—Comprising all that portion of the Township of Waterloo lying north of the Block line on the west side of the Grand River, and that part of the Upper Block in the said Township lying on the east side of the Grand River north of Lots 115, 109, 104, 86 and 95, to the Guelph Township line, including the Village of Berlin. *Clerk*—Andrew Peterson, Berlin P. O.

II.—Comprising all that part of the Township of Waterloo south of the Block line on the west side of the Grand River and that part lying on the east side of the Grand River south of the northern boundary of Lots 111, 109, 104, 86, and 95, to the Guelph Township line, including the Village of Preston. *Clerk*—Otto Klotz, Preston P. O.

III.—Comprising all that part of the Township of North Dumfries, lying east of Lot 19, in the 7th concession, and running a course with the eastern boundary of the said Lot in a northerly direction up to the 12th concession, thence along the eastern boundary of Lot 33, in the said 12th concession to the Township line, including the Town of Galt. *Clerk*—Peter Keefer, Galt P. O.

IV.—Comprising all that part of the Township of North Dumfries lying west of Lot 18, in the 7th concession, thence along the western limits of the said Lot 18 in a northerly direction to the 12th concession, thence along the western limit of Lot 22 to the Township line. *Clerk*—John Wyllie, Ayr P. O.

V.—Comprising the Township of Wilmot. *Clerk*—John Alchin, New Hamburg P. O.

VI.—Comprising the Township of Wellesley. *Clerk*—M. P. Empey, Hawkesville P. O.

VII—Comprising the Township of Woolwich. *Clerk*—Alex. H. Grant, Conestoga P. O.

COUNTY OF WELLAND.

County Judge—H. W. Price, Esq.. Thorold.

DIVISION COURTS AND LIMITS.

I.—Comprising the Township of Crowland; that part of the Township of Thorold lying south of the line between Lots 178 and 195, running through to Pelham; that part of Pelham lying south of the 10th concession; that part of Humberstone lying west of Lot 10 in the several concessions thereof; and the whole of the 5th concession. *Clerk*—Alfred Willett, Welland P. O.

II.—Comprising the Township of Wainfleet. *Clerk*—S. S. Hagen Marshville P. O.

III.—Comprising the Township of Bertie, and that part of Humberstone not included in No. 1. *Clerk*—Thos. Newbigging, Fort Erie P.O.

IV.—Comprising the Township of Willoughby, the Village of Chippawa, and that part of the Township of Stamford south of the line between Lots 136 and 137, easterly from the western limit of the Township to the south-east angle of Lot 133; thence north on the line between lots 132 and 133, to the northern boundary of the Township and Navy Island. *Clerk*—William Patrick, Clifton P. O.

V.—Comprising those portions of the Townships of Stamford, Thorold and Pelham, not included in any other Division, and the Village of Thorold. *Clerk*—Jacob Keefer, Thorold P. O.

COUNTY OF WELLINGTON.

County Judge—Archibald Macdonald, Esq., Guelph.

DIVISION COURTS AND LIMITS.

I.—Comprising the Town and Township of Guelph *Clerk*—A. A. Baker, Guelph P. O.

II.—Comprising the Township of Puslinch. *Clerk*—William Leslie, Puslinch P. O.

III.—Comprising the Township of Eramosa. *Clerk*—William McCarthy, Rockwood P. O.

IV.—Comprising the Township of Nichol, except the 11th and 12th concessions, the first eight concessions, inclusive, of Garafraxa, Lots 1 to 13 in the 14th, 15th, 16th, 17th, and 18th concessions, east of the Saugeen Road, and Lots 1 to 18 inclusive in concessions A and B Township of Peel. *Clerk*—Alexander S. Cadenhead, Fergus P. O.

V.—Comprising the Township of Erin. *Clerk*—William Tyler, Erin P. O.

VI.—Comprising the Township of Pilkington, with the 11th and 12th concessions of the Township of Nichol. *Clerk*—John McLean, Elora P. O.

NII.—Comprising all west of the Saugeen Road in the Townships of Peel and Maryborough. *Clerk*—Geo. Allan, Allansville P. O.

VIII.—Comprising the Township of Arthur, the western portion of Township of Luther, from Lots 1 to 15, both inclusive, and those portions of Peel and Maryborough not included in Division Nos. 4 and 7. *Clerk*—Cornel. O'Callaghan, Arthur P. O.

IX.—Comprising that part of the Township of Garafraxa, except the first eight concessions thereof, and including the Gore of said Township, the Township of Amaranth, and the eastern part of the Township of Luther, from Lots 16 to 32 inclusive. *Clerk*—Guy Leslie, Orangeville P. O.

X.—Comprising the Township of Minto. *Clerk*—Wm. Yeo, Harriston P. O.

COUNTY OF WENTWORTH.

County Judge—A. Logie, Esq., Hamilton.

DIVISION COURTS AND LIMITS.

I.—Comprising the City of Hamilton and the Township of Barton. *Clerk*—Andrew Milroy, Hamilon P. O.

II.—Comprising the Town of Dundas and the Township of West Flamboro'. *Clerk*—Alexis Fidele Begue, Dundas P. O.

III.—Comprising the Township of East Flamboro'. *Clerk*—James McMonies, Jr. Watertown P. O.

IV.—Comprising the Township of Beverley. *Clerk*—Wallace Macdonald, Rockton P. O.

V.—Comprising the Township of Saltfleet. *Clerk*—John J. Bradley, Stoney Creek P. O.

VI.—Comprising the Township of Ancaster. *Clerk*—Lemuel A. Gurnett, Ancaster P. O.

VII.—Comprising the Township of Glandford. *Clerk*—John Atkinson, Glandford P. O.

VIII.—Comprising the Township of Binbrook. *Clerk*—Henry Hall, Binbrook P. O.

UNITED COUNTIES OF YORK AND PEEL.

County Judge—Hon. S. B. Harrison, Toronto.

Junior Judge—John Boyd, Esq., Markham.

DIVISION COURTS AND LIMITS.

I.—Comprising the City of Toronto. *Clerk*—Allan McLean Howard, Toronto P. O.

II.—Comprising parts of the Townships of Markham and Whitchurch. *Clerk*—J. J. Barker, Unionville P. O.

III.—Comprising parts of the Townships of Markham and Whitchurch, and the 1st, 2nd and 3rd Concessions of Vaughan, and 1st and 2nd Concessions of King, from Lot 1 to 10 inclusive. *Clerk*—Alex. C. Lawrence, Richmond Hill P. O.

IV.—Comprising the 1st and 2nd Concessions of King, from line between 10 and 11 northward; Whitchurch from same line northward, and the Township of East Gwillimbury. *Clerk*—Geo. R. Hogaboom, Sharon P. O.

V.—Comprising the Townships of North Gwillimbury and Georgina. *Clerk*—Wm. Fry, Sutton P. O.

VI.—Comprising 3rd to 12th Concession of King, and 8th to 11th of Albion. *Clerk*—Arthur Armstrong, Lloydtown P. O.

VII.—Comprising 4th to 11th Concession of Vaughan, and the Northern Division of the Gore of Toronto. *Clerk*—Thornhill A. Agar, Burwick P. O.

VIII.—Comprising part of the Township of York lying west of Yonge Street, the Township of Etobicoke, and the Southern Division of the Gore of Toronto. *Clerk*—John Paul, Weston P. O.

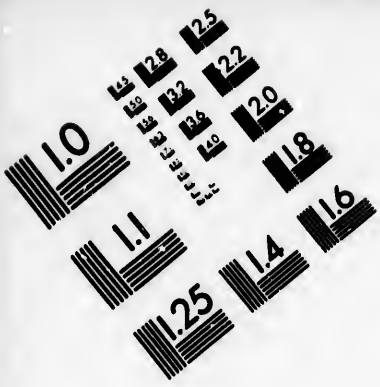
IX.—Comprising the Township of Toronto. *Clerk*—Adam Simpson, Streetsville P. O.

X.—Comprising the Township of Chinguacousy. *Clerk*—T. McKenna, Brampton P. O.

XI.—Comprising the Township of Caledon, and 1st to 7th Concessions of Albion. *Clerk*—Henry Pettigrew, Sandhill P. O.

XII.—Comprising the Township of Scarboro' and that part of the Township of York East of Yonge Street. *Clerk*—W. H. Norris, LL.D., Scarboro' P. O.

INDEX.



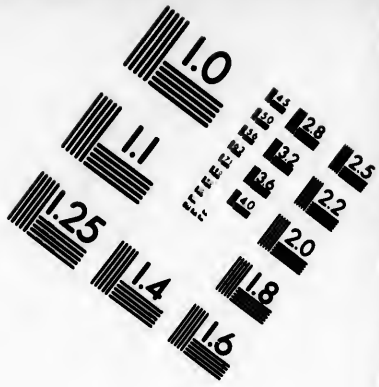
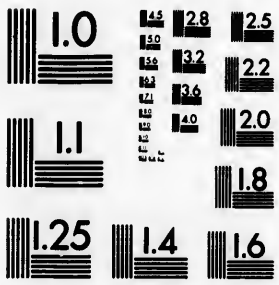
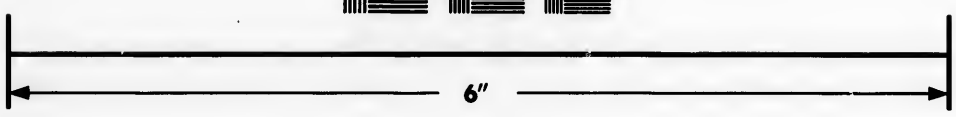
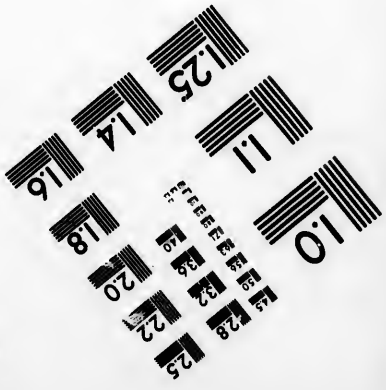


IMAGE EVALUATION TEST TARGET (MT-3)







Photographic Sciences Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

PRINTED BY W. C. CHEWETT & CO., 17 & 19 KING STREET EAST, TORONTO.