



THE  
CONSOLIDATED STATUTES

FOR

LOWER CANADA,

BEING

THE PUBLIC GENERAL STATUTES

WHICH APPLY EXCLUSIVELY TO THAT PORTION OF THE PROVINCE, AS REVISED AND CONSOLIDATED  
BY THE COMMISSIONERS APPOINTED FOR THAT PURPOSE.

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Draft reported to His Excellency the Governor General.  
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QUEBEC:  
PRINTED BY STEWART DERBISHIRE AND GEORGE DESBARATS,  
LAW PRINTER TO THE QUEEN'S MOST EXCELLENT MAJESTY.

1860.



# R E P O R T

Of the Acting Commissioner appointed finally to revise, print and edit the Consolidated Statutes for Lower Canada.

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TO HIS EXCELLENCY THE RIGHT HONORABLE SIR EDMUND WALKER HEAD, Baronet, Governor General of British North America, &c., &c., &c.

*May it please Your Excellency :*

In the Joint Report made to Your Excellency by the late Sir J. B. Macaulay and myself, on the 3rd of March, 1859, and accompanying the printed Draft of the Consolidated Statutes of Canada which have since become law, we had the honor to assign the reasons why it had been found impossible to present at the same time the Draft of the Consolidated Statutes for Lower Canada, and to inform Your Excellency that they were then in a very forward state, and that a few months' work after the close of the then Session would complete them, including the incorporation of the legislation of that Session. I have now the honor to submit to Your Excellency the Volume containing the printed Draft of the said Statutes in English, and to state that upwards of three-fourths of its contents are now printed in French, and the whole ready for the printer, except the Index and Schedule, so that a very short time will suffice to complete it in that language. Four hundred copies in French and three hundred in English are being struck off for the use of the Government and the Legislature.

The same general plan and arrangement have been followed in this work as in the Consolidated Statutes for Canada, and the statements and remarks made in the Joint Report of the 3rd March, 1859, apply almost equally to both volumes. The Statutes affecting Lower Canada exclusively, have, generally speaking, been consolidated "with as close an adherence as possible to the words of the original,—omitting mere redundancies of language,—incorporating all amendments with the enactments they amend,—arranging the whole in the best order that could be devised, without observing that of the original if it appeared susceptible of improve-

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ment,—and dividing and transposing clauses whenever it appeared necessary to clearness of expression.”

The same rule has also been followed with regard to the nature of the Acts consolidated; and Acts applying only to one locality or being of a private nature, have been generally omitted. Had time permitted, I should have been strongly inclined to make an exception in favour of the Acts relating to the Trinity House of Quebec and that of Montreal, respectively, inasmuch as they regulate very important interests and affect a very extensive class of the community. It is much to be regretted that one law should not govern both corporations on the main points. This could not be effected without Legislation, but the Acts respecting each might yet be consolidated and incorporated in the volume with the sanction of your Excellency and of the Legislature.

The remarks made in the report above referred to respecting Private and Local Acts, apply as well to those in force in Lower Canada only, as to those applying to the whole Province; there are many that are of the highest importance to the public, but their mass is very great and the expense of revising and publishing would be very considerable.

In addition to my share of the original work, the final revision, arrangement, printing, noting, indexing and editing of the Consolidated Statutes in their present shape, including the incorporation therewith of the Legislation of the last Session—and (in a great portion of the work) of the last two Sessions,—has, by your Excellency’s command, devolved upon me, and I have spared no pains or labour to perform my task faithfully; but the time within which it was necessary the work should be completed was short,—the removal of the Government from Toronto to Quebec followed very close indeed upon the completion of the Consolidated Statutes of Canada,—and since that removal I have had to print in one language or the other, upwards of a thousand pages, and to revise and correct the whole, so that if imperfections which greater leisure would have enabled me to remove, exist in the work in either language, I trust that I may reasonably hope indulgence for them. The volume will, I trust, be strictly examined by the Law Officers and by the Members of the Committee to whom it will be referred and of the Legislature generally; and indeed it is only by the aid of a large number of persons, each examining those subjects with which he is so familiar, that we can hope to eradicate the last inaccuracies, more especially in matters as to which local or technical knowledge

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and practice are requisite. I have had (for instance) the assistance of Mr. Deputy Surveyor General Bouchette, (who on his part acknowledges that of Mr. Futvoye) in correcting the chapter respecting the boundaries of the Counties of Lower Canada, and the parishes, townships and places comprised in them, yet we are by no means sure that the descriptions are in all cases perfectly correct.

But there are other imperfections which it was beyond the power of the Commissioners to remove even when they perceived them clearly, cases in which there is ambiguity in the law itself, or a want of the provisions necessary to adapt an Act made with reference to one state of things to another which has since supervened. Nor is this surprising, when it is remembered that many of the laws we have had to consolidate were enacted nearly a century ago, while others relating to the same subject date only from last session. We have had to amalgamate laws of the Governor and Legislative Council for the Province of Quebec, of the Parliament of Lower Canada, of the Governor and Special Council for the affairs of that Province, and of the Parliament of Canada; and it was our duty to report the Statute Law as it is, not as we might think it ought to be; to present it in such a form that any defects in it should be easily perceived and amended, but not to amend it. A very slight exercise of Legislative power will, in most cases, remove the defects referred to.

It is satisfactory to observe the very small amount of statutory provisions relative to the Criminal Law which are in force exclusively in Lower Canada. The Criminal Law Acts brought in by the Hon. Mr. Black, in 1841, and those regulating the duties of Justices of the Peace, brought in by the Hon. Mr. Drummond, for Lower Canada, in 1851, and adopted by the Hon. Mr. Richards for Upper Canada, in 1853, the Hon. Mr. J. H. Cameron's Acts of 1847 and 1854, respecting Forgery and Procedure, have made the Criminal Law nearly uniform throughout the Province.

I have received most valuable and energetic assistance from Mr. E. P. Dorion, who translated into French that portion of the work which was prepared in English, and from Mr. F. Badgley who, in addition to other aid afforded me, translated into English the portion prepared in French:—and the Queen's Printer is entitled to my sincere thanks for the accuracy and despatch with which he has done his work. Messrs. Polette, A. Stuart, Loranger, Mackay, and DeBoucherville, my brother Commissioners, have divided with me the labour and responsibility of the task

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assigned us, and to all of them I owe my thanks for the facilities afforded me by the manner in which they performed their respective shares of it, and the ready assistance they have given me on all occasions. Where all have done their part, it is unnecessary to say what was done by each,---yet it is but fair to mention that the original Draft of the long and complicated Title of "Administration of Justice," was made by Mr. Polette, and that of the very important one of "Real Property," by Mr. Mackay.

All which is most respectfully submitted.

G. W. WICKSTEED.

Quebec, 10th April, 1860.

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THE  
CONSOLIDATED STATUTES  
FOR  
LOWER CANADA.

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TITLE. 1.

LEGISLATION AND FISCAL MATTERS.

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CAP. I.

An Act respecting the Consolidated Statutes for Lower Canada.

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CAP. II.

An Act respecting the Codification of the Laws of Lower Canada relative to Civil matters and Procedure.

**W**HEREAS the Laws of Lower Canada in Civil Matters, Preamble.  
are mainly those which, at the time of the cession of the country to the British Crown, were in force in that part of France then governed by the Custom of Paris, modified by Provincial Statutes, or by the introduction of portions of the Law of England in peculiar cases ; and it therefore happens, that the great body of the Laws, in that division of the Province, exist only in a language which is not the mother tongue of the inhabitants thereof of British origin, while other portions are not to be found in the mother tongue of those of French origin ; And whereas the Laws and Customs in force in France, at the period above mentioned, have there been altered and reduced to one general Code, so that the old laws still in force in Lower Canada are no longer re-printed or commented upon in France, and it is becoming more and more difficult to obtain copies of them, or of the commentaries upon them ; And whereas the reasons aforesaid, and the great advantages which have resulted from Codification, as well in France as in the State of Louisiana,

Louisiana, and other places, render it manifestly expedient to provide for the Codification of the Civil Laws of Lower Canada : Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Governor to  
appoint three  
Commissioners—

And two Secretaries.

1. The Governor may appoint three fit and proper persons, Barristers of Lower Canada, to be Commissioners for Codifying the Laws of that division of the Province in Civil Matters, and two fit and proper persons, being also such Barristers, to be Secretaries to the Commission, one of whom shall be a person whose mother tongue is English but who is well versed in the French language, and the other a person whose mother tongue is French but who is well versed in the English language. 20 V. c. 43, s. 1.

Judges may  
act as Commissioners.

Appointment  
of Assistant  
Judges in such  
case.

2. Any Judge or Judges of the Court of Queen's Bench or of the Superior Court for Lower Canada may be appointed a Commissioner or Commissioners under this Act ; and if any such Judge is so appointed, the Governor may appoint any Circuit Judge or Barrister of at least ten years standing at the Bar of Lower Canada, to be and act as an Assistant Judge of either of the said Courts,—or any Judge of the Superior Court to be and act as an Assistant Judge of the Court of Queen's Bench, and a Circuit Judge or Barrister as aforesaid to supply his place as Judge of the Superior Court, as an Assistant Judge thereof,—for and during the time that the Judge, appointed a Commissioner under this Act, continues to be such Commissioner :

Powers of Assistant Judges.

Vacancies.

2. Every Assistant Judge so appointed shall, during the said time, have and exercise all the powers and authority and perform all the duties by law vested in or assigned to a Judge of the Court of which he is appointed an Assistant Judge, as if he had been appointed a Judge of such Court, and shall reside at the place to be named for that purpose from time to time by the Governor ; and in case of the vacancy of the office of any such Assistant Judge, another may be appointed in his stead in like manner and with like effect. 20 V. c. 43, s. 2.

To hold office  
during pleasure.

3. The said Commissioners and Secretaries shall hold their offices during pleasure, and in cases of vacancy, the Governor may appoint another or others to fill the same, and so on until the work is completed. 20 V. c. 43, s. 3.

Civil Code to  
be framed.

4. The said Commissioners shall reduce into one Code, to be called the *Civil Code of Lower Canada*, those provisions of the Laws of Lower Canada which relate to Civil Matters and are of a general and permanent character, whether they relate to Commercial Cases or to those of any other nature ; but they shall not include in the said Code, any of the Laws relating to the Seigniorial or Feudal Tenure. 20 V. c. 43, s. 4.

5. The said Commissioners shall reduce into another Code, to be called the *Code of Civil Procedure of Lower Canada*, those provisions of the Laws of Lower Canada which relate to Procedure in Civil Matters and Cases, and are of a general and permanent character. 20 V. c. 43, s. 5.

And a Code of Civil Procedure.

6. In framing the said Codes, the said Commissioners shall embody therein such provisions only as they hold to be then actually in force, and they shall give the authorities on which they believe them to be so; they may suggest such amendments as they think desirable, but shall state such amendments separately and distinctly, with the reasons on which they are founded. 20 V. c. 43, s. 6.

Codes must contain the actual Law.

As to amendments.

7. The said Codes shall be framed upon the same general plan, and shall contain, as nearly as may be found convenient, the like amount of detail upon each subject, as the French Codes known as the *Code Civil*, the *Code de Commerce*, and the *Code de Procédure Civile*. 20 V. c. 43, s. 7.

Form and extent of the Codes.

8. The Commissioners shall, from time to time, report to the Governor their proceedings and the progress of the work entrusted to them, and shall in all matters not expressly provided for by this Act, be guided by the instructions they receive from the Governor; and whenever they think any section or division of the work sufficiently advanced for the purpose, they shall cause the same to be printed, and transmit a sufficient number of printed copies thereof with their Report to the Governor:

Commissioners to report to the Governor, and to act under his instructions.

2. And if the Governor in Council thinks it advisable, he shall cause one or more of such copies to be transmitted to each of the Judges of the Court of Queen's Bench and Superior Court for Lower Canada, with a request that he will return the same, with his remarks thereon, by a day to be named in the letter containing such request. *Ibid*, s. 8.

Copies of the work may be submitted to the Judges.

9. Each of the said Judges shall examine the portion of the Commissioners' work so submitted to him, and return the same by the day named as aforesaid, with his remarks, and he shall more especially examine carefully that part of the work purporting to state the Law then in force; and to report distinctly his opinion, whether the Law as it then stands is correctly stated therein, and in what paragraph or paragraphs (if any) it is incorrectly stated, with his reasons and authorities, and a draft of the amendments which ought in his opinion to be made in such paragraph or paragraphs, in order that the Law may be correctly stated therein. 20 V. c. 43, s. 9.

Judges to examine the work when submitted, and to report thereon.

10. The Judges or any of them may, in their Report on any portion of the said work referred to them, make suggestions for the amendment of the Law contained in such portion, with the reasons on which such suggestions are founded. 20 V. c. 43, s. 10.

Judges may suggest amendments.

Judges may confer with the Commissioners before reporting.

11. At any time when any portion of the said work is before the Judges for their report, they or any of them may confer with the Commissioners or any of them, touching the same; and the Commissioners shall, in any such conference, give all such information and explanation as it is in their power to afford and as the Judges may require, relative to any statement of the Law as it then stands, or any suggestion for its amendment, which the Commissioners have made in such portion of their work as aforesaid. 20 V. c. 43, s. 11.

Judges' reports to be communicated to Commissioners.

12. The reports of the Judges shall be communicated to the Commissioners, who shall make such corrections in their work as they find advisable after having taken into consideration the reports and suggestions of the Judges; but if any of the Judges do not send in their reports by the day named for that purpose, this shall not prevent the Codes from being completed and submitted to the Legislature as hereinafter provided. *Ibid*, s. 12.

Commissioners to incorporate amendments adopted by Governor in Council.

13. The Commissioners shall, from time to time, incorporate, with the proper portions of the said Codes, such amendments of the actual Law, as the Governor in Council thinks it right to recommend for adoption by the Legislature, after considering the Reports of the Commissioners, and those of the Judges, if any; but such amendments shall be carefully distinguished from the actual Law. *Ibid*, s. 13.

Code completed to be laid before the Legislature: proceedings thereon:

14. When the said Codes or either of them, are completed, with such amendments as last mentioned, printed copies thereof and of the Reports of the Commissioners, and of the Judges if any, shall be laid before the Legislature, in order that such Code or Codes may be made Law by enactment; and if it is found advisable that either of the said Codes be completed and submitted to the Legislature before the other, the *Civil Code of Lower Canada* shall be the first so completed and submitted:

Civil Code to have the preference as to order of completion.

Amendments how made by the Legislature.

2. Either House may propose any amendments to either Code, but such amendments shall be proposed by resolutions which may be passed by one House and sent to the other for its concurrence, and shall be subject to amendment by the other, and to be otherwise dealt with as a Bill might be, until finally agreed to by both Houses, and shall then be communicated to the Commissioners, who shall, with all possible despatch, incorporate the substance of the amendments so agreed to, with the proper Code, which may then be passed as a Bill, at the same or any future session. *ibid*, s. 14.

Form of printing, &c.

15. The said Codes and the Reports of the Commissioners, shall be framed and made in the French and English languages, and the two texts, when printed, shall stand side by side. *ibid*, s. 15.

**16.** Any two of the Commissioners may make any report or do any other thing which the Commissioners are hereby empowered to do ; saving the right of the third Commissioner, if so advised, to make a separate report or enter his dissent and the reasons thereof in the minutes of the proceedings of the Commission. *ibid.* s. 16.

Two Commissioners may report, &c.

**17.** The Commissioners shall be remunerated for their services at such rate as the Governor in Council shall determine, not exceeding sixteen dollars per diem to each Commissioner while employed in the performance of his duties, nor five thousand dollars per annum to any Commissioner ; and the said Secretaries shall be remunerated for their services at such rate not exceeding three thousand four hundred dollars per annum, as the Governor in Council shall determine, but the said Secretaries shall give their whole time to the duties of their office. *ibid.*, s. 17

Remuneration of Commissioners ;

And of Secretaries.

**18.** If any Judge of the Court of Queen's Bench or Superior Court for Lower Canada is appointed such Commissioner as aforesaid, he shall, while acting as such, receive no remuneration as Commissioner except the excess (if any) of the remuneration of a Commissioner over his salary as Judge ; and any Assistant Judge to be appointed to supply the place of any such Judge while acting as Commissioner, shall receive a salary to be fixed by the Governor in Council, but not to exceed the highest salary of a Puisné Judge of the Court to which he is appointed ; so that the charge upon the Province shall not be increased by the appointment of a Judge or Judges as Commissioners. *ibid.*, s. 18.

Provision if a Judge be appointed to act as Commissioner.

**19.** The Commissioners shall hold their meetings at such place as shall be appointed by the Governor, and the Secretaries shall keep minutes of the proceedings at such meetings. 20 V. c. 43, s. 19.

Place of meeting, &c.

**20.** The remuneration to the Commissioners and Secretaries, with such expenses as may be incurred by them for travelling expenses, printing, stationery and other things necessary to the due performance of their duties under this Act, shall be paid by warrant of the Governor, out of the Consolidated Revenue Fund, as shall also the rent of their place of meeting, if such place be not in any public building. *ibid.*, s. 20.

Payment of remuneration, &c.

**21.** All moneys expended under this Act shall be accounted for to Her Majesty and to the Legislature, in the manner provided by Law. *ibid.*, s. 21.

Accounting clause.

## CAP. III.

An Act respecting the time when certain Laws took effect, the publication of Acts and Proclamations, and the preservation of certain Records.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Acts and Ordinances of former Province of Lower Canada declared to have taken effect from the time they received the Royal Assent.

1. For avoiding doubts it is declared,—that Acts and Ordinances of the former Province of Lower Canada took effect respectively from the time when they were assented to by the Governor in the name of the Crown,—unless some other time was expressly appointed for their commencement, and that if they were reserved for the signification of the pleasure of the Crown, and afterwards assented to, they took effect from the time when the assent of the Crown was signified by speech or message of the Governor to the Legislature or by proclamation. 34 G. 3, c. 1,—36 G. 3, c. 1,—1 V. c. 1,—2 V. (2) c. 10.

Priests or Ministers of Churches to read publicly any Act or Proclamation when required by the Governor.

2. The rector, curate, vicar, or other priest or minister, doing the parochial or clerical duty of any parish or other church in Lower Canada, shall publicly read, after divine service in the morning, at the *presbytère*, or other usual place where the legal assemblies of the parish are held, any Act or proclamation or any part thereof, when and so often as he is thereunto required by the Governor. 43 G. 3, c. 4, s. 1.

Priests, &c., to receive copies of Acts of each Session.

3. Copies of the Acts passed at each session of the provincial parliament shall be transmitted to the rector, curate, vicar, or other priest or minister, in each parish within Lower Canada, which said Acts shall be preserved and left to their successors. *ibid*, s. 2.—*But see Con. Stat. Can.* c. 5, s. 7, &c.

*Preservation and distribution of the Ancient French Records.*

Recital.

4. And whereas there exist many volumes of papers, manuscripts and records interesting to such of the inhabitants of Lower Canada as hold property under titles, acquired prior to the conquest, and divers ancient records relating to the City of Montreal, and of other parts of Lower Canada, which ought to be disposed of so as to give a cheap and easy access to them, and it is expedient that they be kept in a state of preservation and safety, so that they may be known and useful. 30 G. 3, c. 8.

Certain powers vested in the Governor in relation to the preservation and publica-

5. The Governor in Council may make orders, from time to time, touching the arrangement, removal, digesting, printing, publishing, distributing, preserving and disposing of the said papers, manuscripts and records, or any parcel thereof; and every

every person possessed of any papers, manuscripts and records anciently appurtenant to any public office or deposit, prior to the conquest, who surrenders the same, as by such order may be required, shall be as justifiable therefor in the law, as if the same were delivered up in pursuance of any law for such purpose specially made; and it shall be as unlawful for any person possessed of any such public paper, manuscript or record, to withhold or detain the same contrary to such order, as if the same was withheld and detained against any Act of the Legislature, expressly commanding the surrender and restitution of the same, to the proper office to which the same belongs or appertains. 30 G. 3. c. 8.

tion of Old  
French Re-  
cords.

## FISCAL MATTERS.

## C A P . I V .

## An Act respecting the Marriage License Fund and the exemption of Crown property from local taxation.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

## MARRIAGE LICENSE FUND.

Appropriation of Lower Canada portion thereof.

1. That portion of the Marriage License Fund arising in Lower Canada shall be appropriated to the payment of the principal and interest of the Lower Canada Rebellion Losses Debentures, issued under the Act ninth Victoria chapter 65. 9 V. c. 65, s. 2.

## CROWN PROPERTY EXEMPT FROM TAXATION.

Crown property to be exempt from all local taxes ;

Certain arrears, however, may be paid.

2. All property belonging to Her Majesty, or held in trust by any officer or party for the use of Her Majesty, in whatever part of *this Province* the same is situate, shall be exempt from all local rates or taxes, statute or other labour on any highway, or commutation for the same ; But any arrears of such rates or taxes accrued and payable in Lower Canada before the twenty-eighth day of July, one thousand eight hundred and forty-seven, may be paid as if this Act had not been passed. 10, 11 V. c. 17. *See also* 18 V. c. 100, s. 72.

C A P . V .

An Act respecting the Duty on Sales by Auction.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. Except as hereinafter excepted, all goods, wares, merchandize and effects put up to sale at any public auction or outcry in Lower Canada, by any auctioneer, or by any person whomsoever duly qualified and licensed as under this Act, and sold to the highest bidder, shall be subject to a duty of one dollar for every hundred dollars of the price at which they are sold, and at and after the same rate for every greater or less sum, which duty shall be retained, and paid to the proper Revenue Inspector by the auctioneer by whom the sale is made out of the proceeds of the sale, in the manner hereinafter mentioned ; and at the costs of the seller, unless it be expressly stipulated that the same shall be at the cost of the buyer, and so added to the amount bid by him : 4, 5 V. c. 21, s. 1.

Certain duty to be levied on all goods sold by auction.

2. But goods or effects belonging to the Crown, and all goods or effects seized by any public officer in execution or under process of any Court, or as being forfeited, and all goods and effects of deceased persons or appertaining to any *dissolution de communauté*, or belonging to any church, shall be free from the duty aforesaid, and may be sold by auction without a license ; 4, 5 V. c. 21, s. 5.

Certain goods exempted.

3. Such duty shall not be payable on sales by auction held in the rural districts, but not for trading purposes, either by the inhabitants selling their furniture, grain, cattle and real estate or chattel property other than merchandize or stock in trade, when changing their residence or finally disposing of the same ; 20 V. c. 55, s. 1.

Sales in rural districts not for trading purposes exempted from duty.

4. Nor shall any duty be payable on sales by auction for municipal taxes, under the Act respecting Municipalities. 18 V. c. 100, s. 75.

Sales for taxes.

2. No person other than a person licensed in the manner hereinafter prescribed, shall sell, dispose of, or expose to sale at public auction or outcry in Lower Canada, any goods, wares, merchandize or effects whatsoever ; and the proper Revenue Inspector shall license under his hand and seal, authorize and empower any person, being a subject of Her Majesty, and applying for the same (being qualified as by this Act required) to act as auctioneer in Lower Canada :

No one authorized to sell by auction unless duly licensed.

2. Such license shall remain in force for one year from the date thereof ; and the person receiving the same shall pay therefor

License to be for one year—fee therefor.

therefor to the Revenue Inspector the sum of twenty dollars, to be by him paid over to the Receiver General. 4, 5 V. c. 21, s. 2.

Formalities to be observed before license is granted.

3. No license shall be granted to any person in the manner hereinbefore mentioned, until such person has entered into recognizance to the Queen, with two good and sufficient sureties before the Revenue Inspector, or before some person by him duly authorized to that effect, in the sum of two thousand dollars, with condition for the payment of the duty hereinbefore mentioned, to the proper Revenue Inspector or to some person by him duly authorized to receive the same; and conditioned also that the person so licensed as an auctioneer shall in all things well, truly and faithfully behave and demean himself according to the true intent and meaning of this Act; which recognizance the Revenue Inspector or person taking the same shall cause to be made in duplicate, and one duplicate shall be transmitted to the Receiver General and the other shall be left in the office of the Revenue Inspector. 4, 5 V. c. 21, s. 3.

Conditions of recognizance.

Fee to Inspector.

4. The Revenue Inspector who grants such license and causes such recognizance to be taken as aforesaid, shall take the sum of one dollar, and no more, for the said services. 4, 5 V. c. 21, s. 6.

Quarterly statement of goods sold to be rendered by each Auctioneer.

5. Every auctioneer qualified and licensed as in this Act is directed, who sells or disposes by public auction or outcry, of any goods, wares, merchandize or effects, on the sale of which a duty is imposed by this Act, shall within the first ten days of each of the months of January, April, July and October in each year, render to the proper Revenue Inspector or to some person by him authorized to receive the same, a just and true account in writing, signed by such auctioneer or his chief clerk, agent or partner, stating the amount of all goods, wares, merchandize and effects on the sale of which a duty is imposed, by him sold during the period for which no account has been previously rendered, stating also the amount of each day's sale:

To be duly attested.

2. Such account shall be attested by the person making the same on oath (or affirmation) in the following form:—

“ I, \_\_\_\_\_ do solemnly swear (or affirm) that the account now exhibited by me and to which I have subscribed by \_\_\_\_\_ name, contains a just and true account of the amount of all goods, wares, merchandize and effects sold by me (or by \_\_\_\_\_ as the case may be) within the time mentioned in the said account, and subject to duty on such sale, and of the days on which the same were respectively so sold;—  
“ So help me God ;”

And such oath or affirmation may be made before any Justice of the Peace in and for any part of Lower Canada. 4, 5 V. c. 21, s. 7.

6. If any auctioneer refuses or neglects to render such account, or cause the same to be rendered in the manner required by this Act, according to the true intent and meaning thereof, or to pay to the proper revenue inspector at the times hereby required, all moneys due by him on account of such sales, he shall, for such refusal or neglect, forfeit four hundred dollars to Her Majesty, which may, as well as the moneys due for any such duties, be recovered with costs in any manner in which debts of like amount due to the crown may be recovered in Lower Canada; and the said revenue inspector may also cause a notice to be inserted in the Canada Gazette, declaring the person so in default to have forfeited his license as an auctioneer, and such license shall be forfeited accordingly, and shall be thereafter of no effect, nor shall any new license be granted to such defaulter until such forfeiture and debt has been paid and satisfied. 4, 5 V. c. 21, s. 8.

Penalty on Auctioneer neglecting to render such statement.

7. Any person who sells or disposes of, by public auction or outcry, any goods, wares, merchandize or effects on the sale of which a duty is by this Act imposed, without having a license, as aforesaid, then in force, shall forfeit the sum of four hundred dollars, for each offense; and one moiety of such forfeiture shall belong to the prosecutor and the other moiety to Her Majesty, or if any officer of the Crown be the prosecutor the whole shall belong to Her Majesty:

Penalty on person acting as Auctioneer without a license.

2. Such forfeiture may be sued for and recovered by action at law in any Court of Record having competent civil jurisdiction in the place where the offence is committed, or recovered in any way in which debts to the Crown may be recovered in Lower Canada; But the prosecution or action shall be brought within three months next after the offense shall have been committed, and not afterwards. 4, 5 V. c. 21, s. 4.

Recovery of such penalty.

Limitation of suit therefor.

8. The duties collected under this Act shall form part of the Seigniorial Fund: 18 V. c. 3, s. 18.

Duties appropriated.

2. All forfeitures or penalties recovered under this Act, or so much thereof as belongs to Her Majesty, shall be paid over to the receiver general by the revenue inspector or other person receiving the same, within three months after they have been so received, and shall form part of the Consolidated Revenue Fund of this province. 4, 5 V. c. 21, s. 10.

Penalties appropriated.

9. The revenue inspector may retain for his services under this Act, a sum equal to two and a half per cent on the duties by him collected under this Act; and the bond given by any such revenue inspector and his sureties, shall be held to be conditioned

Per centage on amount collected to be retained by Revenue Inspector.

conditioned for the due payment to the receiver general, of all duties received by him under this Act, and for the due performance of all duties hereby assigned to him. 4, 5 V. c. 21, s. 11,---*But see Con. Stat. Can. c. 16, s. 3.*

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C A P. V I.

An Act respecting Tavern-Keepers and the Sale of Intoxicating Liquors.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

LICENSES, DUTIES AND FEES.

1. Except Distillers duly licensed under chapter nineteen of the Consolidated Statutes of Canada, who may, as such Licensed Distillers, sell spirituous liquors in the same quantities as Storekeepers or Merchants licensed under this Act to sell spirituous liquors, no person shall sell or retail brandy, rum, whisky or other spirituous liquors, wine, ale, beer, porter, cider or other vinous or fermented liquors, (all which are included by the words 'spirituous, vinous or fermented liquors,' whenever used in this Act) in a less quantity than three gallons at any one time,—nor shall any person keep any Inn, Tavern, Temperance Hotel or other House of Public Entertainment for the reception of travellers and others, without a license as hereinafter provided for. 14, 15 V. c. 100, s. 2.

Except licensed Distillers no one to sell spirituous liquors in quantities under three gallons without license.

2. Over and above such duty as in any of the cases hereinafter mentioned, is payable under the authority of an Act passed in the Parliament of Great Britain and Ireland, in the fourteenth year of the reign of His late Majesty King George the Third, intituled, *An Act to establish a fund towards further defraying the charges of the Administration of Justice and support of the Civil Government within the Province of Quebec, in America*,—or under chapter twenty of the Consolidated Statutes of Canada,—there shall be paid by every person who takes out a License for keeping a House or any other place of Public Entertainment, or for the retailing of any spirituous, vinous or fermented liquors, the following duties respectively, that is to say :

Certain duties to be paid on licenses over and above Imperial duty.

For every license to keep an Inn, Tavern or other House or Place of Public Entertainment, and for retailing whisky or any spirituous liquors, wine, ale, beer, porter, cider or other vinous or fermented liquors, the sum of twenty dollars ;

Taverns for sale of spirituous liquors ;

For every license to keep an Inn, Tavern, or other House or Place of Public Entertainment, and for retailing wine, ale, beer, porter, cider or other vinous or fermented liquors, but not brandy, rum, whisky or other spirituous liquors, the sum of ten dollars ;

For sale of wine and beer ;

For every license to keep a "Temperance Hotel" for the reception of travellers and others, but not for retailing brandy, rum, whisky or other spirituous liquors, nor wine, ale, beer, porter,

Temperance Hotels.

porter, cider or other vinous or fermented liquors, the sum of four dollars ;

On licenses to sell in small quantities.

For every license to vend or retail in any store or shop, brandy, rum, whisky or other spirituous liquors, and wine, ale, beer, porter, cider or other vinous or fermented liquors, in a quantity not less than three half-pints at any one time, the sum of twelve dollars ;

Steamboat bars for retailing spirituous liquors.

For every license to retail on board any Steamboat or other Vessel, brandy, rum, whisky or other spirituous liquors, wine, ale, beer, porter, cider or other vinous or fermented liquors, the sum of twenty dollars ;

Steamboat bars for retailing wine and beer.

And for every license to retail on board any Steamboat or other Vessel, wine, ale, beer, porter, cider or other vinous or fermented liquors, but not brandy, rum, whisky or other spirituous liquors, the sum of ten dollars ;—

But if a higher duty be payable under any Municipal By-law.

Unless some greater sum is then lawfully payable for any such license, in any Municipality, under any Municipal By-law, over and above any tax imposed thereon for raising money for municipal purposes,—in which case such greater sum shall be payable under this Act and for the purposes thereof, instead of the sum herein mentioned ; but no less sum than that herein mentioned shall in any case be so payable ;

In case of repeal of Imperial Act.

2. And if at any time the Act of the Imperial Parliament hereinafore mentioned is repealed, the duty thereby imposed shall nevertheless continue in force by virtue of this Act, as if herein re-enacted. 14, 15 V. c. 100, s. 3—*Con. Stat. Can. cc. 19, 20—19, 20 V. c. 101, s. 8, par. 3, and Local Municipal Acts.*

Licenses to be issued by Revenue Inspector.

3. *Except only in the City of St. Hyacinth*, the licenses before mentioned shall be granted under the authority of the Governor, and the duties thereon shall be paid to, and the licenses shall be issued by the Revenue Inspector or one of the Revenue Inspectors in the District in which such Houses or Places of Public Entertainment, Stores or Shops are respectively situate, (and for Steamboats and other Vessels as hereinafter provided,) or by such other person, persons or authority only as the Governor may appoint. 14, 15 V. c. 100, s. 4, and 20 V. c. 131, s. 52, (*St. Hyacinth.*)

Fee to Revenue Inspector.

4. For every license issued under this Act, there shall be paid to the revenue inspector, issuing the same, a fee of one dollar, by the person to whom it is issued. 14, 15 V. c. 100, s. 15.

Expiration of licenses.

5. Licenses issued under this Act shall expire on the first day of the month of May in each and every year. *ibid*, s. 16.

APPLICATION OF DUTIES.

6. The duties levied under chapter twenty of the Consolidated Statutes of Canada, shall be applied as therein provided : Duties under C. S. C., Cap. 20.

2. So much of the other duties arising from licenses for inns, taverns, temperance hotels and other houses and places of public entertainment, to be levied and collected under this Act, as is levied in the townships of Lower Canada, shall belong to the respective municipal corporations of the towns, villages, counties or divisions of counties within which the houses for which such licenses are issued are situate, and shall be accounted for and paid over to the treasurers of the respective municipalities entitled thereto, at such time or times, and in such manner as may be directed by the governor,—and the remainder of the said last mentioned duties shall be paid over to the Receiver General and applied to the purposes of the Seignorial Act of 1854, subject, as to those collected in the County of Montreal, and City, to the charges thereon for the new court house at Montreal ; 14, 15 V. c. 100, s. 31,—18 V. c. 3, s. 19,—13, 14 V. c. 94. How duties on licenses for Taverns, &c., in the townships shall be applied.

3. But an amount equal to ten per centum of the gross proceeds of the said duties shall be paid over to the Receiver General, or shall be retained and accounted for by the Revenue Inspectors respectively, to be applied under the directions of the Minister of Finance, for the purpose of defraying the expenses of collection and of supervision, and the disbursements consequent on or attending prosecutions for breaches of this Act ; and the surplus of such per centage, if any remain, shall form part of the Consolidated Revenue Fund of the Province. 14, 15 V. c. 100, s. 31. Ten per centum to be paid to Receiver General.

7. The duties arising from stores or shops, licensed to retail not less than three half pints of spirituous, vinous or fermented liquors to be consumed out of such shop or stores, and the duties on steamboats or vessels on board of which spirituous, vinous or fermented liquors, are sold; shall, after deducting such charges and expenses of collection as may be authorized by the Governor, be paid over to the Receiver General for the purposes of the said Seignorial Act of 1854. 14, 15 V. c. 100, s. 32,—18 V. c. 3, s. 19. Duties on Shop and Steamboat licenses.

SPECIAL PROVISION AS TO COURT HOUSE AT MONTREAL.

8. If the moneys appropriated by the Act thirteenth and fourteenth Victoria, chapter ninety-four, towards defraying the cost of the new Court House at Montreal, should at any time yield less than the amount produced from the same when the fund was so appropriated, the Governor in Council may increase the rate of duty to be paid for every license to keep an inn, tavern or other house or place of public entertainment for Increase of duty on licenses within county of Montreal.

for retailing spirituous, vinous or fermented liquors within the County and City of Montreal, to any amount not exceeding, in the whole, fifty dollars, for each license : 14, 15 V. c. 100, s. 41.

GRANTING OF LICENSES,—CONDITIONS PREVIOUS, &c.

*Houses of Public Entertainment.*

Certificate necessary to obtain a license to keep a Tavern.

9. No license shall be granted to any person for keeping an Inn, Tavern, Temperance Hotel or other House or Place of Public Entertainment in any part of Lower Canada, unless the person applying for the same produces to the Revenue Inspector, (or in the City of St. Hyacinth, to the proper Municipal Officer) a certificate signed by fifty Municipal Electors of the parish, township or town, or of the ward of the city, in which such House of Entertainment is situate, and approved, after due deliberation, by the Municipal Council of the County, or of the Incorporated City, Town or Village within the limits of which such Inn, Tavern, Temperance Hotel or other House or Place of Public Entertainment is intended to be kept, in the form of the Schedule (B) annexed to this Act, and signed by the Mayor and Secretary of such Council or Corporation. 14, 15 V. c. 100, s. 5, and 20 V. c. 131, s. 52, (S. Hyacinth).

Form.

Ward of city to which it relates to be stated in license.

10. In every such certificate and also in every license granted in virtue of such certificate, the ward of the city, to which the same relates, shall be stated; and the same shall be null and void and of no effect whatever beyond the limits of the said ward. 16 V. c. 214, s. 5.

Formalities requisite to obtain a license in Quebec or Montreal.

11. No license shall be granted to any person for keeping an Inn, a tavern, a temperance hotel, or any other house or place of public entertainment, in any ward of either of the said cities of Montreal or Quebec, unless the said certificate, in the form of the said Schedule B, is signed by fifty Municipal electors, actually domiciled in such ward, and having their names inscribed as such on the Municipal voters' list then last made and completed, and is also signed by the Mayor and City Clerk : 16 V. c. 214, s. 2.

Duty of City Council as regards certificate.

2. The city Council of each of the said cities respectively shall, in every case in which any such certificate is presented to it for approval or confirmation, enquire and ascertain whether or not the same be in fact signed by fifty Municipal Electors, actually domiciled in the ward in such certificate mentioned, and having their names inscribed as such on the voters' list then last made and completed, and in default of the same being so signed, shall withhold its confirmation or approval thereof ; *ibid*, s. 3.

3. Each of the said city Councils shall exact proof on oath made before one of the members thereof, of the authenticity of such signatures respectively, and of their being those of persons domiciled, and having their names inscribed as aforesaid. *ibid*, s. 4.

Proof of signatures.

12. Every such certificate shall set forth that the applicant is a subject of Her Majesty,—that he is personally known to the signers thereof,—that he is honest, sober and of good repute,—and is a fit and proper person to keep a house of public entertainment;—and every such certificate shall also state, if it refers to country parts, that a house of public entertainment is required at the place where it is intended to be kept, and that the house for which a license is required contains the accommodation required by this Act;—And such certificate shall be accompanied by an affidavit from the person applying for the same, that he is duly qualified according to law to obtain such license, which affidavit shall be in the form (A) annexed to this Act. 14, 15 V. c. 100, s. 7.

What shall be set forth in the certificate.

13. If on the day appointed for holding a meeting of a Municipal Council there be no *quorum* present, any certificate in the said form (B) by this Act prescribed, submitted to such Council for confirmation on such day, may be confirmed by the Mayor of such Municipal Council and two Justices of the Peace not being Municipal Councillors, residing in the County where the house for which such certificate is granted, is situate ;—and in case of a vacancy in the office of Mayor, by any three such Justices of the Peace ; and such Council or such Mayor and Justices, or such Justices, as the case may be, may refuse to confirm any such certificate, if he or they see fit so to do. 14, 15 V. c. 100, s. 6.

Confirmation of certificate.

14. No revenue inspector shall issue any license under this Act, after the expiration of thirty days from the date of such certificate as aforesaid, if obtained on or after the first day of May in any year, nor after the thirtieth day of May, if such certificate is obtained before the first day of the said month of May ; and any such certificate upon which no license is taken out within the period hereby prescribed, shall become unavailable, and of no effect. *ibid*, s. 18.

License must be issued within a certain period.

15. Before any license shall be granted for keeping an inn, tavern, temperance hotel, or any house or place of public entertainment, the person applying for the same shall enter into a bond to Her Majesty, in the sum of two hundred dollars, with two good and sufficient sureties in the sum of one hundred dollars each, conditioned for the payment of all fines and penalties such person may be condemned to pay for any offence against the provisions of this Act, or of any Act, ordinance or provision of law, relative to houses of public entertainment then or thereafter to be in force, and to do, perform and observe all

Bond to be entered into to Her Majesty conditioned for payment of fines.

Form of Bond.

all the requirements thereof, and to conform to all rules and regulations that may be established by competent authority in such behalf;—And such bond, to be drawn in the form expressed in the Schedule (C) annexed to this Act, shall be executed in the presence of, and the sureties shall be approved of by one or more of the Municipal Councillors or Justices granting the certificate, which bond, with the certificate and affidavit required by this Act, shall be filed in the office of the revenue Inspector. *ibid*, s. 8.

In case a person licensed dies before expiration of his license.

16. If any person so licensed under this Act dies before the expiration of his license, or removes from his house, such person, his assigns, or legal representatives, may transfer such license to any other person, who, under such transfer, may exercise the rights granted by such license, until the expiration thereof, in the house and premises for which such license was granted, but in no other place :

Transferee of license to produce certificate, &amp;c.

2. But the person in whose favor such transfer is made shall produce to the revenue inspector a certificate, and enter into a bond, with sureties, such as was required of the original holder of such license ; such transfer being endorsed on the license by the revenue inspector ; and if no such transfer is executed within three months after the death or removal of the original holder of the license, the license shall be null and void. *ibid*, s. 17.

Certain persons disqualified from signing certificate.

17. No Municipal Councillor or Elector, being a common brewer, distiller or retailer of any spirituous liquors, or keeper or proprietor of any house or place of public entertainment, shall sign any certificate for a license for any inn, tavern, temperance hotel, or house or place of public entertainment, or for the transfer of a license for any such house or place of public entertainment, under a penalty of fifty dollars for each such offence. 14, 15 V. c. 100, s. 33.

Penalty on signing not being qualified.

18. Any person who knowingly signs any certificate for a license or for the transfer of a license, without being duly qualified to do so, shall be liable to a penalty of twenty dollars for each such offence. 14, 15 V. c. 100, s. 34.

### Steamboats, &c.

Steamboat owners, &amp;c., may obtain licenses.

19. Every owner, master, or person in charge of any steamboat or vessel, who intends to retail or allow to be retailed spirituous, vinous or fermented liquors, on board such steamboat or vessel, shall, upon applying for the same and paying the duty and fee thereon, receive from any revenue inspector a license for such purpose, without entering into the bond hereinbefore required for keeping a house or place of public entertainment, which license shall be constantly exposed in the bar-room or bar-cabin of such steamboat or vessel, under a penalty of twenty dollars: 14, 15 V. c. 100, s. 27 part.

Stores

*Stores or Shops.*

20. Every revenue inspector shall, upon receipt of the duty and the fee hereinbefore mentioned, issue to any person applying for the same, a license for retailing in any one shop, store or place, to be accurately designated in such license, spirituous, vinous or fermented liquors, in quantities of not less than three half pints at any one time: *ibid*, s. 24, part.

Shop licenses to be issued on certain conditions.

*Conditions and Restrictions under Municipal By-laws.*

21. The provisions of the *twelve* next preceding sections shall be subject to such *further* conditions and restrictions upon the granting of such licenses as aforesaid as have been lawfully imposed in any municipality by any By-law *not inconsistent with this Act*, then in force; and no revenue Inspector shall grant any such license, contrary to the provisions of such By-law, provided a copy thereof has been transmitted by the proper municipal officer to such revenue Inspector. 19, 20 V. c. 101, ss. 8 and 11, and local Acts.

Preceding sections to be governed by any Municipal By-Law affecting licenses.

PENALTIES FOR SELLING, &C., WITHOUT LICENSE.

22. If any person keeps an inn, tavern, temperance hotel, or any other house or place of entertainment,—or sells, vends or barter by retail, brandy, rum, whisky, or other spirituous liquors, wine, ale, beer, porter, cider or other vinous or fermented liquors, or causes or suffers the same or any of the same to be sold, vended or bartered by retail in his house or premises, or in any boat, barge, craft or other construction, floating on or moored in any river, lake or stream, or in any house, shanty, hut, or other building erected upon any frozen water, without the license required by this Act, or contrary to its true intent and meaning,—such person shall incur a penalty of fifty dollars for each such offence:

Penalty for selling liquors without license.

2. And any person who knowingly purchases any spirituous, vinous or fermented liquor in any quantity less than three gallons at any one time, from any person not duly licensed to retail the same, shall be liable to a penalty of ten dollars for each such offence, unless he gives information of such purchase to the district revenue Inspector within forty-eight hours after such purchase. 14, 15 V. c. 100, s. 9.

Penalty on purchasing in such case.

23. If any person not being duly licensed under this Act, exposes or causes or suffers to be exposed in, on or near his house or premises any sign, painting, printing or writing of a description or character to induce travellers or others to believe or suppose such house to be a duly licensed house or place of public entertainment, or that spirituous, or vinous or fermented liquors may be sold, vended or bartered by retail therein, such person shall be liable to a penalty of twenty dollars for each such offence. *ibid*, s. 14.

Penalty on persons not licensed putting up signs, &c.

Penalty on persons selling on board Steamboats, &c., without license.

24. Every owner, master or person in charge of a steamboat or vessel, who retails or allows to be retailed or vended, any spirituous, vinous or fermented liquor, on board such steamboat or vessel, without having previously obtained a license; shall be subject to a penalty of fifty dollars, for each and every offence, which penalty shall be sued for and recovered as hereinafter prescribed, and the amount thereof, with costs, if not forthwith paid, shall be levied by distress and sale of the tackle and furniture of the steamboat or vessel, on board of which such spirituous, vinous or fermented liquor has been retailed or vended, by warrant under the hand of the Justice or Justices of the Peace before whom the offender has been convicted. 14, 15 V. c. 100, s. 28.

#### OBLIGATIONS AND RESTRICTIONS ON PERSONS LICENSED.

##### *Houses of Public Entertainment.*

What accommodation for travellers must be provided at every Inn.

25. Every licensed inn or tavern, temperance hotel or house of public entertainment, situate in a village or in the country parts, shall contain at least three rooms, with at least one good bed in each, for the accommodation of travellers, in addition to those used by the family;—and the keeper of every such inn, tavern, temperance hotel, or other house of public entertainment, shall have a stable adjacent or attached to such house, with convenient stalls for at least four horses, and the keeper of such house shall be constantly supplied with a sufficient quantity of provisions, and of hay and oats, for travellers and their cattle;—And in default of any one or more of the foregoing requirements, the keeper of such house shall be liable to a penalty of twenty dollars. *ibid*, s. 10.

License to be exhibited to Inspector when required: and a sign to be kept up.

26. The keeper of every licensed inn, tavern, temperance hotel or other house or place of public entertainment, shall, at all times on demand, exhibit his license to the revenue Inspector, his deputy or deputies, and shall cause the same to be constantly exposed to public view in the bar-room in a conspicuous place and manner to the satisfaction of the revenue Inspector, and shall also cause to be painted in legible characters of not less than three inches in height, and of proportionate width, immediately over the door of such house, his name at full length, with the following words in addition, as the case may be: "licensed to retail spirituous liquors," "licensed to retail wines and fermented liquors," "licensed to keep a temperance hotel;"—and whenever such house is situate in country parts, the keeper thereof shall also expose or cause to be exposed, and keep so exposed, during the whole time of the duration of his license, a like sign in letters not less than four inches in height, and of proportionate width, in a conspicuous place near the house, to indicate the same to travellers,—and shall, in default of complying with any of the foregoing requirements, incur a penalty of twenty dollars for each offence. *Ibid*, s. 11.

Penalty.

**27.** The keeper of every licensed inn, tavern, temperance hotel, or other house or place of public entertainment, shall keep a peaceable, decent and orderly house, and shall not knowingly suffer any person resorting to his, her or their house to play any game whatsoever at which money or any thing which can be valued in money shall be lost or won;—No keeper of any house licensed to retail spirituous liquor, or vinous and fermented liquor, shall keep a bar or bars in more than one house, or vend at any time any such liquor to any intoxicated person—nor on Sundays to any person whomsoever, except sick persons or travellers,—nor to any soldier, seaman, apprentice or servant, knowing him to be such, on any day after eight o'clock in the afternoon in winter, and nine o'clock in the afternoon in summer,—under a penalty of twenty dollars for each offence. *ibid*, s. 12.

Keepers of Inns to keep orderly houses, and prevent gambling therein.

Certain restrictions on sale of liquors.

**28.** No person holding a license to keep an inn, tavern, temperance hotel, or other house of public entertainment, shall refuse to receive and accommodate any traveller without just cause; under a penalty of twenty dollars for each offence. *ibid*, s. 13.

Penalty on refusing to receive travellers.

**29.** If any keeper of a licensed temperance hotel knowingly suffers any spirituous, vinous or fermented liquor to be drunk in the house or on the premises thereto belonging;—or if any keeper of a licensed inn, tavern or other house or place of public entertainment, not licensed to retail spirituous liquors, knowingly suffers to be drunk any spirituous liquor within such house, or any out-building, or in any part of the premises belonging to such inn, tavern, or house or place of public entertainment, he shall be liable to a penalty of twenty dollars for each such offence. *ibid*, s. 20.

Keepers of Temperance Hotels to prevent spirituous liquors being drunk on their premises.

**30.** Whenever any person has drunk to excess in any inn, tavern or other house or place of public entertainment, any spirituous or other intoxicating liquors sold by or with the permission or sufferance of the keeper thereof, for the gain or reward of such keeper, and while in a state of intoxication or drunkenness arising out of the use of such spirituous or intoxicating liquor, has come to his death by committing suicide or by drowning, perishing from cold, or by any accident occurring in consequence of his being so intoxicated or drunk,—the keeper of such inn or tavern, or house or place of public entertainment, shall be liable to be indicted and tried before the Court of Queen's Bench sitting in the district in which such person resides, for a misdemeanor, and if convicted thereof, shall be liable to a penalty of not less than two hundred dollars, nor more than one thousand, to be paid to the heirs or legal representatives of the deceased person, or to be imprisoned for a period not less than one month nor more than six months. 14, 15 V. c. 100, s. 37.

Liability of innkeepers who give liquor to persons who afterwards, being intoxicated, commit suicide.

Penalty.

Licenses under this Act may be revoked.

**31.** If any person licensed under this Act to keep an inn, tavern, temperance hotel, or other house or place of public entertainment, is convicted of any breach or non-fulfilment of the requirements of this Act, or of any felony, the Governor may cancel, revoke or suspend the license granted to such person; and if such person, after being duly notified of such revocation or suspension of his license, continues to keep open a house of public entertainment, or retails any spirituous, vinous or fermented liquor, such person shall be liable to the pains and penalties imposed on persons for keeping a house of public entertainment; or for retailing such liquors without license. 14, 15 V. c. 100, s. 35.

#### Stores and Shops.

Penalty on persons holding shop licenses selling less than three half pints or allowing liquor to be drunk on the premises.

**32.** If any person holding any license to sell spirituous, vinous or fermented liquors in any shop, store or place, but not to keep a house of public entertainment, sells any such liquor in quantity less than three half pints, or allows any such liquor to be drunk within such shop, store or place, or on the premises appertaining to the same, either by the purchaser of such liquor or by any person not residing with or in the employ of the person holding such license,—or sells any such liquor in any quantity less than three gallons in any shop, store or place not designated in such license,—such person shall be liable to a penalty of fifty dollars for every such offence. *ibid*, s. 24, *part*.

Persons holding shop licenses to have signs.

**33.** The owner or keeper of every such shop or store shall cause to be painted in legible characters, immediately over the door of such shop or store, his name at full length, with the addition "LICENSED WINE AND SPIRIT STORE," and shall cause his license to be constantly exposed in a conspicuous place and manner within such shop or store, and shall allow the revenue inspector, his deputy or deputies to have free access thereto at all reasonable hours, under a penalty of twenty dollars for each offence. *ibid*, s. 26.

Penalty on purchaser drinking liquor in shops.

**34.** If any person who has purchased any spirituous, vinous or fermented liquor, in any shop or store, licensed only as mentioned in the next preceding section, drinks the same or any part thereof, or allows the same or any part thereof to be drunk in the said shop, store, or any house or out-buildings, or premises appertaining thereto, such person shall be liable to a penalty of ten dollars for each such offence. *ibid*, s. 25.

Liquors may not be sold on Steamboats while laid up in winter.

**35.** If the owner, master or person in charge of any steamboat or vessel allows any spirituous, vinous or fermented liquor to be sold on board such steamboat or vessel during the time the same shall be laid up in winter, he shall be liable to a penalty of forty dollars for each offence, notwithstanding his having obtained a license under this Act: *ibid*, s. 27.

2. And such license shall not prevent the effect of any municipal by-law prohibiting the sale of spirituous, vinous or fermented liquors in any municipality through or in which such steamboat or vessel may pass or be, and the license shall have no effect in such municipality while such by-law is in force therein. 19, 20 V. c. 101, ss. 8 and 11.

Municipal By-laws to prevail as regards sale of liquor in Steamboats.

PROSECUTION, &C., FOR OFFENCES AGAINST THIS ACT.

36. Any prosecution for an offence against this Act committed within the limits of any County, Parish, Township, Town, or Village Municipality, may be instituted by or in the name of any Revenue Inspector of the District, before any one or more Justices of the Peace, or the Inspector and Superintendent of Police, or a Stipendiary Magistrate, within the District wherein the offence has been committed, or within any district whatever, if the offence has been committed on board a steamboat or other vessel,—or by or in the name of the Clerk or Treasurer, or Secretary-Treasurer, or the Mayor, or any one of the Councillors or Officers of such Municipality, before any one or more Justices of the Peace therein or in a neighbouring Parish or Township,—and in every case where the prosecution is not brought by or in the name of a Revenue Inspector the share which would otherwise have accrued to the Revenue Inspector, shall belong to the Municipality (as hereinafter provided), to be appropriated to such purposes as they deem proper, but the Municipality shall be answerable for all the costs of prosecution. And in the following sections the word “Justice” includes any magistrate mentioned in this section, and two or more Justices in all cases where two or more act. 20 V. c. 46, s. 1--14, 15 V. c. 100, s. 42.

Where and by whom suits under this Act shall be commenced and prosecuted.

What the term “Justice” shall comprehend.

37. Any prosecution under any of the provisions of this Act, except those of the thirtieth section, shall be commenced within six months after the alleged offence, and shall be heard and determined in a summary manner, either upon the confession of the defendant or upon the evidence of one or more witnesses :

Limitation of suits.

Exception.

2. In default of immediate payment of the penalty, and such costs as are awarded to the prosecutor, the amount thereof shall (subject to the discretion hereinafter vested in the convicting Justice) be levied by warrant of distress out of the goods and chattels of the defendant ; and in default of such goods and chattels, or in case of their being insufficient, the defendant shall be imprisoned under the warrant of any such Justice for a period of not less than two months, and not exceeding six months ; but the defendant may at any time obtain his liberation from such imprisonment by making full payment of the said penalty and of all costs, whether incurred upon or after conviction ;

How payment of penalties may be enforced.

Service of process.

3. Every summons or other process, proceeding or paper, in any such prosecution may be served, and the service thereof certified under his oath of office by any constable or peace officer duly appointed for the district in which the same is brought. 14, 15 V. c. 100, s. 42, and 20 V. c. 46, s. 1, &c.

Imprisonment in lieu of distress in certain cases.

38. Whenever any judgment is rendered under this Act, for the amount of any penalty and costs, the justice trying the case may call upon the defendant to declare whether or not he possesses sufficient goods and chattels to satisfy the judgment and costs, and if he refuses to answer to the satisfaction of such justice, he may be forthwith imprisoned, under the warrant of such justice, in the common gaol or house of correction, for a period not exceeding three months; but no warrant of distress shall, in such case, issue against his goods and chattels. 20 V. c. 46, s. 2.

In case defendant makes a false declaration as to his means.

39. If the defendant declares that he possesses sufficient goods and chattels to satisfy the judgment and costs, then in default of immediate payment a warrant of distress (or execution) may issue against them; and if upon the return of the bailiff or other officers charged with the execution of the warrant in that behalf, it appears that there has not been a sufficient levy, and the justice is satisfied by affidavit or otherwise that there has been misrepresentation, concealment or fraud on the part of the defendant, the justice may imprison such defendant in the common gaol or house of correction until the judgment and costs be fully paid, or for a period not exceeding three months. *ibid*, s. 3.

Further powers to Justice as regards the recovery of penalties.

40. Such justice may, if he deems it expedient, in the event of such penalty and costs not being immediately paid, appoint some future day for the payment thereof, and may order the offender to be detained in safe custody until the day so appointed, unless such offender gives security for his or her appearance on such day, to the satisfaction of the said justice, who is hereby empowered to take such security by way of recognizance or otherwise at his discretion;---and if at the time so appointed the penalty is not paid, the same or any other justice of the peace may, by warrant under his hand and seal, commit the offender to any common gaol or house of correction within his jurisdiction, there to remain for any time not exceeding three months, reckoned from the day of such adjudication; such imprisonment to cease on payment of the said penalty and costs. *ibid*, s. 4.

Informations may contain several counts.

41. In all informations and complaints for the prosecution of offences against this Act, several counts for the same offence, and several offences under the same section, similar in their nature and only constituting different categories of the same offence, may be included, provided the time and place of the commission of each offence be alleged; and the form in Schedule D annexed

annexed to this Act shall be altered in this particular ;--and the information or plea may be amended before plea to the merits in any matter of form or substance, upon motion in writing of the complainant, setting forth the required amendment, but without obliterating or altering the original pleading ; and if the amendment be allowed, the defendant, (if he requires it,) may have a further delay to plead to the merits, or for plea and proof, as it may be ordered ; and if the information or plea, in the opinion of the Justice, be so defective either in form or substance, that a legal conviction cannot be based upon it, and it be not amended or reformed, the Justice may dismiss the case, the whole with or without costs in his discretion. 20 V. c. 46, s. 8.

Amendment of pleading and further delay to plead.

42. It shall not be necessary, in any action or prosecution under this Act, to prove that the offence was committed on the precise day specified to obtain judgment against the defendant ; provided it be proved that the offence was committed on or about the day set forth in and by the summons, information or declaration, and before the commencement of such action or prosecution. 14, 15 V. c. 100, s. 19.

Proof in prosecution facilitated.

43. The forms of declaration, summons, conviction, warrant of distress and commitment, D, E, F, G, H, annexed to this Act, or other form to the like effect, shall be good and sufficient, and shall be used in any prosecution under this Act, or in any proceeding antecedent to, or consequent thereon. 14, 15 V. c. 100, s. 45.

Forms.

44. No suit, action or prosecution under any of the provisions of this Act, (except those of the thirtieth section) shall be dismissed or set aside for any alleged defect, informality, error or omission ; but if it appears that the party summoned has or may have been deceived or misled, the presiding Justice may, upon such terms as he thinks fit, adjourn the hearing of the case to some future day. 14, 15 V. c. 100, s. 43.

Suits under this Act not to be dismissed for defect or informality.

45. Any person examined or called as a witness on any such action or prosecution shall be bound to answer all questions put to him which are deemed pertinent to the issue, notwithstanding any declaration on his part that his answer may disclose facts tending to subject him to the penalty imposed by the twenty-second section of this Act ; but such evidence shall not be used against him in any prosecution under the said section. 20 V. c. 46, s. 9.

Examination of witnesses.

46. Any person who tampers with a witness, either before or after he is summoned as such witness on any trial under this Act,—or by the offer of money, or by threats, or in any way, either directly or indirectly, induces or attempts to induce any such person to absent himself or herself, or to swear falsely, shall be liable to a penalty of fifty dollars for each such offence. 14, 15 V. c. 100, s. 47.

Penalty on tampering with witnesses.

Depositions to be reduced to writing.

47. In every prosecution for any contravention of the provisions of this Act, the depositions of the witnesses shall be reduced to writing by the clerk of the peace, or some one appointed by him, or by the justice trying the case, and shall be filed of record in the cause, in like manner as if the same had been taken in the superior court for Lower Canada. 20 V. c. 46, s. 5.

Fees to Clerk taking depositions.

48. The said clerk of the peace, or other clerk officiating in this behalf, shall be entitled to charge and receive at the rate of ten cents for each hundred words of the said evidence so reduced to writing, or of two dollars per diem for the time during which he is so occupied, in the discretion of the Justice trying the case, to be entered in taxation and paid by the party failing on such proceeding, if judgment be rendered therein against either party; and if no judgment be rendered therein within three months after the return of the Summons or Information, then the fees of such Clerk shall be paid equally by the said parties. *Ibid*, s. 7.

How paid.

Judgments, &c., under this Act not to be removed by *certiorari*.

49. No judgment or conviction in pursuance of this Act, or adjudication on appeal therefrom, shall be removed by *Certiorari*, or otherwise, into any of Her Majesty's Superior Courts of Record in Lower Canada. 16 V. c. 214, s. 6.

No appeal allowed in cases tried before two Justices.

50. No appeal from any conviction, order or judgment for any offence against this Act shall be allowed under any law or statute whatsoever, in any case wherein the trial was had before, and the conviction made by two justices of the peace,---or by any inspector and superintendent of police or stipendiary magistrate, and another justice of the peace :

Provision for appeal in cases tried before one Justice.

2. Nor if the case was tried and the conviction made before one justice only, shall any appeal whatever be allowed according to the practice observed with respect to appeals in other cases; but any party to the cause, whether complainant or defendant, aggrieved by any conviction, order or judgment made or rendered by only one justice of the peace, may within eight days after the making or rendering thereof, and after two days' notice to the opposite party or his attorney, and after having complied, (if a defendant,) with the conditions of the next following section, apply to any justice of the superior court, by petition setting forth the grounds of his application, and praying to be permitted to appeal from such conviction, order or judgment, to the next court of general quarter sessions ;

Permission of the Judge required.

3. And thereupon such judge, if he sees fit, may make an order directing the justice or public officer having the legal custody of the record in the case, to send the same immediately before him, together with a copy of the conviction, according to the form in the schedule to this Act ; and upon examining the same and hearing the parties, if present, he may allow the said

said appeal or reject the said petition with costs (to be taxed by him and entered in execution against the party failing,) by the justice who tried the case, or without costs in his discretion ;

4. And if the judge allows the said appeal, he may order the said petition and record in the said case to be returned to and filed with the clerk of the court of quarter sessions, to be set down without further formality for hearing on the first day next thereafter of any session of the said court, when the said appeal shall be heard, and shall be restricted to a mere revision of the proceedings, proof and judgment therein, without the admission of any other evidence or the adoption of any further proceedings whatever. 20 V. c. 46, s. 6.

Transmission of the record, &c.

51. No person against whom any judgment is rendered under this Act, shall be entitled to appeal under the next preceding section, unless within twenty-four hours from the date of such judgment, he gives notice to the Clerk, or the person acting as Clerk of the convicting Justice, of his intention to appeal therefrom, and within fifteen days from the date of such judgment, deposits with the Clerk of the Peace for the district within which such judgment has been pronounced, the amount of the penalty and costs awarded by such judgment. 14, 15 V. c. 100, s. 44, and 20 V. c. 46, s. 6.

But in any case notice of appeal must be given within twenty-four hours.

52. All fines and penalties recovered under this Act, shall be disposed of in the following manner, that is to say :

How fines under this Act shall be disposed of.

2. One third thereof shall belong to the person upon whose information the prosecution was instituted, and such person shall not, on account of his interest in the event of such suit, be incompetent to give evidence therein ;

3. If the prosecution has been brought by a Revenue Inspector, one third shall belong to and be retained by such Revenue Inspector, and the remaining third shall belong to the Crown ; and if there be no informer, then one half shall belong to such Revenue Inspector, and the other half to the Crown ; but in cases where the Revenue Inspector or his Deputy has been the sole witness, the whole of the penalty shall belong to the Crown ;

4. If the prosecution has been brought by any municipal officer, the informer (if any) shall have one third as aforesaid, but the share which would have accrued to the Revenue Inspector if he had been the prosecutor, shall belong to the municipality ;

5. The share belonging to the Crown shall be paid to the Revenue Inspector for the Revenue Division, and by him to the Receiver General for the public uses of the Province ;--the share

share belonging to any Municipality shall be paid to the Treasurer thereof for its use. 14, 15 V. c. 100, s. 46,---and 20 V. c. 46, s. 5.

REVENUE INSPECTORS, THEIR DUTIES, POWERS, &c.

List of licensed houses to be published annually.

**53.** A list of the licensed houses of public entertainment shall be published by the several revenue inspectors once a year, or oftener, at such time or times and in such newspapers as may be directed by the Minister of Finance. 14, 15 V. c. 100, s. 36.

Revenue Inspector may have a Deputy.

**54.** Every revenue inspector may, with the consent and approval of the minister of finance, appoint one or more deputy or deputies for the performance of the duties relating to his office under this or any other Act;---and every such revenue inspector and every Deputy to be appointed by him, shall take and subscribe the following oath, before any judge of the superior court, or before the commissioner of customs, who may administer the same; and every such oath shall be deposited in the office of the minister of finance:

Oath.

“ I , revenue inspector for the revenue division  
“ of , do swear, that I will well and truly execute  
“ and perform the duties of revenue inspector, relating to inns,  
“ taverns, temperance hotels, and other houses and places of  
“ public entertainment, according to the best of my skill and  
“ knowledge, and that in all cases of fraud or suspicion of  
“ fraud that may come to my knowledge, I will spare no person  
“ from favor or affection, nor will I aggrieve any person from  
“ hatred or ill-will, and that I will in all things, to the best of  
“ my skill and ability, comply with and enforce the law in this  
“ behalf. So help me God.” *ibid*, s. 22.

Inspector to visit yearly each licensed Tavern in his division.

**55.** Every revenue inspector, either in person or by his deputy, shall visit, once at least in each year, every inn, tavern, temperance hotel, and every other house or place of public entertainment within the revenue division for which he is appointed, shall examine the same, and shall prosecute every keeper of any such inn, tavern, temperance hotel, or place of public entertainment, or other person who offends against this Act. *ibid*, s. 21.

And may also inspect Steam-boats.

**56.** Any revenue inspector, or his deputy, may, at all seasonable hours, go on board any steamboat or vessel to examine whether a license be exhibited, and to ascertain whether all other requirements of this Act are complied with. *ibid*, s. 29.

In case Tavern-keeper refuses admittance to Inspector.

**57.** If the keeper of any licensed inn, tavern, temperance hotel, or of any licensed house or place of public entertainment, refuses admittance to the revenue inspector, or to his deputy

—or

---or if any person in any way opposes or hinders, obstructs or molests the revenue inspector, or his deputy, in the execution of his duty, such Keeper or person shall be liable to a penalty of forty dollars for each such offence. *ibid*, s. 23.

**58.** Any person who by force or violence, or in any way assaults, resists, opposes, molests, hinders or obstructs any revenue inspector or his deputy, in the exercise of his office, or any person acting under him, shall be liable to a penalty of not more than forty dollars, nor less than eight dollars for each such offence. *ibid*, s. 30.

Penalty on person molesting him in the exercise of his office.

**59.** No action or prosecution shall be maintainable against any Revenue Inspector for any thing done by him in the exercise of his office, unless the same is brought within six calendar months after the cause thereof ; and the defendant may plead the general issue, and give the special matter in evidence ; and if the Plaintiff is non-suited, or discontinues the action, or judgment is given against the Plaintiff, the Defendant shall receive costs ;--and if judgment be given for the Plaintiff, and the Judge or Court before whom the action or prosecution has been tried, certifies that the Revenue Inspector had reasonable grounds for the act or proceeding complained of, the Plaintiff shall not be entitled to any costs of suit, nor to more than nominal damages. 14, 15 V. c. 100, s. 48.

Protection of Inspector in suits brought against him for things done by him in discharge of his duty.

**60.** In every action or prosecution instituted or commenced by, or against any Revenue Inspector under the provisions of this Act, or for any thing done in pursuance of this Act, such Revenue Inspector may appeal from the judgment given therein, within three months thereafter, to any Court having competent jurisdiction. 14, 15 V. c. 100, s. 49.

His right of appeal.

## SCHEDULES.

(A)

FORM OF AFFIDAVIT TO BE MADE BY A PERSON DESIROUS OF OBTAINING A LICENSE TO KEEP A HOUSE OR PLACE OF PUBLIC ENTERTAINMENT.

Province of Canada, }  
District of }

I, \_\_\_\_\_, of \_\_\_\_\_, in the county of \_\_\_\_\_, in the district of \_\_\_\_\_, who am desirous of obtaining a license to keep \* \_\_\_\_\_ situated at † \_\_\_\_\_, being duly sworn, do make oath and say, that I am a subject of Her Majesty, and that I am in all respects duly qualified according to law, to keep a house or place of public entertainment.

(Signature.)

Sworn to before me, at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_ one thousand eight hundred and \_\_\_\_\_  
J. P. for the district of \_\_\_\_\_,

NOTE.—At the mark \* insert “a house or place of public entertainment for retailing spirituous liquors, &c.,” or “a house or place of public entertainment, and for retailing vinous and fermented liquors,” or, “a temperance hotel,” as the case may be. At the mark †, describe the exact locality as nearly as possible

*The Note is common to the forms A, B, and C.*

(B)

FORM OF CERTIFICATE FOR OBTAINING A LICENSE TO KEEP AN INN OR TAVERN, OR TEMPERANCE HOTEL, (as the case may be.)

Province of Canada, }  
District of }

We, the undersigned municipal electors of the \_\_\_\_\_ of \_\_\_\_\_, in the county of \_\_\_\_\_, do hereby certify that \_\_\_\_\_, of \_\_\_\_\_, in the county of \_\_\_\_\_, in the district of \_\_\_\_\_, who is desirous of obtaining a license to keep \* \_\_\_\_\_ at † \_\_\_\_\_ is personally known to each of us, that he is a subject of Her Majesty, is honest, sober, and of good repute, and is a fit and proper person for keeping a house of public entertainment, (where in country parts, add :—that we have visited or are acquainted with the house and premises situate at \_\_\_\_\_, for

for which the license is required, and that he has in and on the same, bedding, stabling and accommodation for travellers, as required by law.)

*If in country parts, add :* We further certify that a house of public entertainment is required at the place where the said house is situate.

Given under our hands, the \_\_\_\_\_ day of \_\_\_\_\_, in the year one thousand eight hundred and \_\_\_\_\_

{ Municipal Electors for  
 { the County of \_\_\_\_\_

The foregoing certificate having been this day submitted to the municipal council of (or to the corporation of) \_\_\_\_\_ and the said council (or corporation) being duly assembled, and having deliberated thereon, confirm the same certificate in favor of \_\_\_\_\_ therein mentioned.

Signed at \_\_\_\_\_, this day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_

P. Q., *Mayor.*  
 R. S., *Secretary.*

WHEN THE CERTIFICATE IS CONFIRMED UNDER THE PROVISIONS OF THE \_\_\_\_\_ SECTION

The foregoing certificate having been this day submitted to us, conformably to the \_\_\_\_\_ section of chapter \_\_\_\_\_ of the Consolidated Statutes for Lower Canada, we do hereby confirm the same.

(Signatures.)

—————  
 (C)

Know all men by these presents, that we T. U. of \_\_\_\_\_, V. W. of \_\_\_\_\_, and X. Y. of \_\_\_\_\_, are held and firmly bound unto Her Majesty, Queen Victoria, her heirs and successors, in the penal sum of four hundred dollars of good and lawful money of the Province of Canada, that is to say, the said T. U. in the sum of two hundred dollars, the said V. W. in the sum of one hundred dollars, and the said X. Y. in the sum of one hundred dollars, of like good and lawful money, for payment of which, well and truly to be made, we bind ourselves and each of us, our heirs, executors and administrators, firmly by these presents.

Whereas the above bounden T. U. is about to obtain a license to keep \* \_\_\_\_\_, the condition of this obligation is \_\_\_\_\_

is such, that if during all the time such license remains in force, the said T. U. pays all fines and penalties which he may be condemned to pay for any offence against the law relative to houses of public entertainment now or hereafter to be in force, and does, performs and observes all the requirements thereof, and conforms to all rules and regulations that are or may be established by competent authority in such behalf, then this obligation shall be null and void, otherwise to remain in full force, virtue and effect.

In witness whereof, we have signed these presents with our hands and sealed them with our seals, this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_.

T. U. [L. s.]  
V. W. [L. s.]  
X. Y. [L. s.]

Signed, Sealed and Delivered, }  
in the presence of us }

(D)

FORM OF DECLARATION.

Province of Canada, }  
District of }

Special Sessions of the Peace.

(*Name of Revenue Inspector*,) of the city, (town, township or parish) of (*name of the city, town, township or parish*,) in the district of (*name of the district*,) Revenue Inspector for the (*division if the district be divided*), district of (*name of district*), in behalf of our Sovereign Lady the Queen, prosecutes, (*name of defendant*,) of the city, (town, township or parish) of \_\_\_\_\_ in the district of \_\_\_\_\_.

For that whereas the said (*name of defendant*,\*) did at the city, (town, township, or parish,) of \_\_\_\_\_ in the district aforesaid \_\_\_\_\_, on \_\_\_\_\_, and at sundry times before and since (*here state succinctly the offence*,) contrary to the statute, in such case made and provided; Whereby and by force of the said statute, the said \_\_\_\_\_ hath become liable to pay the sum of \_\_\_\_\_ dollars \_\_\_\_\_ cents.

Wherefore the said Revenue Inspector prays judgment in the premises, and that the said (*name of defendant*,) may be condemned to pay the sum of \_\_\_\_\_ dollars \_\_\_\_\_ cents, for the said offence, with costs.

Revenue Inspector,  
for the district of \_\_\_\_\_  
Prosecutor.

*If the prosecution is brought by a Municipal Officer, vary the form accordingly.*

\* *In any of these Schedules say "defendants," instead of "defendant," if there are more than one.*

(E)

(E)

FORM OF SUMMONS.

Province of Canada, }  
 District of }

To (*name of defendant*), of the (city, town, township or parish,) of (*name of the city, town, parish or township*), in the district of (*name of district*).

You are hereby commanded to be and appear before me, the undersigned Justice\* of the Peace for the said district, at (*name of place*), on the day of , at the hour of of the clock in the noon, or before such other Justice or Justices of the Peace for the said district, as may then be there, to answer to the complaint made against you by (*name of Revenue Inspector*), Revenue Inspector, (*or as the case may be*), who prosecutes you in Her Majesty's name and behalf, for the causes mentioned in the declaration hereunto annexed ;-- otherwise judgment will be given against you by default.

Given under my hand and seal, this day of , in the year of our Lord, one thousand eight hundred and , at , in the district aforesaid.

J. P. [Seal.]

\* *In any of these Schedules say "Justices," instead of "Justice," when there are more than one.*

CERTIFICATE OF SERVICE.

I, the undersigned , do hereby certify, upon my oath of office, that on the day of , I did serve the within summons, and the declaration thereto annexed, on the within named defendant, at the hour of of the clock in the noon, by leaving a true and certified copy of the said summons and of the said declaration at the domicile of the said defendant, in the speaking to of day of 18 .

NOTE.---*The copy left with or for the Defendant is to be certified as a "true copy" by the Justice of the Peace signing the Summons.*

(F)

FORM OF CONVICTION.

Province of Canada, }  
 District of }

Be it remembered, That on the day of , in the year one thousand eight hundred and , at (*name of place where*

where convicted,) in the said district, (*name of defendant*,) is convicted before the undersigned (*one*) of Her Majesty's Justices of the Peace for the said district, for that he, the said (*name of defendant*,) did (*state the offence succinctly of which he or they were convicted*) and (*I or we*) adjudge the said (*name of defendant*) for his said offence, to forfeit and pay to the sum of \_\_\_\_\_, and also to pay to the said \_\_\_\_\_ the sum of \_\_\_\_\_, for his costs in this behalf.

Given under \_\_\_\_\_ hand and seal, the day and year first above mentioned.

Signature, J. P. (*Seal or Seals*)  
or Signatures.

(G)

FORM OF WARRANT OF DISTRESS.

Province of Canada, }  
District of \_\_\_\_\_ }

(*Name of Justice*) Esquire, \_\_\_\_\_ of Her Majesty's Justices of the Peace in and for the said District.

To any bailiff, constable or other officer of the Peace, in and for the said district :

Whereas (*name of Defendant*) of the Parish of (*name of Parish or Township*,) in the said district, hath been convicted before \_\_\_\_\_ (*one*) of Her Majesty's Justices of the Peace for the said District, of having (*state the offence*) whereby the said (*name of Defendant*) hath forfeited, and hath by the said Justice been adjudged to pay the sum of \_\_\_\_\_ dollars \_\_\_\_\_ cents, and further the sum of (*amount of the costs allowed by me*) the said Justice allowed and adjudged to be paid by the said (*Defendant*) to (*name of Officer*) Revenue Inspector, (*or as the case may be*) for costs by him laid out about the conviction aforesaid\* ; These are therefore to command and require you, and each and every of you, to distrain the goods and chattels of the said (*name of Defendant*) wheresoever they may be found within the said district ; and on the said goods and chattels so distrained to levy the said penalty and costs, making together the sum of \_\_\_\_\_ dollars \_\_\_\_\_ cents : And if within the space of four days next after such distress by you made, the said last mentioned sum of \_\_\_\_\_ dollars \_\_\_\_\_ cents, together with the reasonable charges of taking and keeping the said distress are not paid, that then you do sell the said goods and chattels so by you distrained as aforesaid, and out of the money arising from such sale that you do pay the said sum of \_\_\_\_\_ dollars \_\_\_\_\_ cents, unto the said \_\_\_\_\_ Revenue Inspector,

Inspector, (or as the case may be) returning to the said the overplus, the reasonable charges of taking, keeping and selling the said distress being first deducted ; and you are to certify to with the return of this precept what you shall have done in the execution thereof. Hereof fail not.

Given under hand and seal, at , in the said district, this day of , in the year one thousand eight hundred and

Signature, J. P. [Seal.]

(H)

WARRANT OF COMMITMENT FOR WANT OF DISTRESS.

To all or any of the Bailiffs, Constables and other Peace Officers, in the district of , and to the keeper of the (house of correction) at in the said district of :

Whereas (&c., as in the foregoing distress warrant to the (\*) and then, this) : And whereas afterwards, on the in the year aforesaid, I, (or, as the case may be,) issued a warrant to all or any of the bailiffs, constables or other Peace Officers of the district of , commanding them or any of them, to levy the said sums of and by distress and sale of the goods and chattels of the said ; And whereas it appears to me, as well by the return to the said warrant of distress by the (constable) who had the execution of the same, as otherwise, that the said (constable) hath made diligent search for the goods and chattels of the said , but that no sufficient distress whereon to levy the sums above mentioned could be found ; These are therefore to command you, the said Bailiffs, Constables or Peace Officers, or any one of you, to take the said and him safely to convey to the (house of correction) at aforesaid, and there deliver him to the said keeper, together with this precept ; and I do hereby command you the said keeper of the said (house of correction) to receive the said into your custody, in the said (house of correction) there to imprison him, (and keep him to hard labor) for the space of , unless the said several sums, and all the costs and charges of the said distress, (and of the commitment and conveying of the said to the said house of correction) amounting to the further sum of , are sooner paid unto you the said keeper ; and for so doing, this shall be your sufficient warrant.

Given under my hand and seal, this day of , in the year of our Lord , at , in the district aforesaid.

Signature, J. P. [L. s.]  
C A P .

## C A P . V I I .

## An Act respecting the duty on Hawkers and Pedlers.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Hawkers, pedlers, &c., to take out a license.

1. Every hawker, pedler, petty chapman, and every trading person or persons going from town to town or to other men's houses, and travelling either on foot or with horse or horses, or otherwise within Lower Canada, carrying to sell or exposing to sale any goods, wares or merchandizes, shall take out a License for which there shall be paid a duty of eight dollars to the Revenue Inspector or other person who delivers it, at the time such license is taken out. 35 G. 3, c. 8, s. 1.

License must be renewed annually.

2. Every such License shall be in force until the fifth day of April then next and no longer, and every such person as aforesaid shall take out a fresh License on or before the fifth day of April in every year, before he shall presume so to travel and trade, and shall renew such License from year to year, paying down the like duty for each year and renewed license. 35 G. 3, c. 8, s. 2.

But employes of Religious or Benevolent Societies need not be licensed.

3. Nothing in this Act shall render it necessary for persons in the employ of any temperance, benevolent or religious society in this Province, to take out licenses as hawkers or pedlers, in order to enable them lawfully to sell and peddle temperance tracts and other moral and religious publications under the direction of such society : 13, 14 V. c. 7, s. 1.

The sale of certain articles exempted from the operation of this Act.

2. Nor shall this Act prohibit any person from selling any acts of the legislature, prayer books, or church catechisms, proclamations, gazette, almanacs or other printed papers licensed by authority, or any fish, fruits or victuals, nor hinder any person who is the real maker or worker of any goods, wares or manufactures, or his children, apprentices, agents or servants, only, from carrying abroad, exposing to sale and selling by retail or otherwise, any of the goods, wares and manufactures of his own making, in any part of Lower Canada ; nor any tinkers, coopers, glaziers, harness menders or other persons usually trading in mending kettles, tubs, household goods or harness whatsoever, from going about and carrying with him, proper materials for mending the same, without having a license as aforesaid ; Nor shall this Act prohibit hucksters or persons having stalls or stands in the markets in the towns, from selling or exposing to sale without having a license as aforesaid, any fish, fruits or victuals, or goods, wares and merchandizes, in such stalls or stands, they complying with such rules and regulations of police, established in such towns respecting such stalls and stands by the proper Municipal authorities. 35 G. 3, c. 8, s. 13--18 V. c. 100.

Act not to extend to sales in town markets ; police regulations must be complied with.

4. Every person before receiving his license as a hawker, pedler or petty chapman, shall take and subscribe in court in general quarter or special sessions of the peace, for the district in which he resides, the oath of allegiance to Her Majesty required by law, which oath the justices of the peace in such sessions shall administer; and for granting a certificate that such oath has been taken, the clerk of the peace shall be entitled to the sum of twenty cents, and no more; But in order to avoid the unnecessary repetition of oaths, if any such person has once taken such oath on receiving a license, he shall not be required to take again on receiving a renewed license. 35 G. 3, c. 8, s. 5.

Every pedler, &c., to take the oath of allegiance.

Proviso.

5. The licenses hereinbefore mentioned shall be granted by the Governor; and for every such license delivered, there shall be paid by the person applying for the same, to the Revenue Inspector or other person appointed to deliver the same, one dollar, over and above the duty above mentioned. 35 G. 3, c. 8, s. 6. *Corrected.*

Governor to grant licenses.

Fee to Revenue Inspector.

6. Nothing herein contained shall prohibit or prevent any such hawker, pedler or petty chapman from having and employing a servant to accompany him, for the sole purpose of carrying or assisting to carry his packages of goods, wares and merchandizes, without taking out or paying for a license for any such servant so accompanying him. 35 G. 3, c. 8, s. 8.

Pedler, &c., may employ a Servant.

7. If any hawker, pedler, petty chapman or other trading person travelling as aforesaid, is found travelling, as aforesaid, without first taking out such license, and renewing the same yearly, as aforesaid, or otherwise than as allowed by such license, he shall, for each such offence, forfeit the sum of forty dollars, to be recovered and applied as hereinafter mentioned:

Penalty on pedlers, &c., trading without license.

2. And if any person so travelling with a license upon demand being made by any justice of the peace, officer of militia, constable or peace officer of the district, county, town or place where he so trades; refuses to produce and shew his license for so trading, or has not his license for so trading, ready to produce to such justice of the peace, officer of militia, constable or peace officer, then the person so refusing or not having his license, shall forfeit the sum of forty dollars, to be recovered and applied as hereinafter mentioned. 35 G. 3, c. 8, s. 7.

Or refusing to produce it.

8. Any officer of militia, constable or peace officer, may seize and detain any such hawker, pedler, petty chapman or other trading person as aforesaid, found trading without a license, or who being found trading, refuses or neglects to produce a license, after being required so to do for a reasonable time,—in order to his being carried, (and he is hereby required

Proceedings in case pedler, &c., refuses to produce his license.

required to carry such person so seized, unless in the mean time he produces his license), before two of Her Majesty's justices of the peace, the nearest to the place where such offence is committed :

Justices on proof that pedler, &c., is trading without license, may levy fine by distress.

2. The said two justices of the peace, either upon the confession of the party offending, or due proof by witness, other than the informer, upon oath, before them made, that the person so brought before them so traded, as aforesaid, without license, and in case no such license is produced by the offender before such justices, shall by warrant under their hands and seals directed to a constable or peace officer, cause the said sum of forty dollars, with reasonable costs, to be forthwith levied by distress and sale of the goods of such offender or of the goods with which such offender is found trading as aforesaid, rendering the overplus, if any there be, to the owner thereof, after deduction of the reasonable charges for taking the said distress, and out of the sale shall pay the said respective penalties and forfeitures with costs aforesaid. 35 G. 3, c. 8, s. 9.

Penalty on hiring or lending a license.

9. If any person lets out to hire or lends any license to him granted as aforesaid, or trades, with or under colour of any license granted to any other person, or of any license in which his own real name is not inserted as the name of the person to whom the license is granted,—the person letting out to hire or lending any such license, and the person so trading, with or under colour of any license granted to any other person, or any license in which his own real name is not inserted as the name of the person to whom the same is granted, shall each of them forfeit the sum of forty dollars, to be recovered and applied as hereinafter mentioned. 35 G. 3, c. 8, s. 11.

Penalty on hawkers, &c., holding seditious discourses.

10. If any person having a license so to trade, is convicted in Her Majesty's Court of Queen's Bench for Lower Canada, of holding seditious discourses, uttering treasonable words, maliciously spreading false news, publishing or distributing libellous or seditious papers, written or printed, tending to excite discontent in the minds, and to lessen the affections of Her Majesty's subjects, or to disturb the peace and tranquillity of *this Province*, his license shall be thenceforth forfeited and void, and he shall be utterly incapable of having any licence again granted to him for so trading, and shall also be subject to such other punishment as by law may be inflicted for such offence. 35 G. 3, c. 8, s. 12.

How penalties over forty dollars may be recovered.

11. Any pecuniary penalty incurred under this act, of a greater sum than forty dollars, shall be recovered with costs of suit, in any of Her Majesty's Courts of Record in Lower Canada, by action of debt, or on information. 35 G. 3, c. 8, s. 14.

Penalties under forty dollars—

12. If the pecuniary penalty by this Act imposed, doth not exceed the sum of forty dollars, it shall be recovered with costs of

of suit, before any one of Her Majesty's Justices of the Superior Court, or before any two of Her Majesty's Justices of the Peace of the district wherein the offence is committed, in the weekly sittings of such Justices at the cities of Quebec and Montreal and town of Three-Rivers, except where it is otherwise provided,—on proof of the offence, either by voluntary confession of the party accused, or by oath of one or more credible witness or witnesses, other than the informer, made before the said Justices and Judges :

provision for their recovery.

2. If the penalty and costs are not paid, they shall be levied by distress and sale of the offender's goods and chattels, by warrant under the hand and seal of such Justice of the Superior Court, or under the hands and seals of such Justices of the Peace, directed to a constable or peace officer ; and the overplus of the money raised, after deducting the penalty and costs of suit, with the expenses of the distress and sale, shall be returned to the owner ;—and for want of sufficient distress, the offender shall be committed by such Judge or Justices of the Peace to the nearest gaol, for such time not exceeding six months nor less than one month, as such Judge or Justice thinks most proper. 35 G. 3, c. 8, s. 15.

If not paid to be levied by distress and sale.

13. The powers which by the next preceding section are given to any two of Her Majesty's justices of the peace, in the weekly sittings of such justices, at Quebec, Montreal and Three-Rivers, are hereby given to and may be exercised by any two justices of the peace residing in the county where the offence is committed : 3 G. 4, c. 12, s. 1.

Powers under preceding section may be exercised by two Justices in the county.

2. But when any conviction takes place before such justices of the peace, they shall take in writing the deposition or evidence upon which the conviction is made, to the end that, in the event of a revision of the conviction and judgment by a competent authority, the facts upon which such conviction and judgment has been made and rendered, may manifestly appear. *Ibid*, s. 2.

Formalities which they shall observe.

14. No suit or action shall be commenced against any person for any penalty by this Act imposed, except within twelve months after the offence committed. 35 G. 3, c. 8, s. 16.

Limitation of actions.

15. Any person who finds himself aggrieved by any judgment by any justices of the peace given in pursuance of this Act, may, upon giving security to the amount of the penalty and forfeiture, and such costs as may be awarded in case the judgment is affirmed, appeal to the justices of the peace at the next general quarter sessions of the peace for the district;—except that if such quarter sessions are to be held within ten days, then the appeal may be to the general quarter sessions of the peace following, and the said court may summon and examine witnesses upon oath, and finally hear and determine the

Persons aggrieved may appeal to the Quarter Sessions.

the same; and in case the judgment of the justices be affirmed, the said court of general quarter sessions, may award the person or persons to pay such costs, occasioned by the appeal, as to them seem meet. 35 G. 3, c. 18, s. 17.

Penalty on witnesses for not appearing.

**16.** If any person is summoned as a witness, to give evidence before any justices of the peace touching any of the matters relative to this act, and neglects or refuses to appear at the time and place for that purpose appointed, without reasonable excuse to be allowed by such justices, or appearing, refuses to be examined on oath and to give evidence before the justices, before whom the prosecution is depending, such person shall forfeit, for each such offence, the sum of forty dollars to be levied, recovered and paid in such manner and by such means as are herein directed as to other penalties, *Ibid*, s. 18.

Fines, how disposed of.

**17.** All the moneys arising from the duties hereinbefore mentioned, shall be paid by the person or persons receiving the same, to the receiver general:

2. The moiety of every pecuniary penalty or forfeiture by this Act imposed, shall belong to Her Majesty, and shall be paid by the person receiving the same into the hands of the said receiver general,—and the other moiety thereof shall belong to the person suing or prosecuting for the same. *Ibid*, s. 19.

Limitation of actions for things done in pursuance of this Act.

Defendant may plead general issue.

**18.** If any action or suit is brought against any person, for any thing done in pursuance of this Act, it shall be commenced within six months next after the matter or thing done, and not afterwards; and the defendant may plead the general issue and give this Act and the special matter in evidence at any trial to be had thereupon; and if afterwards judgment is given for the defendant, or the plaintiff becomes non-suited, or discontinues his action or suit after the defendant has appeared, then such defendant shall have treble costs against such plaintiff, and have the like remedy for the same as any defendant hath in other cases to recover costs at law. *Ibid*, s. 20.

Powers of Municipal Councils as regards pedlers not affected.

**19.** This Act shall not affect any power vested in any municipal council to make regulations *not inconsistent* with this Act, for the granting of municipal licenses to pedlers or for preventing their carrying on their traffic within the municipality without such license. 20 V. c. 41, s. 5, *par.* 2.

## CAP. VIII.

## An Act respecting the duty on Billiard Tables.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. No person for his gain and lucre shall erect, set up, continue to keep or maintain, any billiard table in Lower Canada, without being licensed for that purpose, in the manner hereinafter directed; and any person who erects, sets up or continues to keep and maintain, for his lucre or gain, any billiard table, without being licensed as aforesaid, shall, on being convicted thereof before any judge of the superior court, or any two justices of the peace for the district where such offence is committed, upon the oath of one credible witness, or upon the view of such judge or justices, or on confession, incur a penalty of one hundred dollars, with costs of suit, to be levied by distress and sale of the offender's goods and effects, by warrant under the hand and seal of such judge or justices; which said forfeiture, when recovered, shall go to and be applied one moiety to Her Majesty, for the public uses of the Province, and the other moiety to the informer or person who sues or prosecutes for the same. 41 G. 3. c. 13, s. 1.

Penalty on persons keeping a Billiard Table for profit without a license.

2. Any person who sets up, continues to keep or maintain for his lucre and gain, any such billiard table, after the expiration of such his license, without a renewal of the same, ten days at least before the expiration thereof, shall be subject to the same pains and penalties as if he had never obtained such license. *Ibid*, s. 4.

Penalty on failure to renew license.

3. The licenses hereinbefore mentioned shall be granted by the Governor, and delivered by the revenue inspector or person appointed to deliver them, who shall be entitled to receive on delivering them (in addition to the duty), the like sum as for licenses to hawkers and pedlers, delivered at the same place: *Ibid*, s. 2.

Licenses to be granted by the Governor.

2. But no such license shall be given to any person, unless he enters into a recognizance to Her Majesty, before Her Majesty's justices of the peace, in court of quarter sessions within their districts, respectively, with two sufficient sureties (being householders,) jointly and severally, in the sum of two hundred dollars, on the special condition that the person obtaining the license shall not, during the continuance of the said license, knowingly suffer any apprentice, school-boy or servant to play at the said billiard table, and shall not knowingly suffer any person whatever to play or game at the same for money;

Bond to be entered into to Her Majesty.

Special condition thereof.

To remain with Clerk of the Peace.

3. The recognizance so taken shall remain with the clerk of the peace of the district where it is entered into, to be by him prosecuted in case the said conditions are not strictly complied with, or in case of forfeiture of the said recognizance; and the sum forfeited, when recovered, after deducting the reasonable costs of such prosecution, shall belong, one moiety to Her Majesty, and the other moiety to the informer or the person suing or prosecuting for the same. *Ibid*, s. 2.

Fee to be paid before obtaining license.

4. Previous to the delivery of any such license, the revenue inspector or other person delivering it, shall demand for every billiard table, so licensed, the sum of fifty dollars, to be paid to him and by him remitted to the Receiver General; But no such license shall be so delivered to any person, until he produces a certificate from the clerk of the Peace, that the recognizance required by this Act hath been duly entered into. *Ibid*, s. 3.

Imprisonment in case of failure to pay penalty or give security.

5. If any person who, so convicted as aforesaid, has not sufficient goods and effects whereon to levy the penalties inflicted by this Act, or does not, upon a return of *nulla bona* to the warrant of distress, immediately pay the penalty and costs, or give security for payment of the same within ten days thereafter, the Judge or Justices of the Peace, before whom such person is convicted may commit him to the common gaol for any time not exceeding three months. *Ibid*, s. 5.

Limitation of actions.

6. No suit or action shall be brought against any person for any penalty or forfeiture by this Act imposed, unless it is brought within three months after the offence committed. *Ibid*, s. 6.

Powers of Municipalities with respect to Billiard Tables, not affected by this Act.

7. This Act shall not affect any power vested in any Municipality, to make regulations not inconsistent with this Act, concerning Billiard Tables or to require the keepers of Billiard Tables to take out Municipal Licenses.

C A P . I X .

An Act respecting certain Ferries over the River St. Lawrence.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. No person shall act as a ferryman, or shall convey, or cause to be conveyed by any one in his service, any person across the River St. Lawrence, between the City of Quebec and the Parish of Notre-Dame de la Pointe Lévi, or between the City of Montreal and the Parish of Longueuil, without having received a license under the hand of the Governor, or of some person by him duly authorized to that effect, to keep a ferry across the said River, for a certain time, at a place and within limits, to be designated in such license,--nor shall the person having received such license, so act as a ferryman, or so convey, or cause to be conveyed, any person for hire, at any place to which such license does not extend, or beyond the limits mentioned therein, under a penalty of One dollar, for each person so conveyed contrary to the provisions of this Act ; and of such further penalty as may be fixed by any regulations to be made in the manner hereinafter provided. 16 V. c. 212, s. 2,--and 20 V. c. 41, s. 5, par. 3. *But see also local Acts as to the powers of the Corporations of Quebec and Montreal.*

No one to act as a ferryman on the St. Lawrence without a license.

Penalty.

2. The Governor in Council may make, and may from time to time repeal or alter such regulations, as he deems expedient, for any of the following purposes, that is to say :

Governor may make Regulations fixing--

*Firstly.* For establishing the extent and limit of all or any such Ferries as aforesaid ;

The limits ;

*Secondly.* For defining the manner in which the conditions (including any duty or sum to be paid for the license,) under which, and the period for which, licenses shall be granted in respect of all such Ferries, or any one or more of them ;

The conditions ;

*Thirdly.* For determining the size and description of the vessels to be used on any such Ferries by the persons holding licenses in respect thereof, and the nature of the accommodation and conveniences to be provided for passengers carried in such vessels ;

Description of vessels ;

*Fourthly.* For fixing the Tolls or Rates at which persons and chattels shall be carried over such Ferries, and the manner and places in which such Tolls or Rates shall be published or made known ;

The tolls ;

*Fifthly.*

And for enforcing the same ;

*Fifthly.* For enforcing the payment of such Tolls or Rates by the persons carried, or for whom chattels are carried, over such Ferries ;

Times of crossing ;

*Sixthly.* For regulating the conduct of persons holding licenses in respect of such Ferries, and for fixing the times, and hours and parts of hours, during and at which vessels employed on such Ferries shall cross and recross, or depart from either side of any such Ferry, for that purpose ;

Forfeiture of license ;

*Seventhly.* For annulling and declaring the forfeiture of any such Ferry license in consequence of the conditions thereof, or any of them, not having been fulfilled ;

Penalties.

*Eighthly.* For imposing penalties not exceeding Ten dollars in any case, for the violation of any such regulation ;---and all such regulations shall, during the time for which they are intended to be in force, have the same force and effect as if contained and enacted in and by this Act. 16 V. c. 212, s. 3.

No license for more than 12 months.

3 No license for any such Ferry shall hereafter be granted for a longer period than twelve months, except by public competition, and to parties giving such security as may be required by the Governor in Council, after notice inserted at least four times in the course of four weeks in the *Canada Gazette*, and in one or more newspapers published in the district in which such Ferry is situate, and if no newspaper is published in such district, then in the nearest district in which a newspaper is published ; nor shall any such Ferry be leased or a license therefor granted for a longer term than ten years at any one time. 16 V. c. 212, s. 4.

Regulations to be published.

4. The Provincial Secretary shall cause all regulations made as aforesaid to be published in the English and French languages in the *Canada Gazette*, at least three times during the three months following the date thereof, and any copy of the said Gazette containing a copy of such Regulations, or any of them, shall be evidence of such Regulation or Regulations. 16 V. c. 212, s. 5.

How fines recoverable.

5. All fines or penalties imposed by this Act or by any regulations under the authority thereof, shall be recoverable in a summary manner before any one Justice of the Peace, on the oath of any credible witness other than the informer ; and one half of every such penalty shall be paid to the informer, and the other half shall belong to the Crown for the Public uses of the Province. 16 V. c. 212, s. 6.

How proceeds of licenses shall be dealt with.

6. All moneys arising out of such Ferry Licenses and out of penalties incurred in regard of the same, or otherwise, under this Act, shall form part of the Consolidated Revenue Fund after

after deducting therefrom such portion thereof as may be necessary for the remuneration of the Revenue Inspectors, or other Officers employed in carrying out this Act, for their services in that behalf, and for defraying other expenses required for the purposes of this Act. 16 V. c. 212, s. 7.

7. Nothing in this Act shall extend to the owner or master of any vessel plying between two ports in this Province, or regularly entered or cleared by the Officers of Her Majesty's Customs at any such port, or in any way to affect any privilege granted by the Legislature either of the late Province of Lower Canada or of this Province, to the proprietor of any Bridge or to any Railroad Company, or other Road Company. 16 V. c. 212, s. 8.

Act not to affect certain persons and privileges.

8. The term "chattels," when used in this Act, shall extend and apply to horses, cattle, grain, provisions and all other moveable property :

Meaning of term "chattels."

2. The owner, master or person in charge of any vessel used for the purpose of carrying any person or chattel over any such ferry as aforesaid, shall be deemed to have acted as a ferryman within the meaning of this Act, and shall be liable to all the penalties hereby imposed if he contravenes this Act in so acting ;

Liability of person in charge of ferry.

3. And the word "vessel" shall mean any steamboat, horseboat, boat, canoe, or craft of any kind used for the purpose of carrying passengers or chattels across any such ferry as aforesaid. 16 V. c. 212, s. 9.

Meaning of word "vessel."

## MATTERS OF PUBLIC ORDER.

## CAP. X.

## An Act respecting seditious and unlawful Associations and Oaths.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

## OATHS AND SOCIETIES, UNLAWFUL.

Administering unlawful oaths for certain purposes, how punishable.

1. Any person who in any form administers or causes to be administered, or is aiding or present at and consenting to the administration or taking of any oath or engagement, purporting or intending to bind the person taking the same---to commit any treason or murder, or any felony punishable with death,---or to engage in any seditious, rebellious, or treasonable purpose,---or to disturb the public peace,---or to be of any association, or confederacy, formed for any such purpose,---or to obey the order or commands of any committee or body of men not lawfully constituted, or of any leader or commander, or other person not having authority by law for that purpose,---or not to inform or give evidence against any associate, confederate or other person,---or not to reveal or discover any illegal act, done or to be done,---or not to reveal or discover any illegal oath or engagement administered or tendered to, or taken by such person or persons, or to or by any other person, or the import of any such oath or engagement,---shall be guilty of felony, and may be imprisoned in the provincial penitentiary for any term of years not exceeding twenty-one years :

Punishment for taking such oaths.

2. And every person who takes any such oath or engagement, not being compelled thereto, shall be guilty of felony, any may be imprisoned in the provincial penitentiary for any term of years not exceeding seven years. 2 V. (2) c. 8, s. 1,---and 6 V. c. 5, s. 4.

Compulsion not to be a justification: except on certain conditions.

3. Compulsion shall not justify or excuse any person taking such oath or engagement, unless within eight days after the taking thereof, if not prevented by actual force or sickness, and then within eight days after the hindrance produced by such force or sickness shall cease, he declares the same, together with the whole of what he knows touching the same, and the person or persons by whom and in whose presence, and when and where such oath or engagement was administered or taken, by information on oath, before one of Her Majesty's justices of the peace for the district in which such oath or engagement was administered or taken. 2 V. (2) c. 8, s. 2.

**3.** Any person aiding at, or present and consenting to the administering or taking of any such oath or engagement or causing any such oath or engagement to be administered or taken, though not present at the taking or administering thereof, shall be principal offenders, and shall be tried as such, although the person who actually administered such oath or engagement, has not been tried or convicted. 2 V. c. 8, s. 3.

Punishment of aiders and abettors.

**4.** It shall not be necessary, in any indictment against any person administering, or causing to be administered or taken, or taking any such oath or engagement, or aiding at, or present at and consenting to the administering or taking thereof, to set forth the words of such oath or engagement; but it shall be sufficient to set forth the import of such oath or engagement, or some material part thereof. 2 V. (2) c. 8, s. 4.

In indictments, only the import of the oath need be set forth.

**5.** Any engagement or obligation in the nature of an oath, shall be deemed an oath, within the meaning of this Act, in whatever form or manner the same is administered or taken, and whether the same be actually administered by any person, or taken by any person without any administration thereof by any person. 2 V. (2) c. 8, s. 5.

Engagements, &c., to be deemed oaths.

**6.** Every society or association the members whereof are according to the rules thereof, or to any provision, or any agreement for that purpose, required to keep secret the acts or proceedings of such society or association, or admitted to take any oath or engagement, which is an unlawful oath or engagement, within the intent and meaning of the foregoing provisions, or to take any oath or engagement not required or authorised by law,—and every society or association, the members whereof or any of them take, or in any manner bind themselves by any such oath or engagement, or in consequence of being members of such society or association,—and every society or association, the members whereof or any of them, take, subscribe, or assent to any engagement of secrecy, test or declaration not required by law,—and every society of which the names of the members, or any of them, are kept secret from the society at large, or which has any committee or secret body so chosen or appointed that the members constituting the same are not known by the society at large to be members of such committee or select body, or which has any president, treasurer, secretary or delegate, or other officer, so chosen or appointed that his election or appointment to such office is not known to the society at large, or of which the names of all the persons and of the committee or select bodies of members, and of all presidents, treasurers, secretaries, delegates and other officers, are not entered in a book kept for that purpose, and open to the inspection of all the members of such society or association,—and every society or association which is composed of different divisions or branches, or of different parts acting in any manner separately or distinct from each other, or of which any part shall

What Societies, &c., shall be unlawful.

shall have any separate or distinct president, secretary, treasurer, delegate or other officer elected or appointed by or for such part, or to act as an officer for such part,---shall be deemed and taken to be unlawful combinations and confederacies :

What persons shall be deemed confederates.

2. And every person who, becomes a member of any such society or association, or acts as a member thereof, and every person who, directly or indirectly, maintains correspondence or intercourse with any such society or association, or with any division, branch, committee, or other select body, treasurer, secretary, delegate, or other officer or member of such society or association, whether within or without the province, as such, or who, by contribution of money or otherwise, aids, abets, or supports such society, or any member or officer thereof, as such, shall be deemed guilty of an unlawful combination or confederacy. 2 V. (2) c. 8, s. 6.

Punishment for unlawful confederacy, &c.

7. Any person who shall, in breach of the provisions of this Act, be guilty of any such unlawful combination or confederacy as aforesaid, and shall be convicted thereof upon indictment, shall be imprisoned in the Provincial Penitentiary, for a term not exceeding seven years, nor less than two years or be imprisoned in the common gaol or house of correction, for any term less than two years. 2 V. (2) c. 8, s. 7, and 6 V. c. 5, s. 4.

Punishment for allowing meetings of unlawful Societies, &c.

8. If any person knowingly permits any meeting of any society or association hereby declared to be an unlawful combination or confederacy, or of any division, branch, or committee of such society, to be held in his house, apartment, barn, out-house, or other building, such person shall, for the first offence, forfeit a sum not exceeding two hundred dollars, and shall, for any such offence committed after the date of his conviction for such first offence, be deemed guilty of an unlawful combination and confederacy, and shall be punished as hereby directed for that offence. 2 V. (2) c. 8, s. 8.

Act not to extend to Lodges of Freemasons, &c.

9. And whereas certain societies have been long accustomed to be holden in this Province, under the denomination of lodges of free-masons, the meetings whereof have been in great measure directed to charitable purposes:—nothing in this Act shall extend to the meetings of any such society or lodge, holden under the said denomination and in conformity to the rules prevailing among the said societies of free-masons; Provided such society or lodge has been constituted, by or under the authority of warrants in that behalf, granted by or derived from any grand master or grand lodge in the United Kingdom of Great Britain and Ireland. 2 V. (2) c. 8, s. 9.

C A P . X I .

An Act respecting Newspapers, and other like publications.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

**1.** No person shall print or publish, or cause to be printed or published in Lower Canada any newspaper, pamphlet or other paper containing public news or intelligence, or serving the purpose of a newspaper, or for the purpose of posting or general circulation in detached pieces as such newspaper,— until an affidavit or affidavits, or affirmation or affirmations, made and signed as hereinafter mentioned, containing the matters hereinafter mentioned, have been delivered to the clerk of the peace, for the district in which such newspaper, pamphlet, or other paper is printed or published. 1 V. c. 20, s. 1. Affidavit, &c., to be made by Printers and Publishers of Newspapers, &c.

**2.** Such affidavit or affidavits, affirmation or affirmations, shall set forth the real and true names, additions, descriptions and places of abode, of every person who is, or who is intended to be, the printer or publisher of the newspaper, pamphlet, or other paper mentioned in such affidavit or affidavits, affirmation or affirmations, and of all the proprietors of the same, if the number of such proprietors, exclusive of the printer and publisher, does not exceed two; and in case the same exceed such number, then of two such proprietors, exclusive of the printer and publisher; and also the amount of the proportional shares of such proprietors in the property of the newspaper, pamphlet or other paper, and the true description of the house or building wherein such newspaper, pamphlet or other paper is intended to be printed, and the titles of such newspaper, pamphlet or other paper. *Ibid*, s. 2. Affidavit, &c., to contain certain particulars.

**3.** In every case where the number of such proprietors, exclusive of the printer and publisher, exceeds two, the names of two proprietors, the amount of each of whose proportional shares in the property of such newspaper, pamphlet, or other paper, is not less than the proportional share of any other proprietor, exclusive of the printer and publisher, shall be specified and set forth in such affidavit or affidavits, affirmation or affirmations. *Ibid*, s. 3. When the number of proprietors exceeds two.

**4.** An affidavit or affirmation, affidavits or affirmations of the like import, shall be made, signed and given in like manner, as often as any of the printers, publishers or proprietors named in such affidavits or affirmations are changed, or change their respective places of abode, or their printing house, Affidavit, &c., to be renewed on change of proprietors, &c.

house, place or office, and as often as the title of the newspaper, pamphlet or other paper is changed. *Ibid*, s. 4.

Affidavit to be in writing and signed.

5. Every such affidavit or affirmation shall be in writing, and signed by the person or persons making the same, and shall be taken before any justice of the peace for the district in which such newspaper, pamphlet or other paper is printed or published. 1 V. c. 20, s. 5.

By whom it must be signed.

6. Where the persons concerned as printers and publishers of any newspaper, pamphlet or other such paper, together with such number of proprietors as are hereinbefore required to be named in such affidavits or affirmations as aforesaid, do not altogether exceed the number of four persons, the affidavit or affirmation required shall be sworn or affirmed and signed by all the said persons who are adult,---and when the number of all such persons exceeds four, the same shall be signed and sworn or affirmed by four such persons, if so many of them are adult, or by so many of them as are adult ;---but the same shall contain the real and true names, descriptions and places of abode of every person, who is, or is intended to be the printer or printers, publisher or publishers, and of so many of the proprietors as are hereinbefore for that purpose mentioned, of such newspaper, pamphlet or other such paper as aforesaid :

If the number of persons exceeds four.

Notice to be given by the signers to other proprietors, &c.

2. The person and persons so signing and swearing or affirming to the truth of such affidavit or affirmation in the last mentioned case, shall give notice, within eight days after such affidavit or affirmation is so delivered as aforesaid, to each person not signing and swearing or affirming such affidavit or affirmation, but named therein as a proprietor, printer or publisher of such newspaper, pamphlet, or other paper as aforesaid, that he is so named therein ; and in case of neglect to give such notice, each person who has so signed and sworn or affirmed such affidavit or affirmation shall forfeit eighty dollars. 1 V. c. 20, s. 6.

Penalty for printing, &c., without such affidavit, &c.

7. If any person knowingly or wilfully prints or publishes or causes to be printed and published, or knowingly and wilfully, either as a proprietor thereof or otherwise, sells or delivers out any newspaper, pamphlet or other such paper, such affidavit or affirmation containing such matters and things as are required to be therein contained, not having been duly signed, sworn or affirmed and delivered, and as often as by this Act is required, or any other matter or thing required by this Act to be done or performed not having been done or performed, such person shall forfeit twenty dollars. 1 V. c. 20, s. 7.

Punishment for false statements, omissions, &c.

8. If any person making such affidavit or affirmation as aforesaid, knowingly and wilfully inserts and sets forth therein the name, addition or place of abode of any person as proprietor,

proprietor, publisher or printer of any newspaper, or other such pamphlet or paper as aforesaid, to which such affidavit or affirmation relates, who is not a proprietor, printer or publisher thereof,—or knowingly or wilfully omits to mention in such affidavit or affirmation the name, addition and place of abode of any proprietor, printer or publisher thereof,—or knowingly and wilfully in any other manner or respect, sets forth in such affidavit or affirmation any matter or thing required to be set forth, otherwise than according to the truth,—or knowingly and wilfully omits to set forth therein according to the truth, any matter or thing required by this Act, to be therein set forth,—the person so offending shall be liable to the pains and penalties to which persons are liable for wilful and corrupt perjury. 1 V. c. 20, s. 8.

9. All such affidavits and affirmations shall be filed and kept by the clerk of the peace for the district in which the newspaper, pamphlet or other paper to which they relate, is printed or published ; and the same, or copies thereof certified to be true copies as hereinafter is mentioned, shall respectively in all cases proceedings, civil and criminal, touching any newspaper or other such pamphlet or paper as aforesaid, mentioned in any such affidavit or affirmation, or touching any publication, matter or thing contained in any such newspaper, pamphlet or paper, be admitted as conclusive evidence of the truth of all matters set forth in such affidavit or affirmation, as are hereby required to be therein set forth, against every person who has signed and sworn or affirmed such affidavit or affirmation,—and shall also be admitted in like manner as sufficient evidence of the truth of all such matters against every person who has not signed or affirmed the same, but who is mentioned therein to be a proprietor, printer and publisher of such newspaper, pamphlet or other paper, unless the contrary shall be satisfactorily proved :

*Affidavits, &c., to be filed and preserved.*

*Certified copies to be evidence.*

2. But if any such person against whom any such affidavit or affirmation, or any copy thereof, is offered in evidence, proves that he hath signed, sworn or affirmed, and delivered to the clerk of the peace of the district, previous to the day of the date or publication of the newspaper, pamphlet or other paper, to which the proceedings civil or criminal relate, an affidavit or affirmation that he hath ceased to be printer, proprietor or publisher of such newspaper, pamphlet or such paper, such person shall not be deemed, by reason of any former affidavit or affirmation so delivered as aforesaid, to have been printer or publisher of such newspaper, pamphlet or other paper, after the day on which such last mentioned affidavit or affirmation was delivered to the clerk of the peace. 1 V. c. 20, s. 9.

*Provision as to persons ceasing to be proprietors, &c.*

10. In some part of every newspaper, pamphlet, or other such paper aforesaid, there shall be printed the real name, addition, and place of abode of every printer and publisher thereof,

*Name, &c., of Printer and Publisher to be inserted in the paper.*

## Penalty.

thereof, and also a true description of the place where the same is printed ; and if any person knowingly and wilfully prints or publishes, or causes to be printed or published, any such newspaper, pamphlet, or other paper not containing the particulars aforesaid such person shall forfeit eighty dollars :

## Evidence of printing, &amp;c.

2. And proof in the manner hereinafter mentioned, in any proceeding to recover the same, that the person proceeded against is a printer or publisher of a newspaper, pamphlet or other such paper so printed and published as aforesaid, shall be taken to be proof that such party is a person wilfully and knowingly printing or publishing the same, or causing the same to be printed or published, unless he satisfactorily proves the contrary thereof. 1 V. c. 20, s. 10.

## Proof of purchase from defendant not necessary.

11. It shall not be necessary, after any such affidavit or affirmation, or a certified copy thereof has been produced in evidence as aforesaid, against the persons who made and signed such affidavit or affirmation, or are therein named or any of them, and after a newspaper, pamphlet, or other such paper is produced in evidence, intituled in the same manner as the newspaper, pamphlet, or other paper mentioned in such affidavit or affirmation or copy is intituled, and wherein the name or names of the printer and publisher, or printers and publishers, and the place of printing, are the same as the name or names of the printer and publisher, or printers and publishers, and the place of printing mentioned in such affidavit or affirmation, for the plaintiff, informant, or prosecutor, or person seeking to recover any of the penalties given by this Act, to prove that the newspaper, pamphlet, or paper to which such suit or trial relates, was purchased at any house, shop, or office belonging to or occupied by the defendant and defendants, or any of them, or by his or their servants or workmen, or where he or they by themselves, or their servants or workmen, usually carry on the business of printing or publishing such newspaper, pamphlet, or other such paper, or where the same is usually sold. *ibid*, s. 11.

## Certified copies to be furnished on payment of a certain fee.

12. The clerk of the peace of each district of Lower Canada, by whom any such affidavit or affirmation as aforesaid is kept, shall, upon application made to him, by any person requiring a certified copy of any such affidavit or affirmation as aforesaid, deliver to the person so applying for the same such certified copy, he paying for the same twenty cents and no more. *ibid*, s. 12.

## Effect of certified copy of affidavit, &amp;c.

13. In all cases a copy of any such affidavit or affirmation, certified to be a true copy under the hand of the clerk of the peace having the custody of the same, shall be received in evidence as sufficient proof of such affidavit or affirmation, and that the same was duly sworn or affirmed, and of the contents thereof ; and any such copy so produced and certified, shall also be received

received as evidence that the affidavit or affirmation of which it purport to be a copy, has been sworn or affirmed according to this Act, and shall have the same effect for the purposes of evidence as if the original affidavit or affirmation had been produced and had been proved to have been duly so certified, sworn and affirmed by the person or persons appearing by such copies to have sworn or affirmed the same. *ibid*, s. 13.

14. All fines, penalties and forfeitures under this Act shall be recovered by action of debt, in the superior court for the district in which the offence was committed; and one moiety of the money arising by all such fines, penalties and forfeitures shall belong to the Queen, and the other moiety thereof, to the person informing and suing for the same. *ibid*, s. 14. Recovery of penalties.

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## CAP. XII.

## An Act respecting the desertion of soldiers.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

Offenders against Imp. Act 1 G. 1, c. 47, may be prosecuted before any three Justices of the Peace in the district where the offence is committed.

1. If any person, not being an enlisted soldier in Her Majesty's service, by words or other means, directly or indirectly, persuades or procures any soldier in the service of Her Majesty, to desert or leave such service, or goes about and endeavours to persuade, prevail on, or procure such soldier to desert or leave such service, such offender may be prosecuted either in the manner provided by the Act of the Parliament of Great Britain passed in the first year of the Reign of King George the first, and chaptered *forty-seven*, or in a summary manner, before any three justices of the peace for the district in which such offence is committed, and if convicted of such offence on the oath of one or more credible witness or witnesses before such justices of the peace, may be condemned to pay a penalty of forty pounds *sterling*, with costs, and may be committed to the common gaol of the district, for a period not exceeding six months, and (if such penalty and costs be not forthwith paid) then for such further time as the same remains unpaid; and such penalty shall belong to and be paid to Her Majesty or to the prosecutor suing for the same. 2 V. (3) c. 16, s. 1.

Limitation of prosecutions.

2. No prosecution shall be commenced by virtue of this Act more than six months after the offence committed. *Ibid*, s. 2.

C A P . X I I I .

An Act respecting Arms and Munitions of War.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. Any justice of the peace, magistrate, or other person whomsoever, by any of them authorized, being a subject of Her Majesty, may take possession of, seize and detain any gunpowder, arms, lead, or other materials for making or casting musket bullets, weapons and munitions of war in the possession of any person or persons whomsoever within Lower Canada, save and except such as are or may be in the hands and possession of Her Majesty's forces, or of Her Majesty's officers, or of persons holding the same under the authority of Her Majesty's Government, and may enter in, into and upon any dwelling house, building of any kind whatsoever, lands and tenements, to search for the same, and may there seize, attach and detain the same :

Justices of the Peace may seize and detain arms, &c., unless in possession of H. M.'s Forces.

May enter any dwelling house, &c., to search for same.

2. The justice, magistrate, or other person so authorized, so seizing or taking, or causing to be arrested and taking away, such gunpowder, arms, lead or other materials for making or casting musket bullets, weapons and munitions of war, shall convey the same or cause the same to be conveyed to the police office in the cities of Montreal, Quebec and Three-Rivers, respectively, and to the office of the clerk of the peace in the Town of Sherbrooke, as the case may be, or to some military post within the said districts, respectively, and shall deliver them there, to the end that the same may be secured and disposed of in such manner as the authorities, civil or military, then and there being, may determine. 2, (2) V. c. 2, s. 1.

How to be disposed of.

3. Any person who resists or otherwise impedes any such justice of the peace, magistrate, peace officer, or other person so authorized as aforesaid, subjects of Her Majesty, in the due execution of the provisions of this Act, shall be guilty of a misdemeanor, and being thereof convicted on the oath of one witness before any justice of the peace, shall be committed to the common gaol, without bail or mainprize, for the space of three months. 2, (2) V. c. 2, s. 2. *Query whether this ordinance can apply now.*

Punishment of persons resisting Magistrates or Officers.

## C A P . X I V .

## An Act respecting Indians and Indian Lands.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

## SELLING STRONG LIQUORS TO INDIANS.

Sale of strong liquors to Indians prohibited.

1. No person shall sell, distribute, or otherwise dispose of, to any Indian within Lower Canada, or to any other person for their use, any rum or other strong liquors, of what kind or quality soever, or shall knowingly or willingly suffer the same, in any manner, to come to the hands of any Indian, without a special license in writing for that purpose, first had and obtained from the Governor, or from Her Majesty's superintendent for Indian affairs, or from such other person as the Governor may authorise for that purpose :

Penalty for contravention.

2. Every person offending herein shall, for the first offense, forfeit the sum of twenty dollars, and suffer imprisonment for any time not exceeding one month, and for the second and every subsequent offence, shall forfeit forty dollars, and suffer an imprisonment for any time not exceeding two months ;

If offender be a retailer of liquors, he shall also forfeit his license.

3. If the person so offending, be a publican, innkeeper, or retailer of strong liquors, he shall, over and above the said penalty and imprisonment, be rendered incapable, from the day of his conviction, of selling or retailing liquors to any person whatsoever, notwithstanding any license he has for that purpose, which license shall be null and void from the day of his conviction. 17 G. 3, c. 7, s. 1.

Purchase of clothing and fire arms belonging to Indians prohibited.

2. No person shall purchase, or receive in pledge or in exchange, any clothes, blankets, fire-arms or ammunition belonging to any Indian within this Province, under a penalty of twenty dollars, and imprisonment for any time not exceeding one month, for the first offense, and of forty dollars, and imprisonment for any time not exceeding two months, for the second and every other subsequent offence. 17 G. 3, c. 7, s. 2.

## SETTLING IN INDIAN VILLAGES.

Settlers among Indians must obtain a license.

3. No person shall settle in any Indian village or in any Indian country, within Lower Canada, without a license in writing from the Governor, under a penalty of forty dollars for the first offence, and eighty dollars for the second and every other subsequent offence. 17 G. 3, c. 7, s. 3.

Such settlers may be ordered to remove.

4. The Governor may, by a written instrument, order any person who has become resident in any of the Indian villages in

in Lower Canada, to remove from such village ; and in case of default by the said person so to remove from such Indian village, within seven days from such order being signified to him, he shall forfeit the sum of twenty dollars, for each day after the said seven days, during which he continues to remain in such Indian village, with all costs of prosecution, and shall suffer imprisonment for a period not less than one month and not exceeding two months, and further, until he has paid the said last mentioned penalty and costs. 3, 4 V. c. 44, s. 2.

Penalty on refusing.

5. All the penalties imposed by this Act, for the offences therein specified, may be recovered by information on behalf of Her Majesty, before any two or more of Her Majesty's Justices of the Peace, for the district in which the offence is committed ; and such two or more Justices of the Peace shall hear and determine such information in a summary manner, and upon the oath of one credible witness, and shall levy the said penalties, together with the costs of suing for the same by a warrant to seize and sell the goods and chattels of the person or persons offending, and shall inflict the said imprisonment in the manner hereinbefore provided ; and all the said pecuniary penalties shall be paid into the hands of the Receiver General, for the public uses of this Province. 3, 4 V. c. 44, s. 3.

How penalties may be recovered.

Their appropriation.

6. All informations under and by this Act, shall be brought within six months from the time that the offence is committed, and not afterwards. 3, 4 V. c. 44, s. 4.

Informations under this Act to be laid within six months.

PROTECTION OF PROPERTY OF INDIANS.

7. The Governor may appoint from time to time a Commissioner of Indian Lands for Lower Canada, in whom and in whose successors by the name aforesaid, all lands or property in Lower Canada, appropriated for the use of any tribe or body of Indians, shall be vested in trust for such tribe or body, and who shall be held in law to be in the occupation and possession of any lands in Lower Canada actually occupied or possessed by any such tribe or body in common, or by any chief or member thereof or other party for the use or benefit of such tribe or body, and shall be entitled to receive and recover the rents, issues and profits of such lands and property, and shall, in and by the name aforesaid, subject to the provisions hereinafter made, exercise and defend all or any of the rights lawfully appertaining to the proprietor, possessor or occupant of such land or property :

Appointment of a Commissioner of Indian Lands.

His powers and duties.

2. This section shall extend to any lands in Lower Canada held by the Crown in trust for or for the benefit of any such tribe or body of Indians, but shall not extend to any lands vested in any Corporation or Community legally established and capable in law of suing and being sued, or in any person

Powers to extend to certain lands.

or persons of European descent, although held in trust for or for the benefit of any such tribe or body. 13, 14 V. c. 42, s. 1.

How suits,  
&c., must be  
brought.

8. All suits, actions or proceedings by or against the said Commissioner shall be brought and conducted by or against him by the name aforesaid only, and shall not abate or be discontinued by his death, removal from office or resignation, but shall be continued by or against his successor in office :

Domicile of  
Commissioner.

2. Such Commissioner shall have in each district in Lower Canada, an office which shall be his legal domicile, and whereat any process, notice or like matter may be legally served upon him, and may appoint such deputy or deputies, and with such powers as he, from time to time, deems expedient, or is instructed by the Governor to do. 13, 14 V. c. 42, s. 2, *except proviso.*

Commissioner  
may concede,  
lease or charge  
lands.

9. The said Commissioner may concede or lease or charge any such land or property as aforesaid, and receive or recover the rents, issues and profits thereof as any lawful proprietor, possessor or occupant thereof might do, but shall be subject in all things to the instructions he may from time to time receive from the Governor, and shall be personally responsible to the Crown for all his acts, and more especially for any act done contrary to such instructions, and shall account for all moneys received by him, and apply and pay over the same in such manner, at such times and to such person or officer, as may be appointed by the Governor, and shall report from time to time on all matters relative to his office in such manner and form, and give such security, as the Governor shall direct and require ; and all moneys and moveable property received by him or in his possession as Commissioner, if not duly accounted for, applied and paid over as aforesaid, or if not delivered by any person having been such Commissioner to his successor in office, may be recovered by the Crown or by such successor, in any Court having civil jurisdiction to the amount or value, from the person having been such Commissioner and his sureties, jointly and severally. *ibid*, s. 3.

He shall give  
security.

Rights of indi-  
vidual Indians,  
&c., saved.

10. Nothing herein contained shall be construed to derogate from the rights of any individual Indian or other private party, as possessor or occupant of any lot or parcel of land forming part of or included within the limits of any land vested in the Commissioner aforesaid. *ibid*, s. 4.

Who shall be  
deemed "In-  
dians," within  
the meaning of  
this Act.

11. For the purpose of determining what persons are entitled to hold, use or enjoy the lands and other immoveable property belonging to or appropriated to the use of the various tribes or bodies of Indians in Lower Canada, the following persons and classes of persons, and none other, shall be considered as Indians belonging to the tribe or body of Indians interested in any such lands or immoveable property :

*Firstly.*

*Firstly.* All persons of Indian blood, reputed to belong to the particular tribe or body of Indians interested in such lands or immoveable property, and their descendants ;

*Secondly.* All persons residing among such Indians, whose parents were or are, or either of them was or is, descended on either side from Indians, or an Indian reputed to belong to the particular tribe or body of Indians interested in such lands or immoveable property, and the descendants of all such persons ; And

*Thirdly.* All women lawfully married to any of the persons included in the several classes hereinbefore designated ; the children issue of such marriages, and their descendants. 14, 15 V. c. 59, s. 2.

#### LANDS SET APART FOR INDIANS.

**12.** Tracts of land in Lower Canada, not exceeding in the whole two hundred and thirty thousand acres, may, (in so far as the same has not been already done under the Act 14, 15 Victoria, chapter 106,) under orders in council to be made in that behalf, be described, surveyed and set out by the Commissioner of Crown Lands, and such tracts of land shall be respectively set apart and appropriated to and for the use of the several Indian tribes in Lower Canada, for which they are respectively directed to be set apart in any order in Council, made as aforesaid, and the said tracts of land shall accordingly, by virtue of this Act, and without any price or payment being required therefor, be vested in and managed by the Commissioner of Indian lands for Lower Canada, under this Act. 14, 15 V. c. 106, s. 1.

Certain lands to be set apart for Indians.

**13.** There shall be paid yearly out of the Consolidated Revenue Fund of this Province, a sum not exceeding four thousand dollars, to be distributed amongst certain Indian tribes in Lower Canada by the Superintendent General of Indian affairs, in such proportions amongst the said Indian tribes, and in such manner as the Governor in Council may from time to time direct. *ibid*, s. 2.

Annual grant for Indian Tribes.

## TITLE 3.

## PUBLIC EDUCATION.

## CAP. XV.

## An Act respecting Provincial Aid for Superior Education,—and Normal and Common Schools.

**H**ER Majesty by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

## SUPERIOR EDUCATION INVESTMENT AND INCOME FUNDS.

Superior Education Investment Fund constituted.

1. The Estates and Property of the late Order of Jesuits, whether in possession or reversion, including all sums funded or invested, or to be funded or invested, as forming part thereof, and the principal of all moneys which have arisen or shall arise from the sale or commutation of any part of the said Estates or Property, are hereby appropriated to the purposes of this Act, and shall form a Fund to be called the "Lower Canada Superior Education Investment Fund," and shall be under the control and management of the Governor in Council, for the purposes of this Act ; and the said Fund shall be understood to be intended by the words "the said Investment Fund," whenever they occur in this Act. 19, 20 V. c. 54, s. 1.

Proceeds of said Investment Fund and certain other revenues to constitute the Superior Education Income Fund.

2. The revenues and interest arising from the said Investment Fund, that is to say :

1. The revenues and interest to arise from the real property forming part of the Jesuits' Estates, or from moneys funded or invested as belonging to the said Estates, or from any property, real or personal, reversible to the said Estates as part of them,—the revenue and interest of investments made or to be made, and of debentures held or to be held, on account of the said Estates ;

2. The income and interest to arise from investments to be made out of the moneys received or to be received from commutations effected or to be effected in the Seigniories forming part of the said Estates, or out of the moneys to be received from the collection of any arrears of revenues, interest, and of debts now due, being part of the said Estates, and out of all moneys which, in lieu of any Seigniorial right to be abolished or commuted, will, as part of the said Estates, become due and payable under the Seigniorial Act of 1854, and the Seigniorial Amendment Act of 1855, or under any other Provincial Act enacted or to be enacted, in relation to the abolition or commutation of feudal rights and duties in Lower Canada ;

3. The revenue and interest to arise from investments to be made out of the moneys to be received from the sale of any portion of the said Estates, or from the sale or redemption of any *rente foncière* or *rente constituée*, being part of

of the said Estates,—shall, with the unexpended and unclaimed yearly balances of the Common School Fund for Lower Canada, and the sum hereinafter directed to be paid yearly out of the Consolidated Revenue Fund of this Province, and with any sum to be taken for the purpose in any year out of the Common School Fund of Lower Canada, form a Fund, to be called the “Lower Canada Superior Education Income Fund;” and the said Fund shall be understood to be intended by the words “the said Income Fund,” whenever they occur in this Act. 19, 20 V. c. 54, s. 2.

3. Whenever it appears to the Governor in Council that the said Income Fund can be increased by the sale and by the investment of the proceeds of the sale of any portion of the said Estates, or of any *rente foncière* or *rente constituée* then forming part of them, the Governor in Council may order such sale to be made, and may direct that the moneys realized by it be invested in provincial debentures or other securities, the annual interest or income whereof shall form part of the said Income Fund. 19, 20 V. c. 54, s. 3.

Governor may order the sale of portions of the said estate and re-invest the proceeds.

4. There shall be annually placed to the credit of the said Income Fund, the sum of twenty thousand dollars, out of the Consolidated Revenue Fund of this Province, which sum shall form part of the said Income Fund, and be appropriated accordingly;—and if in any year the said Income Fund falls short of the sum of eighty-eight thousand dollars, then such sum as may be necessary to make it equal to eighty-eight thousand dollars, shall be taken from the Common School Fund of Lower Canada, and added to the said Income Fund for that year, as part thereof. 19, 20 V. c. 54, s. 4.

Certain amount added to the said Income Fund out of the Consolidated Revenue Fund.

5. If in any one year the whole of the Income Fund is not apportioned, the balance not distributed shall remain for further distribution as hereinafter provided, or shall, if the Governor so directs, be invested, and the income or the interest of the investment shall be added to the said Income Fund, and the principal shall form part of the said Investment Fund. 19, 20 V. c. 54, s. 6.

How any balance of the said Fund shall be disposed of.

AID TO SUPERIOR EDUCATIONAL INSTITUTIONS.

6. The said Income Fund, or such part thereof as the Governor in Council may from time to time direct, shall be annually apportioned by the Superintendent of Schools, for Lower Canada, in such manner, and to and amongst such Universities, Colleges, Seminaries, Academies, High or Superior Schools, Model Schools and Educational Institutions, other than the ordinary Elementary Schools, and in such sums or proportions to each of them, as the Governor in Council approves; and the grants or amounts so apportioned shall be paid by the Receiver General, on the warrant of the Governor, to the said Superintendent, who shall pay the same to the respective Educational Institutions entitled to them. 19, 20 V. c. 54, s. 5.

Institutions among which the said Income Fund shall be apportioned.

Grants to be annual, and may be made conditional.

7. Grants to be made out of the said Income Fund shall be for the year only, and not permanent; and the Governor in Council may attach to such grants any conditions which are deemed advantageous for the furtherance of Superior Education. 19, 20 V. c. 54, s. 7.

Grants limited to Institutions in operation.

8. No grant shall be made to any Educational Institution not actually in operation, nor to any Institution owning real estate, whose liabilities exceed two thirds of the value of such real estate. 19, 20 V. c. 54, s. 8.

Proceedings to obtain a grant.

9. Any Educational Institution desirous of obtaining a grant under this Act, shall make application to that effect to the Superintendent of Schools, before or during the month of July in every year: and the Superintendent shall not recommend any grant to any Educational Institution whose application is not accompanied by a Report, shewing, with reference to such Institution:

What application therefor shall set forth.

1. The composition of the governing body;
2. The number and names of the Professors, Teachers or Lecturers;
3. The number of persons taught, distinguishing those under sixteen years and those above sixteen;
4. The general course of instruction, and the books used;
5. The annual cost of maintaining the Institution, and the sources from which the means are derived;
6. The value of the real estate of the Institution, if it holds any;
7. A statement of its liabilities;
8. The number of persons taught gratuitously, or taught and boarded gratuitously;
9. The number of books, globes and maps possessed by the Institution, and the value of any museum and philosophical apparatus belonging to it. 19, 20 V. c. 54, s. 9.

#### AID TO PARISH AND TOWNSHIP LIBRARIES.

A limited annual amount appropriated to the formation of parish and township Libraries.

10. The Governor in Council may direct that out of the said Income Fund, a sum not exceeding two thousand dollars, be yearly, or during any number of years, set apart and appropriated as an aid towards the formation of Parish and Township Libraries, in localities in Lower Canada where adequate

adequate contributions may have been made by the School Municipalities or otherwise for the same purpose ; such aid to be given in money or in books as the Governor in Council may direct and upon such conditions as he thinks proper ;—And such Libraries shall be under such management, inspection and regulations as the Superintendent of Schools may from time to time determine with the approval of the Governor in Council. 19, 20 V. c. 54, s. 10.

NORMAL SCHOOLS.

**11.** The Governor in Council may adopt all needful measures for the establishment in Lower Canada of one or more Normal Schools, containing one or more Model Schools, for the instruction and training of Teachers of Common Schools in the science of Education and art of Teaching ;—he may select the location of such School or Schools, and erect or procure and furnish the buildings requisite for the same. 19, 20 V. c. 54, s. 11, *part.*

Establishment of Normal and Model Schools.

**12.** And inasmuch as it is necessary to provide for the purchase of such site or sites, and for erecting or procuring and furnishing of such buildings, as may be requisite for the said Normal School or Normal Schools,—the Governor in Council may order that out of the said Income Fund the sum of eight thousand dollars be for such purposes yearly set apart and appropriated to form a fund to be called “ The Lower Canada Normal School Building Fund,” and any sum so yearly set apart and appropriated shall be invested or placed at interest as the Governor in Council may direct ; and the income and interest shall, like the principal, form part of the said Fund :

Certain amount appropriated for the erection of the necessary buildings.

The moneys and interest realized by the sale which the Governor in Council may direct to be made of any site and the buildings thereon already acquired for Normal School purposes in Lower Canada, and not deemed convenient for such purposes, shall form part of the last mentioned Fund, and shall be invested or placed at interest in the like manner as any other sum forming part thereof. 19, 20 V. c. 54, s. 15. *See also 16 V. c. 74, s. 5, authorizing the investment of five thousand pounds from the Jesuits’ Estates Fund for the Normal School at Montreal, the interest on the said sum to be re-paid to the said Fund, out of the unclaimed balance of the L. C. Common School Fund, or out of any moneys to be appropriated for Normal Schools.*

Proceeds of sale of unsuitable buildings to be added to “ Building Fund.”

**13.** Any excess or amount of the Lower Canada Normal School Building Fund not actually required for the purposes for which the fund is constituted, shall, in the discretion of the Governor in Council and as he may direct, either revert to and form part of the said Lower Canada Superior Education Income Fund, or be invested as part of the said Lower Canada Superior Education Investment Fund, in which last case the income and interest

How unexpended balance of the Building Fund shall be disposed of.

interest arising from such investment shall form part of the said Income Fund. 19, 20 V. c. 54, s. 16.

Appropriation for the salaries of the Normal School Teachers.

**14.** A sum not exceeding six thousand dollars shall be allowed yearly out of the Common School Fund for Lower Canada, to defray the salaries of officers and other contingent expenses of such Normal School or Normal Schools; and a sum not exceeding four thousand dollars shall be allowed yearly out of the said Income Fund, as an aid to facilitate the attendance of teachers in training at the Normal School or Normal Schools. 19, 20 V. c. 54, s. 13.

In case such appropriation be insufficient.

**15.** In case the two sums mentioned in the preceding section are found insufficient, the Governor in Council may order that out of the said Income Fund a certain sum be yearly set apart and appropriated for the support and maintenance of the said Normal School or Normal Schools, which sum so set apart and appropriated yearly, shall not exceed in any one year the sum of ten thousand dollars. 19, 20 V. c. 54, s. 14.

Normal Schools to be under the control of the Superintendent who is to make rules, &c., for their government.

**16.** The said Normal Schools shall be under the control of the Superintendent of Schools for Lower Canada, who, for their establishment and maintenance, shall from time to time make such arrangements as the Governor in Council may direct; and shall, subject to the approval of the Governor in Council, cause to be made from time to time such rules and regulations as may be required for the management of such Normal Schools; and for prescribing the terms and conditions on which Students shall be received and instructed therein,—the course of instruction to be gone through,—and the manner and form in which the Registers and books shall be kept, and certificates of attendance granted to Students;—and shall likewise, subject to such approval, determine who shall be the Teachers and the persons to be employed therein; and the number and remuneration of such Teachers and persons to be so employed; And Reports shall be made from time to time by the Principals of such Normal Schools to the Superintendent of Schools, containing such particulars as he directs, whenever such Reports are necessary or he requires them. 19, 20 V. c. 54, s. 11. *But see 19, 20 V. c. 14, s. 18, as to powers of the Council of Public Instruction. (Sec. 21 of this Act.)*

Reports to be made to him.

Students in Normal Schools, on completion of a regular course of study, may receive a certificate.

**17.** On the presentation by any Student to the Superintendent of Schools, of a certificate under the hand and seal of the Principal of any such Normal School, that such Student has gone through a regular course of study therein, the said Superintendent may grant to such Student a certificate or diploma of qualification which shall be valid until revoked for some breach of good conduct or of good morals by such Student, and by virtue whereof, while it remains valid, such Student shall be eligible to be employed as Teacher in any Academy,

Academy, Model School or Elementary School under the control of School Commissioners or Trustees of Dissident Schools. 19, 20 V. c. 54, s. 12.

OF THE COUNCIL OF PUBLIC INSTRUCTION.

**18.** The Governor may appoint not more than fifteen and not less than eleven persons (of whom the Superintendent of Schools for Lower Canada shall be one) to be a Council of Public Instruction for Lower Canada, and such persons shall hold their office during pleasure, and shall be subject to all lawful orders and directions in the exercise of their duties, which may from time to time be issued by the Governor in Council. 19, 20 V. c. 14, s. 16.

Composition of the Council of Public Instruction.

**19.** The Superintendent of Schools shall provide a place for the meetings of the Council of Public Instruction, shall call the first meeting thereof, and may call a special meeting at any time by giving due notice to the other Members :

Place of meeting.

The expenses attending the proceedings of the Council shall be defrayed and accounted for by the Superintendent of Schools as part of the contingent expenses of the Education Office ;

Expenses.

A Recording Clerk to the said Council shall be appointed by the Governor in Council, and such Clerk shall enter all its proceedings in a book to be kept for that purpose, and shall, as may be directed, procure the requisite maps, books and stationery, and shall keep all the accounts of the Council. 19, 20 V. c. 14, s. 17.

Recording Clerk to be appointed.

**20.** Five members of the Council, at any lawful meeting thereof, shall form a quorum for the transaction of business. 19, 20 V. c. 14, s. 18, *part.*

Quorum.

**21.** It shall be the duty of the said Council—

Their duties.

1. To appoint one of its members to be Chairman thereof, and with the approval of the Governor in Council to establish the time of its meetings and its mode of proceeding ; the Chairman shall have a second or casting vote in case of an equality of votes on any question ;

To appoint a Chairman.

2. To make from time to time, with the approval of the Governor in Council, such rules and regulations as at the time of the establishment of the Council, the Superintendent of Schools had power to cause to be made with the approval of the Governor in Council, for the management of the Normal School or Normal Schools which may be established, and for prescribing the terms and conditions on which students shall be received and instructed therein, the course of instruction to be gone through, and the mode and manner in which

To make rules for government of Normal Schools.

Registers and Books shall be kept, and in which Certificates of Study shall be granted to Students, and the reports of the Principal of any such Normal School shall be made to the Superintendent of Schools; *But see 19, 20 V. c. 54, s. 11. (Sec. 16 of this Act.)*

Rules for Common Schools.

3. To make from time to time, with the approval of the Governor in Council, such regulations as the Council deems expedient for the organization, government and discipline of Common Schools, and the classification of Schools and Teachers;

To select the books to be used in the Schools.

4. To select or cause to be published, with such approval as aforesaid, books, maps and globes, to be used to the exclusion of others, in the Academies, Model and Elementary Schools under the control of School Commissioners or Trustees, due regard being had in such selection to Schools wherein tuition is given in French and to those wherein tuition is given in English; But this power shall not extend to the selection of books having reference to religion or morals, which selection shall be made as provided by the second sub-section of the sixty-fifth section of this Act concerning Common Schools;

But not Religious works.

Copyrights in School books, &c., may be owned by Council of Public Instruction.

And the copyright of any book, map, chart, musical composition, or other publication whatsoever, (whether original, or wholly or in part compiled,) published for the use of Schools under the direction of the Council of Public Instruction for Lower Canada, may be acquired and held by the said Council; and all profits to result from such copyrights shall enure to the benefit of the Lower Canada Superior Education Income Fund; 22 V. (1859,) c. 52, s. 9.

To make rules for Boards of Examiners.

5. To make from time to time, with such approval as aforesaid, rules and regulations for the guidance of the Boards of Examiners;

And to register the names and classes of all Teachers holding certificates.

6. To cause to be inserted by the Recording Clerk, in a book to be kept for that purpose, in such manner and form as the Council may direct, the names and classes of all Teachers who have received certificates or diplomas of qualification from the Board of Examiners, also the names of all Teachers, who after having gone through the regular course of instruction in any Normal School, have received certificates or diplomas of qualification from the Superintendent of Schools;

Report to be made to the Council by the Superintendent.

And to ensure compliance with the immediate foregoing provision, it shall be the duty of the Superintendent of Schools—  
Firstly, to report to or cause to be laid before the Council, if it be in his power, the names and classes of all Teachers admitted by the different Boards of Examiners since their establishment; Secondly, the names and classes of all Teachers thereafter admitted by the different Boards of Examiners;  
Thirdly,

Thirdly, the names of all Teachers who have received from him certificates or diplomas of qualification after going through the proper course of instruction in any Normal School. 19, 20 V. c. 14, s. 18.

22. The Council of Public Instruction may revoke any certificate or diploma of qualification granted by any Board of Examiners, to any Teacher, or any certificate or diploma of qualification granted by the Superintendent of Schools to any student in any Normal School, for any want of good conduct as Teacher, of good morals, or of temperate habits, in the holder thereof: 19, 20 V. c. 14, s. 19, *part.* Council may revoke Teachers' certificates.

Such revocation shall not take place, however, unless a charge in writing is made by some complainant, or upon the report of a School Inspector, submitted by the Superintendent of Schools to the Council, nor unless such charge be fully proved; But not unless the charge against such Teacher be fully proved.

Any such charge shall be addressed to the Recording Clerk, who shall lay it before the Council at its then next meeting; and if the Council is of opinion that the charge is of such a nature as not to require any investigation, it shall be dismissed *in limine*; but if it is of opinion that the charge is of so grave a nature and character as to require investigation, the Recording Clerk shall cause the Teacher complained of to be served by any Bailiff of the Superior Court for Lower Canada, with a copy of the charge, accompanied by a notice on behalf of the Council, summoning him to appear, either in person or by proxy, before the Council on such day and hour as the Council appoints, to answer the charge made against him; 19, 20 V. c. 14, s. 19, *part.* How such charge shall be laid and determined.

If the Teacher denies the charge, the Council shall forthwith, or on a subsequent day, proceed to receive the evidence, oral or in writing, which each party has to offer, and the Recording Clerk may administer the oath to any witness; and he shall take and keep of record the notes of the evidence taken; 19, 20 V. c. 14, s. 19, *part.* How evidence shall be taken on the said charge.

The said Council may appoint one or two Commissioners to receive the evidence, when the parties reside at a great distance, or when the Council see that, by so doing, a saving of unnecessary expense will be effected; Commissioners to receive evidence.

The instrument appointing such Commissioner or Commissioners shall be issued on behalf and in the name of "The Council of Public Instruction," and under the signature of the Recording Clerk; Their appointment.

Upon the receipt of such instrument, the Commissioner or Commissioners shall notify to the parties the time at which they How they shall proceed.

they will have to produce their witnesses; the Commissioner or Commissioners shall swear the witnesses, and the evidence shall be taken by such Commissioner or Commissioners and afterwards transmitted by him or them to the Recording Clerk, who shall lay it before the Council;

If the Teacher fails to appear.

If the Teacher does not appear, and neglects to answer the charge, the Council shall proceed by default against him, and shall receive and take the evidence, or cause it to be received and taken, in the manner above provided;

Charge not being proved to be dismissed.

If the charge is not proved, the Council shall dismiss it, and if it is proved, the Council shall order as a penalty that the certificate or diploma of qualification of such Teacher be revoked, and that his name be struck from the book containing the names of the qualified Teachers. 19, 20 V. c. 14, s. 19.

#### OF THE SUPERINTENDENT OF SCHOOLS.

Appointment of Superintendent.

**23.** The Governor may, from time to time, appoint by Letters Patent, under the Great Seal of the Province, a fit and proper person to be Superintendent of Schools for Lower Canada, and hold his office during pleasure:

Salary of Superintendent, and allowances for Clerks.

The said Superintendent shall receive *five hundred and sixty pounds*, currency, salary, per annum, and shall be allowed *two hundred and twenty-five pounds* per annum for a Secretary, and *one hundred and seventy-five pounds* for a Clerk, and the contingent expenses of his office; And the said Superintendent shall give security to Her Majesty, to the satisfaction of the Governor in Council, to the amount of eight thousand dollars. 9 V. c. 27, s. 34—*amended by* 12 V. c. 50, s. 30, *and* 18 V. c. 89.

Superintendent to give security.

His duties.

**24.** It shall be the duty of the Superintendent of Schools—

To receive and distribute money for School purposes.

**1.** To receive from the Receiver General all sums of money appropriated for Common School purposes, and to distribute the same among the School Commissioners and Trustees of the respective Municipalities, according to law, and in proportion to the population of the same, as ascertained by the then last Census;

To prepare Forms.

**2.** To prepare and cause to be printed and distributed all necessary Forms;

And recommendations.

**3.** To prepare and cause to be printed recommendations and advice on the management of Schools, as well for the School Commissioners and Trustees as for the Secretary-Treasurers and Teachers;

To keep certain books.

**4.** To keep correct books and distinct Schedules of all the matters subjected to his superintendence and control, so that all

all requisite information may be clearly and promptly obtained by the Government, the Legislature, or the School Visitors ;

5. To examine and control the accounts of all parties, corporations or associations accountable for any public moneys appropriated and distributed under the laws relating to Common Schools, and to report whether the said moneys are *bonâ fide* applied for the purposes for which they were granted ;

To examine accounts of parties receiving public moneys.

6. To lay annually before the three branches of the Legislature, a detailed report of the actual state of education in Lower Canada, tables of Schools, number of children attending them, and other like matters ; 9 V. c. 27, s. 35.

To make an annual report.

7. To state, in his yearly Report to the Legislature, what he may have done under the first seventeen sections of this Act, during the period to which such Report relates ; 19, 20 V. c. 54, s. 19.

Its contents.

8. To perform all other duties assigned to him by this Act.

25. Every document, or copy of a document, signed or certified by the Superintendent of Schools, shall be *primâ facie* evidence of the truth of what is therein stated. 12 V. c. 50, s. 13.

His signature ; effect of.

26. Whenever difficulties of a grave nature on the subject of Schools occur in any School Municipality, and in consequence thereof it becomes necessary that the Superintendent of Schools should repair to the spot, to correct the evil, or to obtain information, and he is unable so to repair to the spot, by reason of the other duties of his office, or of sickness, or some other cause, the Governor may, upon a representation in that behalf from the Superintendent of Schools, appoint a proper person in the stead of the Superintendent of Schools, to act in relation to such difficulties, and with all the powers of the Superintendent, unless those powers be otherwise defined and limited in the order containing the appointment of such Deputy. 12 V. c. 50, s. 23.

Recital.

May have a Deputy in certain cases.

## OF COMMON SCHOOLS.

### DIVISION OF LOWER CANADA INTO MUNICIPALITIES AND DISTRICTS FOR COMMON SCHOOL PURPOSES.

27. There shall be in each of the Cities of Quebec and Montreal, and in each Municipality, (*existing on the ninth day of June, one thousand eight hundred and forty-six.*) Town or Village in Lower Canada, one or more Common Schools for the elementary instruction of youth, to be managed by School Commissioners,—or in the event of dissentient schools being established therein, then by the Trustees of such Schools,—in the manner hereinafter provided. 9 V. c. 27, s. 1.

Each Municipality to have one or more Common Schools.

What shall be deemed Municipalities for the purposes of this Act.

**28.** Each Municipality existing *on the day last aforesaid*, or legally established thereafter, shall be a Municipality for the purposes of this Act; But the inhabitants of any City, Town or Village Municipality, other than the Cities of Montreal, Quebec and Three-Rivers, shall, for the purposes of this Act, be subject to the jurisdiction of the School Commissioners or Trustees, elected for the Municipality of which the City, Town or Village makes or did formerly make part, and shall have the right of voting at the election of such School Commissioners or Trustees. 9 V. c. 27, s. 2.

Certain parishes, &c., to be Municipalities.

**29.** Each Parish, Township or place, which, immediately before the first day of July, one thousand eight hundred and fifty-five, was a Municipality for School purposes, under the Common School Acts of 1846 and 1849, shall continue to be a Municipality within the meaning of this Act, and for all the purposes thereof. 18 V. c. 100, s. 5, *part*.

Limits of Municipalities may be altered and new ones established.

**30.** The Governor in Council may, from time to time, alter the limits of existing School Municipalities, subdivide the same, or establish new ones, of all which public notice shall be given by the Superintendent of Schools, in such manner as the Governor may direct. 12 V. c. 50, s. 1.

Division of Municipalities into School Districts.

**31.** The School Commissioners *or Trustees*, shall divide the Municipality into School Districts, in all places where this has not been already done, and shall designate them by the numbers one, two, &c., and the limits assigned by them to each District shall be entered in the Registers of their proceedings; they may also at their discretion alter the limits of Districts already existing, and erect new ones from time to time, so as to suit the wants of the population and local circumstances. 9 V. c. 27, s. 18.

A certain number of children in each district.

**32.** No School District shall contain less than twenty children between the ages of five and sixteen years; except that the Commissioners *or Trustees* may allow one School District in each Municipality to contain less than that number of children. 9 V. c. 27, s. 19.

Two or more districts may be united.

**33.** The School Commissioners *or Trustees*, shall take care that there be a School in each School District, and may, when they deem it expedient, unite two or more Districts, and again separate them, and shall give notice to the Superintendent of Schools of their having done so. 9 V. c. 27, s. 20.

#### COMMON SCHOOL COMMISSIONERS AND TRUSTEES—THEIR ELECTION, POWERS AND DUTIES.

##### *Their Election.*

Meeting of householders

**34.** There shall be held each year, on the first Monday in July, a general meeting of all the landholders and householders of

of each *School Municipality*, which meeting, if it be the first which is to be held in the *Municipality* for the election of a body of *School Commissioners*, shall be called by the *Senior Justice of the Peace*,—or, in his default, by any other *Resident Justice of the Peace*,—or, in their default, by any three *landholders*,—by giving eight days previous public notice at the doors of the *Churches* or places of *Public Worship*, or if there be no *Church* or place of *Public Worship*, then by a notice posted at two of the most public places in such *Municipality* :

for election of Commissioners.

At such meeting the *Senior Justice* present, or in his default such other person as may be appointed by the meeting shall preside ;—And thereafter, at the general annual meeting for the election of *School Commissioners*, one of the *Senior acting School Commissioners* shall preside, provided that he be not a *Minister of the Gospel*, and if two *Commissioners* then present are of the same date in office, then the oldest by age shall preside ;

Senior acting School Commissioner to preside.

If, from any cause, such general meeting has been prevented from taking place on the first *Monday* in *July*, and the election could not therefore be proceeded with, such meeting may be held and the election may take place on any of the ensuing *Mondays* in the same month ;

In case the meeting is not held on the day appointed.

And if any such election has been commenced on the first or any subsequent *Monday* in *July*, and has not been closed on the same day, it may be continued on the morrow, and the day after the morrow, if necessary, but not longer ;

Election may be continued.

The time for holding such meetings shall be from ten o'clock in the forenoon until five in the afternoon. 9 V. c. 27, s. 4.

Time for holding meetings.

**35.** At each such meeting the persons qualified to vote shall elect five *School Commissioners*, or shall elect the number of *Commissioners* required to fill the vacancies caused by the retiring of such of the *Commissioners* as go out of office. 9 V. c. 27, s. 5.

Five Commissioners to be elected.

**36.** The *Clergymen* of all religious denominations in each *School Municipality* are eligible as commissioners, without any property qualification. 12 V. c. 50, s. 6.

The Clergy eligible.

**37.** If the choice of the *School Commissioners* is contested, any three electors present may demand a poll, which shall be held in conformity to the regulations established in the Law then in force with regard to the election of *Municipal Councillors*. 9 V. c. 27, s. 6, part.

Poll may be demanded.

**38.** No person shall vote at any election of *School Commissioners* in any *School Municipality*, unless he has previously paid up all contributions then payable by him for *School purposes*

Who may vote.

purposes in such Municipality ;—And any person so voting in contravention to this enactment, shall incur a penalty not exceeding ten dollars. 12 V. c. 50, s. 9.

Contestation of election to be determined by Circuit Court.

**39.** All contestations with regard to such elections and to the functions and powers assumed by School Commissioners, or any of them, or their officers, or by any persons claiming to be such Commissioners or officers, may, by any person having authority as Visitor or otherwise over the Schools in the locality, or by any person assessed for their support, be brought by a petition (*requête libellée*) setting forth the case, of which a copy must have been served on the parties concerned, before the Superior Court in the District, or before the nearest Circuit Court, and shall there be determined in a summary manner on the evidence adduced. 9 V. c. 27, s. 6.

Commissioner acting as such illegally may be prosecuted.

**40.** Any School Commissioner whose election has been obtained by fraud or stratagem, or by the votes of persons not qualified as electors, or any person usurping the functions of School Commissioner, or illegally holding that office, may be summarily prosecuted at the instance of any party interested, or of several collectively interested, before any one of the Judges of the Superior Court for Lower Canada sitting either in the Superior or Circuit Court in the District in which such election, usurpation or illegal detention of office has taken place, for the purpose of declaring such election or such detention of office illegal, and such seat vacant. 16 V. c. 208, s. 1.

Procedure in such case.

**41.** For all the purposes of the next preceding section, the procedure to be adopted shall be that prescribed by the Act 12 V. c. 41.—16 V. c. 208, s. 2.

Superintendent may appoint Commissioners in certain cases.

**42.** If the office is declared vacant, or a legal election has not been had, thereby preventing the operation of the School Laws, the Superintendent of Education for Lower Canada may appoint School Commissioners to fill the vacant office, or to replace those who shall have been illegally elected. 16 V. c. 208, s. 3.

Re-election.

**43.** No School Commissioner shall be re-elected, except by his own consent, during the four years next after his going out of office. 9 V. c. 27, s. 15.

List of persons elected to be transmitted to Superintendent.

**44.** The Chairman of any general meeting for the election of School Commissioners shall, within eight days thereafter, report the proceedings thereat to the Superintendent of Schools, and transmit to him a list of the persons elected thereat as Commissioners, under a penalty of five dollars. 9 V. c. 27, s. 11.

In case no election is held.

**45.** For the Municipalities in which no election of School Commissioners has been had within the time hereby prescribed, the

the Superintendent of Schools shall, *ex officio*, upon an order from the Governor in Council, appoint them, and also a Secretary-Treasurer, subject to the provision in the next following section. 9 V. c. 27, s. 12.

**46.** Within fifteen days after the time when any such election ought to have been had, the School Commissioners for the then last year, three of the School Visitors, the acting Church-Wardens, Elder, Class-Leader or Trustees of the several religious denominations, and the Clergyman or Minister of the most numerous congregation, may meet and submit to the Superintendent of Schools, the names of so many persons as School Commissioners as are provided by this Act; and on the approval of the said Superintendent, signified to the Chairman of such meeting, such persons shall become School Commissioners for the purposes of this Act. 9 V. c. 27, s. 13.

Proceedings in case no election is held.

**47.** If any vacancy happens among the School Commissioners, by reason of the permanent absence from the Parish, death or incapacity from sickness of any Commissioner, another shall be elected in his stead by the electors for the locality, at a meeting called for that purpose, by the Chairman or temporary Chairman of the School Commissioners, and at which he himself, or in his absence, one of the School Commissioners by him named, shall preside. 9 V. c. 27, s. 14.

In case of vacancy among Commissioners.

**48.** Whenever on the occurrence of a vacancy in the Office of School Commissioner, in the case provided for by the next preceding section, the election of another person to the said office has not taken place within one month after the occurrence of such vacancy, the Governor in Council may fill up such vacancy. 12 V. c. 50, s. 10, *part*.

In what case vacancy is to be filled by the Governor.

**49.** In all cases of incapacity arising from sickness, no election or appointment to fill the said office shall take place, unless the said incapacity has been established by the certificate of a Physician deposited with the Secretary-Treasurer; and the vacancy arising from such incapacity shall date from the day of the deposit of such certificate. 12 V. c. 50, s. 10, *remainder*.

In case of incapacity.

*Their term of office and corporate rights.*

**50.** The School Commissioners elected at a general meeting, or appointed by the Governor or by the Superintendent of Schools, as above mentioned, shall remain in office for three years; except that after the first election or nomination of a Board of Commissioners, two of them (to be determined by lot) shall go out of office at the end of one year, and two more (to be determined in like manner) shall go out at the end of two years, and the remaining one at the end of three years;—  
the

School Commissioners to hold office for three years.

the Chairman shall be liable, in common with the other School Commissioners, to go out of office if it be so determined by lot, and the places of Commissioners going out of office shall be filled by election at a general meeting, or in default by others, appointed by the Governor. 9 V. c. 27, s. 7.

Commissioners  
not to be  
Teachers.

**51.** No School Commissioner shall be a Teacher of any School in his Municipality. 9 V. c. 27, s. 8.

Majority to de-  
cide all ques-  
tions.

**52.** At meetings of the School Commissioners, all questions shall be decided by the majority of votes ; and when the votes upon any question are equal on both sides, without the votes of the Chairman, then and in that case only, the Chairman may give his vote, as a casting vote, but in no other case shall the Chairman vote. 9 V. c. 27, s. 17.

To be a Cor-  
poration.

**53.** The School Commissioners in each Municipality shall be a Corporation under the name of *The School Commissioners for the Municipality of* \_\_\_\_\_, *in the County of* \_\_\_\_\_ ; they shall have perpetual succession and a common seal, if they think proper to have one ; they may sue and be sued, and shall generally have the same powers which any other body politic or corporate has, or ought to have with regard to the purposes for which it is constituted ; but they shall not at any time hold real property to the value of more than two thousand dollars yearly, in the Cities and Municipalities of Quebec or Montréal, or of one thousand two hundred dollars yearly value in any other Municipalities. 9 V. c. 27, s. 23.

Their rights as  
such.

School property  
vested in Com-  
missioners.

**54.** No such Corporation shall, without the express authority of the Superintendent of Schools, alienate any portion of the property held by it ;—And no such Corporation shall cease by reason of the want of School Commissioners in any Municipality at any time, but in such case the powers of the Corporation, as regards the possession of any property, real or personal, shall become vested in the Superintendent of Schools, and in his default in the Governor, in trust, until it is otherwise provided by law ;—And all Lands, School Houses or other property, real or personal, belonging to Common Schools, in any part of Lower Canada, under any law or by any title whatsoever, are vested in the Corporation of the School Commissioners respectively, of the Municipality in which such property is situate. 9 V. c. 27, s. 24.

#### TRUSTEES OF DISSENTIENT SCHOOLS.

In what case  
dissentient  
Trustees may  
be chosen.

**55.** When in any Municipality, the regulations and arrangements made by the School Commissioners for the conduct of any School, are not agreeable to any number whatever of the inhabitants professing a religious faith different from that of the majority of the inhabitants of such Municipality, the inhabitants so dissentient may collectively signify such dissent, in

in writing, to the Chairman of the Commissioners, and give in the names of three Trustees, chosen by them for the purposes of this Act :

2. Such Trustees shall have the same powers and be subject to the same duties as School Commissioners, but for the management of those Schools only which shall be under their control ; and such dissentient inhabitants may, by the intervention of the Trustees, establish in the manner provided with regard to other Schools, one or more Schools, which shall be subject to the same provisions, duties and supervision, and they shall be entitled to receive, from the Superintendent or from the School Commissioners, a sum out of the general or local School Fund, proportionate to the dissentient population they represent ;

Powers of such Trustees.

3. Whenever the majority of the children attending any School in operation, *on the ninth day of June, one thousand eight hundred and forty-six*, and the School House belongs to or such School House is occupied by such dissentients, the School House shall continue to be occupied by them so long as the number of children taught in School amounts to the number required to form a School District ;

School House to continue to be occupied by dissentients, in certain cases.

4. And the entire amount of moneys raised by assessment on such dissentients shall be paid to the Trustees of such School, together with a due proportion of the building fund. 9 V. c. 27, s. 26.

Proportion of School moneys to be paid to Trustees.

**56.** The Trustees of dissentient minorities shall be elected for three years, except that at the end of each of the two first years one of the Trustees shall retire and be re-elected, another shall be elected in his stead, by such dissentients :

Election of Trustees.

2. Children from other School Districts, of the same faith as the dissentients for whom the School was established, may attend the same whenever such dissentients are not sufficiently numerous in any District to support a School alone ;

Children from other School Districts may attend dissentient Schools.

3. Individuals of the dissentient minority shall not be elected or serve as School Commissioners, nor vote at the election of the School Commissioners ;—and in like manner the individuals of the majority shall not be elected or serve as School Trustees, nor vote at their election. 9 V. c. 27, s. 29.

Dissentients not to be elected Commissioners.

**57.** Whenever Trustees of Dissentient Schools have been chosen, and have established one or more Dissentient Schools in any School Municipality, and the said Trustees are not satisfied with the arrangements antecedently made by the School Commissioners of the Municipality relative to the recovery and the distribution of the assessments, they may, by a written declaration to that effect, addressed to the Chairman of the School Commissioners, at least one month before

Trustees may receive the assessment on dissentient inhabitants.

the

the first day of January or July in any year, acquire the right of themselves receiving for the following and all future years during which they continue to be such Trustees, the assessments levied on the inhabitants so dissentient, and who have signified their dissent in writing, as hereinafter provided : 12 V. c. 50, s. 18.

Trustees may receive School fees.

2. The said Trustees shall, in such case, be entitled to obtain a copy of the assessment in force, of the lists of children capable of attending School, and of other documents in the hands of the School Commissioners or of the Secretary-Treasurer, and connected with the future government of Dissentient Schools ; And the said Trustees may also receive the amount of the monthly fees payable in respect of the children of dissentient parents or masters, and may institute all suits or prosecutions, and do all other things necessary for the recovery of the said assessments and monthly fees ; 12 V. c. 50, s. 18.

Trustees to be a Corporation.

3. The said Trustees shall be a Corporation for the purposes of their own dissentient Schools and School Districts, and shall be entitled to receive, from the Superintendent of Schools, shares of the General School Fund, bearing the same proportion to the whole sums allotted from time to time to such Municipality as the number of children attending such Dissentient Schools bears to the entire number of children attending School in such Municipality at the same time, and a similar share of the building fund ; 12 V. c. 50, s. 18.

May constitute their own School Districts.

4. The said Trustees may constitute their own School Districts, independently of the Schools Districts established by the School Commissioners, and shall have the same rights and shall be subject to the same duties and penalties as the School Commissioners, in respect of the collection and application of the moneys by them received, of the rendering and examination of their accounts, and of all other matters whatever in reference thereto, and may be removed and others appointed by the Governor in Council, or by the Superintendent of Schools, in all those cases in which School Commissioners are liable to be so dealt with ; 12 V. c. 50, s. 18.

May make a separate assessment.

5. If, after such declaration of separate management, there is no subsisting assessment, or if the assessment does not appear to them a proper one, the Trustees may, in the months of July and August in each year, proceed to make such assessment for the future upon the inhabitants so dissentient. 12 V. c. 50, s. 18.

Their powers as regards it.

58. The Trustees of Dissentient Schools shall alone have the right of fixing and collecting the assessments to be levied on the inhabitants so dissentient. 19, 20 V. c. 14, s. 5.

SECRETARY-TREASURER TO THE COMMISSIONERS OR TRUSTEES.

**59.** The School Commissioners or Trustees shall meet on the first Monday after their appointment or after notice of their election, for the purpose of choosing a Chairman and a Secretary-Treasurer ; and in case of the absence, whether permanent or temporary, of the Chairman, the assembled School Commissioners or Trustees shall name one of themselves as Chairman for the time being, who shall then be vested with the same powers and privileges as the ordinary Chairman. 9 V. c. 27, s. 16.

Appointment of Secretary-Treasurer.

**60.** Every Secretary-Treasurer shall, before entering upon his duties as such, give security to the School Commissioners or Trustees, either by a Notarial Instrument (*Acte notarié*) the minute of which shall remain with the notary receiving it, or by a bond (*Acte sous seing privé*) signed and acknowledged before a Justice of the Peace :

Secretary-Treasurer to give security.

2. The said security shall be given by at least two solvent sureties jointly and severally (*solidairement*) to the satisfaction of the Chairman of the School Commissioners or Trustees, and for the total amount of the moneys for which the Secretary-Treasurer may at any time be responsible, whether arising from the Local School Fund, or from any particular contributions or donations paid into his hands for the support of Schools, or from the Common School Fund, and such security shall be renewed whenever its renewal is required by the School Commissioners or Trustees ;

3. Whenever the said security is entered into by Bond (*Acte sous seing privé*), the original thereof shall, within one month after its execution, be deposited in the hands of the County Registrar, who shall keep the same in his custody and deliver copies thereof, which, being certified by him, shall be considered to all intents and purposes as authentic ; And for every such copy the Registrar may demand and receive ten cents for every hundred words therein ;

In case security is by *Acte sous seing privé*.

4. The School Commissioners or Trustees may at any time remove the Secretary-Treasurer, and appoint another in his place ;

Removal of Secretary-Treasurer.

No Schoolmaster shall be elected or serve as a Secretary-Treasurer, nor be appointed a Justice of the Peace. 12 V. c. 50, s. 7.

Schoolmasters not to be.

**61.** Every such Secretary-Treasurer shall, annually, in the first week of the month of July, prepare and submit to the School Commissioners or Trustees a detailed statement of the receipts and expenditure of the Municipality for the year expired on the thirtieth day of June immediately preceding ;— such

Annual statement to be submitted by.

such statement, after being approved by the School Commissioners or Trustees, shall be by them submitted to a public meeting of the rate-payers of the Municipality convened sometime in the month of July, by the Secretary-Treasurer, in the manner prescribed for convening meetings for the election of School Commissioners;—and a fair copy of such statement, certified and signed by the Secretary-Treasurer, shall be by him affixed at the door of the Church, or principal place of worship in the Municipality, before the hour of nine of the clock in the forenoon of the Sunday next after such meeting; and the Secretary-Treasurer shall, on the payment to him of the sum of one dollar, furnish to any rate-payer a copy of such statement. 14, 15 V. c. 97, s. 10.

His remuneration.

**62.** The remuneration of the Secretary-Treasurer may, in the discretion of the School Commissioners or Trustees, be fixed at any amount not exceeding seven per cent. on the moneys received by him as such; but such remuneration shall include every service which the Commissioners or Trustees may require from time to time from the Secretary-Treasurer, and shall cover all contingent expenses whatever (except such as may be specially authorized by rules and regulations to be made by the Superintendent of Schools from time to time), and shall not exceed one hundred and twenty dollars in one year in any case. 19, 20 V. c. 14, s. 8.

Powers of Superintendent as regards Secretary-Treasurer in certain cases.

**63.** In the event of any difficulties arising between the School Commissioners or Trustees and the Secretary-Treasurer of any School Municipality, or in the event of an application in writing to the same effect being addressed to the Superintendent of Schools by at least five of the assessed contributors to the Local School Fund of the Municipality, on the subject of the accounts, or of the rendering of the accounts of the Secretary-Treasurer for the year ending on the first of July then preceding, the Superintendent of Schools shall have power at all times to cause the said accounts, together with the vouchers in support of the same, or copies thereof, to be laid before him, and shall upon the whole matter render a full and explanatory judgment, which shall be entered in a Register to be by him kept for that purpose, which judgment shall have the force of a decision of Arbitrators (*sentence arbitrale*) as to all parties concerned, and of such judgment copies may be given by him, which, being by him certified as true, shall be taken and deemed to be authentic. 12 V. c. 50, s. 12.

#### DUTIES OF COMMON SCHOOL COMMISSIONERS AND TRUSTEES.

##### *With respect to School Property.*

Duties of Commissioners or Trustees.

**64.** It shall be the duty of the School Commissioners or Trustees in each Municipality: 9 V. c. 27, s. 21.

1. To take possession of lands and School Houses acquired, given to, or erected by the School Trustees or Commissioners, and to which the Province may have contributed in virtue of any former Act, or by the Royal Institution (which Institution is hereby authorized to surrender the same), under any Act for the encouragement or promotion of Education ;—and in case of opposition, to give notice thereof to the Superintendent of Schools, who shall advise them as to the means of removing or overcoming such opposition ;— 9 V. c. 27, s. 21, p. 1.

To hold lands and School houses.

2. To acquire and hold for the Corporation, by any title whatsoever, all real or personal property, moneys or income for the purposes of Education, until the power hereby given be taken away or modified by Law, and to apply the same according to the instructions of the donors; 9 V. c. 27, s. 21, p. 2.

To acquire and apply School property.

3. To do whatever may be expedient with regard to building, repairing, keeping in order or renewing all School Houses, lands, fences and moveable property held by them, or to hire temporarily or accept the gratuitous use of Houses and other buildings for the purpose of keeping Schools therein ; 9 V. c. 27, s. 21, p. 3, *part.*

To keep School houses in order.

4. They may associate with themselves, permanently, or for a time only, Managers to aid them in matters connected with the administration of the School Houses, the erection and repair, warming and cleaning thereof, and with keeping in good order the property, moveable and immoveable, belonging to the Schools, and other like matters ; 9 V. c. 27, s. 21, p. 15.

Managers.

5. Whenever it is necessary to purchase or to build a School House, in any School District, and it appears to the School Commissioners, from their knowledge of the circumstances of the case, that it would be just that such School House should be purchased or built by the inhabitants of the School District specially, and not by the Municipality generally ;—and whenever, under like circumstances, it becomes necessary to repair and keep in order any School House in any particular School District, the said School Commissioners may levy, at the time and in the manner prescribed for levying assessments for the building of School Houses in general, a special assessment in each such School District, for the purchase or building, and for the repairing and keeping in order of the School House of such School District, and in such case such School District shall for that year be exempt from any assessment for the purchase or building of School Houses, except it be for a Model School ;

Special assessments for building School houses.

And in every case of special assessment, in any School District, or of a general assessment in the whole of the Municipality, for the purchase or building of School Houses, other than a Model School, after such special assessment has taken place,

Appeals from such assessments.

place, any of the parties so assessed, in every School District so separately assessed, may appeal to the Superintendent of Schools, who may set aside such assessment, or relieve therefrom the School Districts, or any one of them so appealing, or confirm the same, as to him appears most equitable under the circumstances ; 12 V. c. 50, s. 15.

Limitation of such assessments.

6. No rate shall be levied for the building of a Superior or Model School to exceed the sum of one thousand dollars, nor for building a Common School to exceed the sum of five hundred dollars ; and all accounts relative to the objects aforesaid shall be transmitted annually to the Superintendent of Schools ; 9 V. c. 27, s. 21, p. 3, *part*,--*And* 22 V. (1859.) c. 52, s. 7.

Appeals as regards limits of districts.

7. Whenever a site for a School House is selected by the School Commissioners or Trustees, or any alteration is made in the limits of any School District, or any new one is created in any School Municipality, an appeal shall at all times lie to the Superintendent of Schools ; but no such appeal shall be brought without the approbation in writing of three School Visitors other than the School Commissioners or Trustees of the said Municipality. 12 V. c. 50, s. 11.

*With respect to the Schools, Teachers, books, fees, &c., &c.*

Duty of Commissioners as regards—

**65.** It shall be the duty of the School Commissioners and Trustees :

Appointment of Teachers.

1. To appoint and engage from time to time Teachers duly qualified to teach in the Schools under their control, and after mature deliberation at a meeting of Commissioners or Trustees called for that purpose, to remove them on account of incapacity, neglecting faithfully to perform their duties, insubordination, misconduct or immorality ; 9 V. c. 27, s. 21, p. 4.

Course of study.

2. To regulate the course of study to be followed in each School,—to provide that no other books be used in the Schools under their jurisdiction than those approved and recommended by the Council of Public Instruction ;—to establish general rules for the management of the Schools, and to communicate them in writing to the respective Teachers ;—to fix the time of the annual public examination, and to attend the same ;

Exception as to religious books, &c.

But the Curé, Priest or officiating Minister, shall have the exclusive right of selecting the books having reference to religion and morals, for the use of the Schools for children of his own religious faith ; 9 V. c. 27, s. 21, p. 5, *as amended by* 19, 20 V. c. 14, s. 18, p. 4.

Their duty as to disputes.

3. To hear and decide every dispute arising in relation to the Common Schools in their Municipality, between the parents

parents or children and the Teachers, and others of like nature ;  
9 V. c. 27, s. 21, p. 6.

4. To fix the fees per month to be paid during the eight school months, for each child of age to attend school, by each father or mother of a family, tutor or curator, to the Secretary-Treasurer over and above the rate levied, and for the use of the School District (*arrondissement*) paying the same ;—such fees not to exceed in any case forty cents per month, and to be diminished at the discretion of the Commissioners or Trustees, according to the means of the parents, age of the children, and course of instruction, but not to be less than three pence per month ;

To fix the  
School fees.

The Commissioners or Trustees may, nevertheless, ask higher monthly fees in Model Schools, and for the whole time the same are in active operation. 9 V. c. 27, s. 21, p. 12.

Fees in Model  
Schools.

66. The said monthly School fees shall not be demandable except for each child of from seven to fourteen years of age capable of attending School ; but children from five to sixteen years of age residing in any School District, shall have a right to attend the School thereof, upon payment of the said monthly fees. 12 V. c. 50, s. 2.

Age of children  
to govern  
amount of fees.

67. The School Commissioners or Trustees shall not exact the monthly School fees from indigent persons, nor from any other persons for children who are mentally deranged, blind, deaf and dumb, or incapable of attending School by reason of some grave and protracted illness, nor for children absent from the School Municipality for their education, or attending a College or other Educational Institution, either incorporated or receiving a special allowance out of public funds other than those under the control of the School Commissioners. 12 V. c. 50, s. 3.

Certain persons  
exempt from  
payment of.

68. The monthly fees payable on account of children attending a Model School, or a separate Girls' School, or a School kept by some religious community forming a School District, shall form no part of the School Fund ;—but such monthly fees, to the amount established for the other children in the Municipality, shall be payable directly to the Teacher, and be for his or her use, unless different monthly fees have been agreed upon. 12 V. c. 50, s. 21.

Certain fees  
not to form  
part of School  
Fund.

69. The School Commissioners and Trustees, in the semi-annual accounts and reports which they are bound to transmit to the Superintendent of Schools, shall state the amount of monthly fees fixed for each child, and the amount of such fees actually collected, either directly by them or by the Teacher ;—and if the School Commissioners or Trustees fail to fix the amount of monthly fees to be paid for each child, or to cause the

Commissioners  
to transmit a  
statement of  
fees received.

the same to be collected, the Superintendent of Schools, with the approval of the Governor in Council, may refuse the School allowance for the year, to the School Municipality, represented by such Commissioners or Trustees in default. 19, 20 V. c. 14, s. 3.

*With respect to Schools for Girls.*

Separate Schools for girls may be established.

**70.** The School Commissioners or Trustees may establish in the Municipality, a Girls' School distinct from that for Boys, and such Girls' School shall be deemed to form a School District;—And if any religious community has already established in such Municipality a Girls' School for elementary education, such community may place its School, from year to year, or as may be agreed upon, under the management of the Commissioners or Trustees, and it shall then be entitled to all the advantages hereby granted to Common Schools. 9 V. c. 27, s. 30.

*With respect to the annual census of children attending Schools.*

Commissioners to prepare an annual census of children in each Municipality.

**71.** The School Commissioners and the Trustees of Dissentient Schools, shall cause to be made by their Secretary-Treasurers, between the first day of September and the first day of October, of every year, a census of the children in each School Municipality, distinguishing those who are from five to sixteen years of age, those from seven to fourteen years, and those actually attending school; and shall transmit such census to the Superintendent of Schools within ten days after its completion. 19, 20 V. c. 14, s. 2.

*With respect to inspection of Schools—Minutes of proceedings, &c.*

**72.** It shall be the duty of the School Commissioners and Trustees :

Schools to be inspected by Commissioners.

1. To name two or more from among themselves to visit each public School in the Municipality at least once in six months, and to report to the Corporation of which they are members, the state of the School, and whether their rules and regulations are strictly observed, also the progress of the scholars, the character and capacity of the Teachers, and every other matter relating to the management of the Schools; 9 V. c. 27, s. 21, p. 7.

Commissioners to obey instructions of Superintendent as regards accounts and register.

2. To comply, as regards the accounts and register to be kept by the Secretary-Treasurer, with all instructions, whether special or general, from time to time given them by the Superintendent of Schools, to whom they shall report their proceedings yearly, before the first day of July; 9 V. c. 27, s. 21, p. 8.

3. To keep registers of their proceedings, signed for each sitting by the Chairman and Secretary; and also correct accounts

accounts of their receipts and expenditure, with reference to the Schools in each District under their control, mentioning specially what relates to each School; and such accounts shall be open to all persons, contributors to the support of the Schools, at all seasonable hours. 9 V. c. 27, s. 21, p. 9.

*With respect to assessments and rates.*

**73.** It shall be the duty of the School Commissioners and of the Trustees of Dissident Schools, in their respective Municipalities, to cause to be levied by assessment and rate, in each Municipality, a sum equal to that allowed out of the Common School Fund (for such Municipality,) and to report their proceedings in this respect to the Superintendent of Schools; and to enable them to receive from the said Superintendent their share of the Common School Fund, they must furnish him with a declaration from their Secretary-Treasurer, that he has actually and *bonâ fide* received, or that he has placed in the hands of the School Commissioners or Trustees for the purposes of this Act, a sum equal to the said share accruing to such Commissioners or Trustees. 9 V. c. 27, s. 21, p. 10.

How and to what amounts school assessments shall be levied.

**74.** The School Commissioners or Trustees of Dissident Schools, may cause to be levied by assessment and rate, such additional sum beyond that which they are directed to levy by the next preceding section as they think it necessary to raise for the support of the Schools under their control. 9 V. c. 27, s. 21, p. 10,—19, 20 V. c. 14, s. 1,—And 22 V. (1859,) c. 52, s. 6.

An additional sum may be collected.

**75.** The School Commissioners and Trustees, at the same time and in the same manner, shall cause to be raised an additional sum not exceeding thirty per cent. upon the total sum to be so raised as aforesaid, for the purpose of making good any deficiency in the collection of the assessment and any unforeseen or contingent expenditure. 9 V. c. 27, s. 37,—And 19, 20 V. c. 14, s. 1.

In case of unforeseen expenditure.

**76.** Such assessment shall be laid equally accordingly to valuation, upon all rateable real property in the Municipality, and shall be payable by and recoverable from the owner, occupant or possessor of the property liable to be rated, and shall, if not paid, be a special charge bearing *hypothèque* and not requiring registration to preserve it on all immoveable property. 9 V. c. 27, s. 36.

How assessments shall be laid.

**77.** Unconceded lands in Seigniories shall be free from assessment under this Act, but all Seigniors shall pay, on account of their lucrative rights, one-fortieth part of the sum assessed in the Municipality or Municipalities, or portions of Municipalities of which they are Seigniors, in proportion to their Seigniority in the same.

Assessment of Seigniorial rights.

Certain property exempt from.

2. All buildings set apart for purposes of education, or of religious-worship, Parsonage Houses, and all charitable Institutions or Hospitals incorporated by Act of Parliament, and the ground or land on which such buildings are erected, and also all burial grounds, shall be exempt from all rates imposed for the purposes of this Act. 9 V. c. 27, s. 37.

Municipal valuation to serve as basis for.

78. In all places where a valuation of property has been made by order of the Municipal authorities, such valuation shall serve as the basis of the rates to be made under the authority of this Act, and the Secretary-Treasurer of the Municipal Council shall, on demand, furnish to the School Commissioners or Trustees a copy of any such valuation;—But if no such valuation has been made, the School Commissioners or Trustees, may cause the same to be made by three fit and proper persons. 9 V. c. 27, s. 38.

#### ASSESSORS.

Assessors to be appointed where no property-valuation exists.

79. If there is no existing property-valuation either for the County or for the particular Municipality in question, upon which an assessment for Schools can be based, or if the persons in whose hands such valuation is deposited refuse, or neglect, after having been thereunto required by ten days' notice in writing, to deliver to the School Commissioners or Trustees of a School Municipality entitled thereto, or to their Secretary-Treasurer, the original of the said valuation, or a certified copy thereof, (which copy being so certified to be true, by the person so having the custody of the original, shall be *prima facie* evidence of the truth of what is therein stated,)—the School Commissioners or Trustees may, at all times after such refusal or neglect, cause such property-valuation to be made by three Assessors to be appointed and authorized by them for that purpose :

Commissioners liable to a penalty if they neglect to obtain such valuation.

2. If the said Commissioners or Trustees neglect to give, within one month after their election or appointment, the notice hereinabove required, to obtain either the original or a copy of the said valuation,—or if they neglect to cause the said valuation to be made in their School Municipality within three months next after their said election or appointment, in the cases hereinabove in this section mentioned,—each of the said Commissioners or Trustees shall be liable to a penalty of ten dollars for having neglected to give the said notice, and to a further penalty of one dollar, for each and every day that the said Commissioners or Trustees have been in default in causing the said valuation to be made, as required in the case hereinbefore mentioned ;

Proviso.

3. Provided always, that when a valuation applicable to the levying of assessment for schools is in existence, and the persons in possession thereof, refuse or neglect to hand over and deliver

deliver as aforesaid, either the said original or the said copy so certified, within ten days after being thereunto required, every such person shall, for such refusal or neglect, incur a penalty of twenty dollars ;

3. For every such copy so duly certified and delivered, such person shall be entitled to receive from the School Commissioners or Trustees the sum of eight dollars, and no more ; Fee for copy of such valuation.

4. But whenever the valuation to be copied comprises a larger territorial extent, a copy of so much thereof as relates to such School Municipality shall be sufficient. 12 V. c. 50, s. 24.

80. The persons authorized to make the property-valuation, upon the basis of which the assessment for Schools in any School Municipality may be established, shall at all times, have the right to enter in and upon any property, whether in the possession of the proprietor or of any other occupant,—to inspect the said property, and to require from such proprietor or occupant any information calculated to aid in the making and completing of the valuation ;—And in case of any obstruction or refusal to allow any such persons to effect such valuation, or to give them such information, every person so refusing or obstructing them shall incur a penalty of four dollars. 12 V. c. 50, s. 25. Powers of assessors.

81. Whenever an assessment maintained by the School Commissioners or Trustees in any School Municipality is annulled or set aside, the said Commissioners or School Trustees shall forthwith, in a summary manner, cause a new assessment to be made, which new assessment shall be made and take effect in such Municipality for the whole time, as well passed as to come, for which the assessment so annulled or set aside would have been in operation and in force if it had been valid : New assessment in certain cases.

2. But such annulling or setting aside of the said assessment, shall not have the effect of invalidating any payments made under the authority of the assessment so annulled or set aside, which payments shall go towards the discharge of the new assessment for the period for which they have been made, the assessment so annulled or set aside being declared invalid for the future only, and not with regard to any judgments then already rendered to enforce such payments ; 12 V. c. 50, s. 17. Effect of annulling of assessment.

3. No assessment for School purposes shall be held for null or be set aside, by reason of its having being made or published after the time limited by law. 22 V. (1859,) c. 52, s. 8. Assessment not void tho' after the time limited.

82. When a property-valuation, upon the basis of which the assessment for Schools may be established in any School Municipality is made, it shall be amended by that authority only Amendment of property valuation.

only by which it was ordered to be made; and the assessment based on such valuation, shall not be amended, except by the School Commissioners or Trustees only; and the same may be amended by the said School Commissioners or Trustees at any time during their incumbency in the said office. 12 V. c. 50, s. 26.

Qualification of assessors.

**83.** Any person who acting as Assessor, to make a property-valuation upon the basis of which the assessment for Schools may be established, as aforesaid, without being a proprietor of real or personal property in the Municipality in which he so acts, to the amount of four hundred dollars, shall incur a penalty of ten dollars, unless such Assessor be otherwise exempt by law from possessing such qualification. 12 V. c. 50, s. 28.

#### OF THE PAYMENT OF SCHOOL RATES.

Notice to pay School rates.

**84.** Each School rate shall be fixed and laid between the first day of May and the first day of July, and shall be paid in each year at any time on demand, provided public notice be given at least thirty days before enforcing payment of the same; and the School Commissioners or Trustees and Secretary-Treasurer may, in their discretion, receive the amount of such rates and of the monthly payments for the children, in produce at prices to be fixed by them:

What shall be sufficient notice.

And notice given in the manner hereinbefore prescribed with regard to the holding of general meetings, that the roll of School rates so fixed lies for inspection in the hands of the Secretary-Treasurer, shall be sufficient publication and notification thereof; and it shall lie in his hands for inspection at least thirty days after notice, during which time it may be amended by the Municipal Authority, after which it shall be in full force, and shall be conclusive evidence as to the School rates payable into the office of the Secretary-Treasurer by any party or on any property subject thereto. 9 V. c. 27, s. 39.

School rates may be collected with municipal assessments.

**85.** Every Local Municipal Council may accept from the School Commissioners or Trustees of any School Municipality situate within the limits of the Local Municipality, the Collection Roll for school rates, or a certified copy thereof, and may by resolution declare that the collection of the rates shall be made at the same time and in the same manner as that of the Municipal assessments;—And any Secretary-Treasurer charged with the collection of such rates, shall hand over the entire amount so soon as he has collected them, to the Secretary-Treasurer for Schools entitled to receive the same. 20 V. c. 41, s. 5, p. 1.

## SPECIAL ASSESSMENTS TO PAY DEBTS OF COMMON SCHOOLS.

86. The Superintendent of Schools may cause special assessments to be levied in any School Municipality, for the payment of lawful debts admitted by such Municipality, or adjudged by a Court of Justice to be due by it, and which such Municipality could not otherwise pay;—And whenever such debts have been contracted by a Municipality subsequently divided into several Municipalities, or the limits of which have been subsequently altered, the Superintendent shall apportion the payment of such debt or debts equitably among the several Municipalities liable for the same. 19, 20 V. c. 14, s. 10.

Special assessments for payment of debts.

## VOLUNTARY CONTRIBUTIONS IN LIEU OF ASSESSED RATES.

87. When in any School Municipality the valuation of property has been duly made, and the assessment for Schools founded upon the said valuation, has been established before the first of July in any year, for the then following scholastic year, the persons so assessed, or any other of the inhabitants of such School Municipality or School *District*, may, in the said month of July, pay, as a voluntary contribution, into the hands of the Secretary-Treasurer, the sum required for the scholastic year then commenced, to equal the amount of public moneys granted to such Municipality out of the School Fund, for the said scholastic year:

In what cases voluntary contributions may be substituted for rates.

2. The payment of such voluntary contribution shall be attested on oath before a Justice of the Peace, by the Secretary-Treasurer and by the Chairman, or some other of the School Commissioners or Trustees of the said Municipality, and such attestation shall be transmitted to the Superintendent of Schools, before the tenth day of September;

Attestation of payment thereof.

3. The Secretary-Treasurer shall not receive the amount of the said voluntary contribution by portions or otherwise, than in one and the same payment; and he shall hold the said amount in lieu of the fund which would have been raised by assessment for the scholastic year so commenced, and the said assessment shall thereupon be inoperative for that year in such School Municipality or *District*; But the monthly School fees, and any assessment imposed for the erection of School Houses, shall be levied by the School Municipality or *District*, when they have not been voluntarily paid. 12 V. c. 50, s. 4.

How such contributions shall be paid.

## DISTRIBUTION AND APPLICATION OF COMMON SCHOOL FUNDS.

88. The sums constituting the Lower Canada Common School-Fund may be paid to the Superintendent of Schools in two semi-annual payments, under two accountable Warrants to the Receiver General to be issued by the Governor; and the Superintendent

How Common School Funds shall be apportioned.

Superintendent shall deposit the said sums in such Bank as the Governor in Council may direct, and shall apportion the same according to law among the Municipalities, and shall pay to the School Commissioners and Trustees of Dissident Schools the respective shares belonging to the Municipalities they represent, by checks drawn upon such Bank and made payable to their order, and shall account according to law for such moneys. 19, 20 V. c. 14, s. 11.

Shares of School moneys to be paid half yearly.

**89.** The Superintendent of Schools shall pay their respective shares to the several School Commissioners and Trustees in two semi-annual payments, and the School Commissioners and Trustees may direct the payment out of the general or local School Fund in their hands, of such contingent expenses as are not specially provided for by this Act. 9 V. c. 27, s. 47.

What is requisite to entitle a School to a share of the School Fund.

**90.** To entitle any School to its allowance out of the general or Local School Fund, it shall be requisite and sufficient—

1. That such School has been under the management of School Commissioners or Trustees in the manner directed by this Act;

2. That it has been in actual operation during at least eight calendar months;

3. That it has been attended by at least fifteen children (periods of epidemic or contagious diseases excepted);

4. That the returns have been certified to the School Commissioners or Trustees by the Teacher, and at least two of the Commissioners or Trustees;

5. That a public examination of the Schools has taken place;

6. That a Report signed by the majority of the School Commissioners or Trustees, and by the Teacher, has been transmitted to the Superintendent of Schools, according to the form prescribed by him for that purpose, every six months, that is to say, before the first day of July and the first day of January, in each year;

7. And finally, that a sum equal to the allowance made by the Legislature for the Municipality, has been raised as hereinafter provided. 9 V. c. 27, s. 27.

School must be attended by at least fifteen children.

**91.** The School allowance may be granted in every School Municipality in respect of every School-in the School *District* whereof the number of children of the age required for attending such School amounts to at least fifteen, although it has not been actually attended by that number throughout the scholastic year, provided the School Commissioners have endeavoured in good

good faith to carry out the law ; And so also the School Commissioners who have *bonâ fide* engaged a Teacher for any School District, may pay to the said Teacher the remuneration agreed upon, although the number of children who have regularly attended the School should not have been sufficient according to the provisions of the next preceding section. 12 V. c. 50, s. 19.

**92.** Whenever the School Commissioners of any indigent Municipality have, in good faith, carried into execution the provisions of the law, and the amount of the assessment actually levied falls nevertheless short of the amount required by law, the Superintendent of Schools may, upon a representation to that effect, and upon a proof of the facts to his satisfaction, exempt such municipalities, or any of them, from the payment of the whole or of part of the assessment for the current year, and in that case he may grant them the amount to which they would otherwise be respectively entitled out of the Common School Fund ; But no such indulgence shall be so granted, unless the representation aforesaid be supported in writing by three of the School Visitors of the Municipality in question (other than the School Commissioners), or of the neighbouring Municipalities, who must certify that they have a personal knowledge of the facts alleged, that the School Laws have been *bonâ fide* enforced in such Municipality, and that they have themselves visited the Schools therein, and were satisfied therewith. 12 V. c. 50, s. 5.

Indulgence to indigent Municipalities.

**93.** And whereas in some Counties, School Municipalities have sprung up which did not exist at the time of the taking of the now last census, and it would be unjust to withhold from them their fair share of the Legislative grant ; therefore, the Superintendent of Schools may, with the approval of the Governor in Council, allow to any such School Municipality its fair share of the amount of the Legislative grant coming to the County, in proportion to the actual population of the School Municipality at the time, according to the best evidence he is able to procure, whenever he is of opinion that the said census would not be a fair basis of apportionment. 19, 20 V. c. 14, s. 14.

Recital.

Share of grant to be according to actual population in certain cases.

**94.** The amount of the monies arising from the School Fund, or from assessments imposed to raise a like sum in the Municipalities, or from any other source not specially appropriated by disposition of the donors or vendors or otherwise, shall, after deducting the sum of eighty dollars, for the support of a Model School, (if any such School there be) at the most thickly settled place in the Municipality, over and above the share which would otherwise come to such School, (if any such School there be) be divided amongst the several School Districts in such Municipality in proportion to the number of children between seven and fourteen years of age residing therein

How the share of School Fund shall be divided.

therein and capable of attending School ; the Girls' School established under the *seventieth* section of this Act, being counted as one School District, and the Model School as another School District, without prejudice nevertheless to the previous grant of eighty dollars above mentioned ; And the proportion of the moneys to be allotted to the said Girls' School and to the said Model School respectively, shall be determined by the number of children of the age prescribed for attending School, residing in the School District in which such Model School or Girls' School is established. 9 V. c. 27, s. 21, p. 11—*and* 12 V. c. 50, s. 14.

Support of a  
Model School.

**95.** The Superintendent of Schools may, with the approval of the Governor in Council, retain the sum of eighty dollars towards the support of a Model School in such Municipality, out of the School moneys to which any Municipality is entitled. 19, 20 V. c. 14, s. 4.

Superinten-  
dent may re-  
fuse School  
allowance in  
certain cases.

**96.** The Superintendent of Schools may refuse the School allowance, for any year, to any Municipality the School Commissioners or Trustees of which have not rendered sufficient accounts accompanied by vouchers, of the application of the School moneys for the years preceding, or for any one of them, whatever be the source whence those moneys were derived. 12 V. c. 50, s. 20.

In what cases  
he may so re-  
fuse.

**97.** The Superintendent of Schools, with the approval of the Governor in Council, may refuse to pay the whole or any part of the share of the Common School Fund, which would otherwise be payable to any School Municipality, where his lawful instructions or those of the Council of Public Instruction have been disobeyed, or where unqualified Teachers have been employed by the Commissioners or Trustees, or where a qualified Teacher has been dismissed by the School Commissioners or Trustees, before the time of his engagement, and for no valid or just cause, and he may pay out of the said share of such Municipality such indemnity as appears to him justly due to any Teacher so unjustly dismissed. 19, 20 V. c. 14, s. 12.

Certain appro-  
priations out of  
School grant.

**98.** Out of the Legislative School grant, permanent and additional, for Common School purposes in Lower Canada, the following sums may be set apart and expended yearly by the Superintendent of Schools, with the approval of the Governor in Council, for the following purposes, that is to say :

For poor Mu-  
nicipalities.

1. A sum not exceeding four thousand dollars, for special aids to Common Schools in poor School Municipalities ;

For Journal of  
Public Instruc-  
tion.

2. A sum not exceeding one thousand eight hundred dollars, to encourage the publication and circulation of a Journal of Public Instruction ; and

3. A sum not exceeding two thousand dollars, towards forming a fund for the support of superannuated or worn out Common School Teachers in Lower Canada, under such regulations as may be adopted from time to time by the Superintendent of Schools, or by the Council of Public Instruction of Lower Canada, and approved by the Governor in Council ; But no such Teacher shall be entitled to share in the said Fund who does not contribute to such Fund at the rate of four dollars per annum at the least, for the period of his teaching School or receiving aid from such Fund, or who does not furnish satisfactory proof of his inability from age or loss of health in teaching, to pursue that profession any longer ; and no such allowance to any Teacher shall exceed the rate of six dollars per annum for each year during which such Teacher has taught a Common School in Lower Canada. 19, 20 V. c. 14, s. 7.

Teacher's Superannuation Fund.

99. The balance remaining unexpended or unclaimed out of the portion of the Common School Fund belonging to Lower Canada, shall be appropriated by the Superintendent of Schools, (or by the Council of Public Instruction,) under the authority of the Governor in Council, in aiding to finish School Houses actually commenced, or to build new ones, or to make extensive repairs to old ones, in such manner as he shall deem most conducive to the advancement of Elementary Education. 12 V. c. 50, s. 27.

Unexpended balance appropriated to building of School houses, &c.

APPLICATION OF LOCAL SCHOOL FUNDS IN CERTAIN CASES.

100. Any sum of money whatever arising from the general or local School Fund, from whatever source derived, which has not been employed or paid by the School Commissioners, Trustees or Secretary-Treasurer, during the year in which it has been received, shall be by them deposited or placed out at interest, to be employed in creating revenue for the Corporation ;—But this provision shall not extend to the deposit directed by the next following section, to be made of the share belonging to any School District, in which there is not then any School in operation. 9 V. c. 27, s. 46.

How unexpended local funds shall be disposed of.

101. If in any School District there is no School in operation, the School Commissioners or Trustees shall deposit the money to which such District would be entitled at interest in some Savings or Chartered Bank, where, with the consent of the inhabitants of such District, they shall allow it to accumulate during a term which shall not exceed four years, to be thereafter by them used either in the purchase of ground for or in building a School House, or towards other Educational purposes in or for such School District. 9 V. c. 27, s. 22.

Disposal of district grant in case there is no School in operation in any district.

102. The Superintendent of Schools may, with the approval of the Governor in Council, authorize the School Commissioners

Power of Superintendent as

or

regards district grants in certain cases.

or Trustees in any Municipality, to apply the share coming for any one year to any School District, the inhabitants of which have contributed nothing or too little during the same year to the common fund of such Municipality for School purposes, in such manner as the Superintendent shall direct for the advancement of education in such Municipality, instead of depositing the said share in a Bank ;—And the amounts already placed in any Bank for any School District in like cases, may be dealt with in like manner, and the shares coming to any such School District which have been in like cases applied by the School Commissioners or Trustees in any Municipality, with the consent of the said Superintendent, are hereby declared to have been legally and properly dealt with. 19, 20 V. c 14, s. 13.

OF THE BOARDS OF EXAMINERS FOR THE EXAMINATION  
OF SCHOOL TEACHERS.

Boards of examiners in Quebec and Montreal.

**103.** There shall be in each of the Cities of Quebec and Montreal, a Board of Examiners, composed of fourteen persons, chosen in as fair and equitable a manner as possible, from among the different religious denominations :

How appointed.

2. The members of such Board shall be appointed by the Governor in Council, through the Superintendent of Education, and one half of them shall be Roman Catholics, and one half Protestants, and they shall form a Board of Examiners, to examine Teachers, and to deliver or refuse to each, as the case may require, a license or certificate of qualification, after due examination ; And the said Board shall be divided into two divisions, one of which shall be composed of seven Roman Catholics, and the other of seven Protestants, and each of such divisions shall separately perform the duties hereinafter imposed upon them. 9 V. c. 27, s. 50.

Division of Board.

**104.** There shall be in the Districts of Kamouraska, Gaspé, St. Francis, Three-Rivers and Ottawa, Boards of Examiners for the examination of School Teachers : 16 V. c. 209, s. 1.

Boards in district of St. Francis.

2. And in the District of St. Francis, there shall be two Boards of Examiners, one for the County of Sherbrooke, to be called "The Sherbrooke Board of Examiners," and the other for the County of Stanstead, to be called "The Stanstead Board of Examiners," the said two Counties remaining as they were before the fourteenth day of June, one thousand eight hundred and fifty-three, the day of the passing of the Act 16 V. c. 152 ;

Powers of Boards as regards granting of certificates.

3. The Boards mentioned in this section, shall have power to grant or refuse Certificates or Diplomas to School Teachers of the Districts aforesaid respectively, presenting themselves for examination before the said Boards respectively ; 16 V. c. 209, s. 4.

4. The said Boards shall be appointed by the Governor, on the recommendation of the Superintendent of *Public Education*, and shall constitute Boards of Examiners, by the name of "The Board of Examiners of (*adding the name of the District*)."  
16 V. c. 209, s. 2.

**105.** The Governor in Council may, whenever it is deemed expedient so to do, upon report of the Superintendent of Schools or Council of Public Instruction for Lower Canada, constitute, by Proclamation, a Board of Examiners of Teachers in and for any County in Lower Canada, or in and for any two or more neighbouring Counties in Lower Canada which can be conveniently united for such purpose; and every such Board shall meet at such place and at such times as the Governor in Council may, upon like report, from time to time, ordain; and the members thereof shall, from time to time, be appointed by the Governor in Council through the Superintendent of Schools.  
22 V. (1859,) c. 52, s. 1.

Governor in Council may appoint a Board of Examiners in any county or counties.

**106.** The certificates to be granted by every such Board, constituted under the next preceding section, shall only avail for the employment of the Teachers obtaining the same, within such County or Counties, and for such class or classes of Schools, as the Governor in Council, upon the like report, may from time to time ordain, and for a term of three years from the date of such certificates; and those granted after the fourth day of May, one thousand eight hundred and fifty-nine, by the several Boards of Examiners in the Cities of Montreal and Quebec, and in the Districts of Kamouraska, Gaspé, Three-Rivers and Ottawa, and in the Counties of Sherbrooke and Stanstead, respectively, shall in like manner only avail for such territorial limit, and for such class or classes of Schools, as the Governor in Council upon like report may from time to time ordain, and for a like term of three years.  
22 V. (1859,) c. 52, s. 2.

In what place and during what period the certificates granted by any Board shall avail.

**107.** The several Boards of Examiners so established shall be governed, each in their respective locality, by the provisions herein made.  
16 V. c. 209, s. 4, and 19, 20 V. c. 14, s. 9.

To be governed by this Act.

**108.** Every Board of Examiners, with the exception of those in the Cities of Montreal and Quebec respectively, shall be composed of not less than five nor more than ten members, and may be organized, (if the Governor in Council upon like report so ordains, but not otherwise,) in two divisions, Roman Catholic and Protestant respectively; in which case each division shall separately perform the duties devolving on them.  
22 V. (1859,) c. 52, s. 4.

Number of Members.

Divisions of Boards.

**109.** The meetings of the several Boards of Examiners in the Cities of Montreal and Quebec, the Districts of Kamouraska, Gaspé, Three-Rivers and Ottawa, and the Counties of Sherbrooke and Stanstead, respectively, shall be held at such places

Meetings of the Boards.

therein, and may be held at such times instead of or besides those now fixed by law, as the Governor in Council may, upon like report, from time to time ordain. 22 V. (1859,) c. 52, s. 3.

*Duties of the Boards of Examiners.*

Duties of  
Boards.

**110.** It shall be the duty of each Board of Examiners :

Time of meet-  
ing.

1. To meet at ten o'clock, A. M., on the *twentieth* day after their nomination, (and this enactment shall be for each member of the said Board, a sufficient notification to that effect,) to choose a President, Vice-President and Secretary, -except that if the said *twentieth* day after their nomination be a Sunday or holiday, (*fête d'obligation*,) they shall meet on the day next thereafter, not being a Sunday or holiday ; 9 V. c. 27, s. 50, p. 1.

Meetings to be  
quarterly.

2. To meet once in three months, that is to say, on the first Tuesday in March, June, September and December, after sufficient public notice to that effect, on the application of one or more Teachers made in writing to the Secretary of the Board, at least fifteen days beforehand, and whenever there is any such application ; 9 V. c. 27, s. 50, p. 2.

Who may be  
admitted to  
examination.

3. To admit to examination no candidate who is not provided with a certificate of good moral character, signed by the *Curé* or Minister of his own faith, and by at least three School Commissioners or Trustees of the locality in which he has resided for the last six months, and also with a certificate of his age, which must be at least eighteen years ; 9 V. c. 27, s. 50, p. 3.

4. To return to the bearer the said certificate, after having entered an exact copy thereof on the minute of proceedings, if the candidate has passed a satisfactory examination ; 9 V. c. 27, s. 50, p. 4.

Nature of cer-  
tificate to be  
given to quali-  
fied candidates.

5. To deliver to each candidate found qualified, a certificate or *diploma* of qualification as a Teacher, signed by the President or Vice-President and the Secretary, bearing the Examiners' seal of office, dated, and distinctly specifying the particular kind of instruction to which the candidate intends devoting himself,—whether he can teach English and French, and if not, which of these two languages,—his age, his latest residence, and the religious denomination to which he professes to belong,—stating also that the certificates of age and good moral character required by this Act have been produced to the Board,—and mentioning also the names of the persons signing the said certificates, and that a copy thereof has been taken,—And the said Secretary or his deputy may demand from each candidate obtaining a certificate or *diploma* of qualification, for fees and office charges, the sum of one dollar and no more ; 9 V. c. 27, s. 50, p. 5.

6. To keep a correct list of candidates admitted to the right of teaching ; 9 V. c. 27, s. 50, p. 6. List of candidates admitted.

7. To give notice to the Superintendent of Schools of the admission of each candidate to the right of teaching, within fifteen days after such admission ; 9 V. c. 27, s. 50, p. 7. Notice of such admission.

8. To divide the Teachers into three classes, namely : those of the Schools purely elementary ; those of Model Schools and those of the educational establishments called Academies ; 9 V. c. 27, s. 50, p. 8. Division of Teachers.

9. To enter the Christian and Surname of each Teacher admitted, as well as the class to which he belongs ; 9 V. c. 27, s. 50, p. 9. Entry of names of Teachers.

10. To require, in the course of the examination, proof of the following qualifications, namely : Qualifications required.

For the Teachers of Elementary Schools, such acquirements as will enable them to teach, with success, Reading, Writing, the elements of Grammar and of Geography, and Arithmetic as far as the Rule of Three, inclusively ; Of Teachers of Elementary Schools ;

For the Teachers of Model Schools, in addition to the foregoing, the acquirements requisite to enable them to teach Grammar, the Analysis of the parts of Speech, Arithmetic in all its branches, Book-keeping, Geography, the use of the Globes, Linear Drawing, the elements of Mensuration, and Composition ; Of Teachers of Model Schools ;

For the Teachers of Academies (besides the qualifications required for the above mentioned two classes of Teachers), all the branches of a classical education, inasmuch as they are destined to prepare their scholars for the same ; 9 V. c. 27, s. 50, p. 10, *part*. Of Teachers of Academies.

All Teachers acting as such under this Act, or under any special Act passed for the encouragement of Education, shall undergo an examination before one of the said Boards of Examiners, and be each provided with a certificate of qualification as above mentioned ; and the School Commissioners and Trustees, and all persons entrusted with the management of Schools, shall employ as Teachers such persons only as are so provided with a certificate of qualification given by one of the Boards of Examiners as above mentioned, on pain of losing their share of the grants made for the encouragement of education ; All Teachers to undergo an examination.

Nevertheless, every Priest, Minister, Ecclesiastic, or person forming part of a religious community instituted for educational purposes, and every person of the female sex, being a member Exceptions.  
of

of any religious community, shall be in every case exempt from undergoing an examination before any of the said Boards ;

Proviso.

And neither the possession of a certificate of examination before one of the said Boards, nor any exemption from examination, shall oblige the School Commissioners or Trustees to accept a Teacher who does not suit them ; 9 V. c. 27, s. 50, p. 10, *part*.

Registers to be kept.

11. To keep or cause to be kept a Register of their proceedings, signed (for each meeting) by the President or Vice-President, and also by the Secretary, whose duty it shall be to keep the Register and to make the list of Teachers admitted to teach, the entry in the Register of their certificates of age, morality, character and qualification, the entry of all the proceedings of the Board in the minutes of their deliberations, and also to prepare, fill up and address the certificates of qualification, and to do all other writing requisite ; 9 V. c. 27, s. 50, p. 11.

Board to have a seal.

12. To have a particular seal, and to make use of that furnished them by the Superintendent of Schools, as well as the forms of certificates of qualification they receive from him ; 9 V. c. 27, s. 50, p. 10, *part*.

Governor in Council may modify the duties of the Boards.

111. The Governor in Council, upon the report of the Superintendent of Education or of the Council of Public Instruction for Lower Canada, may, from time to time, modify, as occasion may require, the detail of duties imposed on Boards of Examiners and on the Secretaries of such Boards, by the next preceding section of this Act ; and every modification so made of such duties shall be binding on all parties for whom the same has been made, as though expressly embodied in this Act. 22 V. (1859,) c. 52, s. 5.

Females to submit to examination.

112. Any female, not being a member of any religious community, who desires to become a Teacher in a Common School, shall undergo the required examination before the Board of Examiners. 19, 20 V. c. 14, s. 6.

Council to make rules for Boards.

113. The Council of Public Instruction shall, from time to time, make rules and regulations for the guidance of the Boards of Examiners. 19, 20 V. c. 14, s. 18, p. 5. *And see Sec. 22, as to the power of the said Council to annul Teachers' certificates.*

#### INSPECTORS OF COMMON SCHOOLS.

Inspectors of Common Schools—their appointment and duties.

114. The Governor may appoint, from time to time, and for such period as he deems necessary, in each of the *Districts* of Lower Canada, one or more competent persons as Inspectors of Common Schools therein, whose duty shall be to visit each School Municipality in the District or section of a District for which

which he is appointed,—to examine the Schools, School Teachers and School Houses therein,—to inspect the Accounts of the Secretary-Treasurer and the Register of the School Commissioners or Trustees of every such Municipality,—and generally to ascertain whether the provisions of the School Laws are there carried out and obeyed ;

And every such Inspector shall, with reference to such visits and examinations, have all the powers and authority of the Superintendent of Schools, unless those powers be otherwise defined or limited by the instrument appointing him. 14, 15 V. c. 97, s. 3.

Powers of Inspectors.

**115.** Each Inspector shall act under instructions conveyed to him by the Superintendent of Schools, to whom he shall, at least once in every three months, make a Report of his proceedings, setting forth, in a clear manner,—the state of Education in each Municipality visited by him,—the number of Schools in operation therein,—the competency of the Teachers employed in such Schools,—the condition of the School Houses in cases where they are public property,—the state of the School Commissioners' or Trustees' Register and Secretary-Treasurers' Accounts,—and the causes, if any, so far as they can be ascertained, which impede the full execution and operation of the School Laws in such Municipality ; And the Inspector shall include in such Report, or shall furnish at any other time, when required by the Superintendent of Schools, all such other information as the Superintendent deems necessary. 14, 15 V. c. 97, s. 4.

Inspectors to make quarterly report to superintendent—what report shall contain.

**116.** The Secretary-Treasurer of each Municipality, and every Teacher of a Common School therein, shall, on being thereunto requested by any such Inspector, exhibit to him all the documents in his charge, belonging to or in any way relating to his office of Secretary-Treasurer or Teacher ;—And for every refusal or neglect so to do, shall be liable to a penalty of eight dollars. 14, 15 V. c. 97, s. 5.

Inspector may inspect all School papers, &c.

**117.** Each Inspector shall be *ex officio* a Justice of the Peace of the *District* for which he is appointed ; and the provisions of the Consolidated Statutes of Canada, Chapter one hundred, intituled, *An Act respecting the qualification of Justices of the Peace*, shall not extend to any such Inspector. 14, 15 V. c. 97, s. 6.

To be *ex officio* a Justice of the Peace.

**118.** Each of the said Inspectors shall be paid such sum as the Governor deems adequate remuneration for the duties performed by such Inspector, but such remuneration shall in no case exceed the rate of one thousand two hundred dollars per annum. 14, 15 V. c. 97, s. 7.

Their remuneration.

How paid.

**119.** The Superior Education Income Fund shall be chargeable with the payment of the salaries of the Inspectors of Common Schools. 19, 20 V. c. 54, s. 17.

#### COMMON SCHOOL VISITORS.

Common Schools to be visited at least once a year.

**120.** The Common Schools established in each Municipality, whether in town or country, shall be visited at least once in every year by one of the Visitors hereinafter mentioned, and oftener, if they deem it requisite ; Every Visitor shall be entitled to have communication of the regulations and other documents relative to each School, and of all other information concerning it. 9 V. c. 27, s. 32.

Who are to be visitors.

**121.** The Visitors for each Municipality are :

First.—The Resident Clergymen, of whatever denomination ; But no Priest, Minister or Ecclesiastic shall be entitled to visit any School belonging to any inhabitants not of his own persuasion, except with the consent of the Commissioners or Trustees of such School ;

Secondly.—The Judges of the Court of Queen's Bench, and of the Superior Court ;

Thirdly.—The Members of the Legislature ;

Fourthly.—The Justices of the Peace ;

• Fifthly.—The Warden or Mayor of the Municipality ;

Sixthly.—The Colonels, Lieutenant-Colonels and Majors, and the Senior Captain of Militia, resident in the locality ;

The Superintendent of Schools shall be *ex officio* Visitor General of all *Public* Schools, and as such may take cognizance of contestations arising between the School Commissioners or Trustees and the Teachers, and give a final decision. 9 V. c. 27, s. 33.

Visitors may be present at examinations of Teachers.

**122.** Every person entitled to act as School Visitor shall have the right of being present at examinations made by any Board of Examiners, and of interrogating the Teachers who offer themselves for examination, and also of giving his opinion. 9 V. c. 27, s. 50, p. 12, *part*.

#### SUITS AND PROSECUTIONS—FINES AND PENALTIES.

Suits may be instituted for School rates, &c., by Commissioners.

**123.** The School Commissioners or Trustees of any School Municipality may institute suits or prosecutions for the assessments for Schools or School Houses and for the monthly School Fees, and for all arrears of the said assessments or monthly fees ;

fees ; and all such suits or prosecutions may be instituted either before two Justices of the Peace in the County, or before the Circuit Court, but not before any other tribunal ;

In all such suits or prosecutions, judgment may be rendered with costs ; and no judgment rendered upon any such suit or prosecution shall be liable to be appealed from, nor shall any such suit or prosecution be removed by writ of *certiorari*. 12 V. c. 50, s. 16. No appeal allowed.

**124.** The Chairman of any Board of School Commissioners or Trustees shall not engage in any suit at Law, as plaintiff, without a special authorization from the Commissioners or Trustees duly entered in their Register after deliberation ; and every action may be brought either by the Chairman or by the Secretary-Treasurer in the name of the Corporation, at the discretion of the Board. 9 V. c. 27, s. 23. Suit not to be commenced without special authorization.

**125.** Every person duly called upon to accept any office or perform any functions under this Act, who refuses to accept or neglects to perform the same, or who in any way wilfully contravenes the provisions of this Act, shall thereby for each such offence whether of omission or commission, incur a penalty of not less than five dollars, nor more than ten dollars, according to the gravity of the offence, in the discretion of the Court or authority having cognizance thereof : Penalty on refusing office or neglecting the duties thereof.

2. Any Justice of the Peace residing within the County, or the Circuit Court, shall have jurisdiction with regard to such offence, and may, after judgment, cause the penalty to be levied under warrant, by the seizure and sale of the goods and chattels of the offender ; Jurisdiction of justices in such case.

3. The amount of every penalty so levied shall be paid into the hands of the Secretary-Treasurer of the Corporation of the School Commissioners or Trustees of the locality in which the offence has been committed, and shall make part of the Local School Fund ; Penalty to form part of School Fund.

4. All persons entrusted in any manner with carrying this Act into effect, or qualified to vote at the election of School Commissioners or Trustees, shall be competent to prosecute for the recovery of such penalties. 9 V. c. 27, s. 52, and 12 V. c. 50, s. 31. Who may prosecute therefor.

**126.** If any School Commissioner or Trustee or other person makes any false certificate or return, by means of which he fraudulently obtains or seeks fraudulently to obtain money from the public School Fund, he shall not only restore the money so obtained, but shall also incur a penalty not exceeding forty dollars, nor less than ten dollars, which shall go to the Local School Fund, and which shall be recoverable at the suit of any Penalty on School Commissioners making fraudulent returns.

Enforcement of penalty.

person having an interest in the right administration of the Common Schools, on the oath of one credible witness, before any Justice of the Peace or before the Circuit Court ;—and if such penalty is not paid within ten days after judgment, it shall be levied, with costs, by seizure and sale of the goods and chattels of the defendant, and in default of sufficient goods and chattels, the defendant may be committed to the common gaol, and detained therein one day for each sixty cents of the amount of the fine and costs, or of the balance which may be due. 9 V. c. 27, s. 28, and 12 V. c. 50, s. 31.

Penalty on Commissioners, &c., detaining any books, papers, &c., after ceasing to hold office.

**127.** Whenever any School Commissioner, Trustee, or Secretary-Treasurer, after his dismissal, resignation or ceasing to hold office, detains any book, paper or thing belonging to the School Commissioners or Trustees of any Municipality, he shall thereby incur a penalty of not less than five dollars nor more than twenty dollars for each day during which he shall retain possession of any such book, paper or thing, after having received a notice from the Superintendent of Schools requiring him to deposit the same in the hands of some person mentioned in such notice ;—And the said penalty shall be recoverable with costs before any Court of competent civil jurisdiction, in the name of the Superintendent of Schools, and the same when levied shall be paid into the hands of the said Superintendent, and shall form part of the unexpended balance of the Common School grant, and be dealt with accordingly. 19, 20 V. c. 14, s. 15.

**SPECIAL PROVISIONS RELATING TO THE CITIES OF QUEBEC AND MONTREAL.**

This Act to apply to Montreal and Quebec.

**128.** In each of the Cities of Quebec and Montreal the provisions of this Act, with regard to the establishment of Common Schools in each Municipality, shall have effect and be applied, except in so far as it is otherwise herein provided ; and all persons appointed or called upon to carry this Act into effect in the said Cities, shall have the same powers as the corresponding functionaries in the Municipalities by whatever name they may be designated, and shall be subject to the same obligations and penalties. 9 V. c. 27, s. 40.

Each city to form a distinct Municipality.

**129.** For all the purposes relative to the distribution and apportionment of School moneys, and for all other purposes of this Act, where it is not repugnant to the other provisions thereof, each of the Cities of Quebec and Montreal shall be considered as one Municipality ; and it shall not be necessary to divide them into School Districts, but each School established by the Commissioners or put under their control by virtue of and in accordance with this Act, shall be considered as a School District, and may be attended by children from any part of the City. 9 V. c. 27, s. 41.

**130.** In Quebec and Montreal the Corporation shall appoint twelve School Commissioners, six of whom shall be Roman Catholics and six Protestants; and such Commissioners shall form two separate and distinct Corporations, the one for the Roman Catholics and the other for the Protestants; and one half of each of the said Corporations shall be renewed annually by the said Corporation; In case the Corporation of the City of Quebec or that of Montreal refuses or neglects to appoint such Commissioners or to renew them at the time prescribed, that is to say, in the month of July in each year, the Superintendent of Schools shall appoint them *ex officio*, with the approval of the Governor in Council. 9 V. c. 27, s. 42.

Appointment of School Commissioners.

In case of failure to appoint.

**131.** In the Cities of Quebec and Montreal, no rate shall be imposed for the purposes of Common Schools, but the City Treasurer of each of the said Cities shall, out of the moneys in his hands forming part of the funds of the Corporation of such City, from whatever source such moneys are derived, (all Laws or Rules or By-Laws of the Council of such Corporation to the contrary notwithstanding,) pay to the respective Boards of School Commissioners of such City, and in proportion to the population of the religious persuasion represented by such Boards respectively, a sum equal in amount to that apportioned to such City out of the Common School Fund, to be employed for the purposes of the Common Schools, under the direction of such Boards of School Commissioners respectively;—And if the Treasurer refuses to make such payment, the Board of Commissioners, or their Secretary, may recover the amount by action in the Superior Court, who shall order such Treasurer to pay the amount awarded by their judgment, principal, interest and costs, out of the moneys he may then have in, or that may thereafter come into his hands as such Treasurer; and shall compel him, by all legal means, even by *contrainte par corps*, to satisfy such judgment. 14, 15 V. c. 97, s. 9.

No special School rate to be levied, but the requisite amount to be paid by Corporation.

In case city Treasurer refuses to pay.

**132.** The Corporations of the Cities of Quebec and Montreal may pay out of their funds an additional sum equal to that which they are authorized to pay to the Boards of School Commissioners, and also an additional sum of thirty per cent. to make good any unforeseen or contingent expenditure. 19, 20 V. c. 14, s. 1.

An additional amount may be paid by Corporation.

**133.** The City of Montreal shall be entitled to receive out of the Common School Fund only one fourth, and the City of Quebec two thirds, of the sums they would without this provision be respectively entitled to according to their population. 9 V. c. 27, s. 44.

Proportion of School Fund allowed to Quebec and Montreal.

**134.** The School Commissioners for Quebec and Montreal shall, in their intercourse with the Superintendent of Education, be guided by the same rules and regulations as other School Commissioners. 9 V. c. 27, s. 45.

Rules for Commissioners.

## MISCELLANEOUS PROVISIONS.

*Quorums.*

Majority to be a Quorum.

**135.** The *quorum* of any Corporation, Board or Body constituted under this Act, shall (unless expressly declared) be an absolute majority of all the members thereof; and any majority of the members present at any meeting regularly held, at which there shall be a *quorum*, may validly exercise all the powers of the Corporation. 9 V. c. 27, s. 53.

*Appointments by the Governor.*

Failure to elect any officer not to affect the operation of this Act.

**136.** No failure to elect any officer, or to assess or levy any rate, shall prevent the effect of any provision of this Act, which shall *in any such case* be carried into effect by the Governor in Council, by the means of the Superintendent of Schools, and of School Commissioners, Assessors, Collectors, Teachers and other functionaries, requisite according to the true intent and meaning of this Act; And such Commissioners may be appointed by the Governor in Council, at the instance of the Superintendent of Schools, and shall have the right of naming the Assessors, Collectors, Directors and other functionaries, all of whom, in their several capacities, shall have respectively all the rights, powers and authority, which, under this Act, would have been possessed by the persons who ought to have been elected or to act, under the like names of office or with similar functions, and shall have the same duties and be liable to the same penalties. 9 V. c. 27, s. 3.

Governor to make appointments.

Effect of such appointments.

**137.** Whenever School Commissioners or Trustees are appointed by the Governor in Council, the School Commissioners or Trustees antecedently in office, shall, from the date of such appointment, cease to possess any power or to act as such, as shall also all Assessors, Collectors, and other officers appointed by or acting under them :

Governor may annul such appointments and make others.

2. And the Governor in Council may at all times, and as often as he deems it necessary so to do, annul the appointment of Commissioners or Trustees so by him made and that of the other officers acting under them, and may appoint other Commissioners or Trustees in their stead, who shall in that case proceed to the nomination of the said officers, to perform the other duties pertaining to their office, and during their incumbency in the said office, to do all those things which their predecessors have neglected or refused to do. 12 V. c. 50, s. 8.

*Interpretation.*

Interpretation of certain words and expressions.

**138.** In this Act,—the word “Governor” means the Governor, Lieutenant Governor or person administering the Government of this Province for the time then being;—and the expression

expression "Governor in Council" means the Governor acting by and with the advice of the Executive Council of this Province;—the word "Teacher" shall apply to Female as well as Male Teachers;—any power given to or any obligation imposed upon School Commissioners, shall apply to Trustees of the Dissentient Schools in reference to the schools and school districts under their control;—the expression "Common School" shall apply to Dissentient Schools;—and the words "Municipality" or "School Municipality" shall apply to Dissentient Schools or School Districts under the control of Trustees as well as to Municipalities and Schools under the control of Commissioners. 19, 20 V. c. 14, s. 21.

*Account to the Legislature.*

**139.** The due application of all moneys expended under the authority of sections one to seventeen of this Act both inclusive, shall be accounted to Her Majesty in the manner and form provided by the Interpretation Act, and an account thereof shall be laid before each of the Houses of the Provincial Legislature, within the first fifteen days after the opening of the then next Session thereof. 19, 20 V. c. 54, s. 20.

*Accounting  
clause.*

## C A P . X V I .

An Act respecting *Fabrique* Schools.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

*Fabriques* may hold real and personal property for School purposes.

**1.** Every *Fabrique* in Lower Canada may acquire, purchase, take, receive and hold, without letters of *mortmain*, all real property, *rentes constituées*, moneys, chattels or other personal property, conceded, sold, given, devised or bequeathed, either by *donation entre vifs, à cause de mort*, testamentary disposition, or by any other manner, for the purpose of founding and supporting one or more Elementary School or Schools within the parish to which such *Fabrique* belongs, in the manner and to the amount and annual income hereinafter prescribed. 4 G. 4, c. 31, s. 1.

But real estate becoming property of the *Fabrique* must be disposed of within a certain period.

**2.** When any real estate has been in any way or manner, conceded, sold, given, devised or bequeathed to any *Fabrique*, for the purposes aforesaid, such *Fabrique* shall, within ten years from the date of the instrument by which the same has been so conceded, sold, given, devised or bequeathed, sell and dispose of such real estate, *à constitution de rente*, for the benefit of the Elementary School or Schools, to be by them founded and established out of any lands so conceded, sold, given, devised or bequeathed, such *Fabriques* may retain and reserve any portion, not exceeding in the whole one acre, which is necessary for an *emplacement* for the erection of a School House thereon. 4 G. 4, c. 31, s. 2.

Amount of property to be held by *Fabrique*, limited.

**3.** The property, real or personal, acquired or held by any *Fabrique*, for the first erection and establishment of each School to be by them established, shall not exceed in the whole the capital or sum of four hundred dollars, and the whole annual income from the property, real or personal, acquired or held by such *Fabrique*, for the maintenance and support of the Schools so established, shall not at any time exceed the sum of two hundred dollars, for each such School. 4 G. 4, c. 31, s. 3.

Exception.

**4.** But whenever any *Fabrique* acquires in any way land, not exceeding one superficial acre in extent, upon which there is a building fit for the purpose of a School, such *Fabrique* may hold and retain the said land, with the house thereon erected, although the annual income from such building exceeds two hundred dollars. 7 G. 4, c. 20, s. 1.

Number of Schools.

**5.** The *Fabrique* of each Parish may establish one School ; and when the number of families actually resident in the Parish to which the *Fabrique* belongs, amounts to two hundred, then the *Fabrique* may establish a second School, and so on in the proportion of one School for every hundred families so resident. 4 G. 4, c. 31, s. 4.

6. The said Schools, and the property acquired and held for their foundation, endowment and support, shall be under the inspection and administration of the persons, and subject to the rules prescribed by the laws and usages of Lower Canada, for the government and administration of the property and establishments of *Fabriques*. 4 G. 4, c. 31, s. 5.

Schools and School property to be under the control of the *Fabriques*.

7. In order to establish and maintain the Schools which may be opened and established at any time hereafter by virtue of this Act, every *Fabrique* may, until it has acquired property for establishing and maintaining the said Schools, apply out of its annual income in the several Parishes in which such Schools are opened and established, a sum of money not exceeding in any case one fourth of the actual income of such *Fabrique*; But no such application of the funds of a *Fabrique* shall take place, without observing the formalities usual in the Parishes of Lower Canada, when moneys belonging to a *Fabrique* are applied to objects other than those to which they were originally designed. 4 G. 4, c. 31, s. 6.

Funds belonging to *Fabriques* may, in certain cases, be applied to School purposes.

8. The *Fabriques* shall annually render an account in writing, on the third Sunday after Easter, at a meeting of the resident landholders in the parish, stating the income and expenditure of the said schools, for the twelve preceding months; the number of pupils and the name of the School-master; which account shall be deposited in the archives of the *Fabrique*, and a copy thereof duly certified by a Public Notary and two witnesses, shall also, within six weeks after the said meeting, be deposited in the office of the Prothonotary of the Superior Court in the district, to which copy, all persons being resident landholders in Lower Canada, shall have access without paying any fee. 4 G. 4, c. 31, s. 7.

Account of expenditure on Schools to be rendered.

9. The *Fabrique* of any parish, and the School Commissioners thereof, may, by mutual agreement in due form, unite for one or more years the *Fabrique* Schools in operation, with any of the Schools to be kept under the Common School Laws; and any *Fabrique* contributing not less than fifty dollars by the year, towards the support of any School under the management of School Commissioners, shall thereby acquire a right to the *Curé* and Church-warden in office to be Commissioners, if they were not so before; but no *Fabrique* shall so unite its School to those managed by Commissioners of another faith, except under an express and formal agreement with the School Commissioners or Trustees of such other faith. 9 V. c. 27, s. 25.

Arrangements for joint School may be made between *Fabrique* and School Commissioners.

## C A P . X V I I .

## An Act respecting the Royal Institution for the advancement of Learning.

## CONSTITUTION, INCORPORATION, &amp;C.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Governor may appoint Trustees of Schools of Royal Foundation.

**1.** The Governor may, by an instrument under the great seal of this Province, appoint such and so many persons as he sees fit, to be Trustees of the Schools of Royal foundation in Lower Canada, and of all other institutions of Royal foundation, established for the advancement of learning therein, and for the administration and improvement of all estates and property, in any manner appropriated to the said schools and institutions, for the purposes of education and the advancement of learning in Lower Canada, and may remove, from time to time, the said Trustees or any of them, and appoint others in the place of those so removed, or who die or resign their trust. 41 G. 3, c. 17, s. 1.

Such Trustees to be a Corporation.

**2.** The said Trustees shall be a body corporate and politic, by the name of *The Royal Institution for the Advancement of Learning*; and by that name shall have perpetual succession and a common seal, and may alter, break and make new the same, when and as often as they judge the same to be expedient; and may by the same name, sue and be sued, implead and be impleaded, answer and be answered unto, in all or any Court of Record or places of judicature within *this Province*; and by the name aforesaid may purchase, take, hold and possess, without license in mortmain or *lettres d'amortissement*, all real or immovable property, money, and moveable property, paid, given, granted, purchased, appropriated, devised or bequeathed in any manner whatsoever, for and in favor of the said Schools and Institutions of Royal foundation, to and for the purposes of education and the advancement of learning, within Lower Canada, and may do all and every lawful act and thing which any other body politic or corporate, by law, may do. 41 G. 3, c. 17, s. 2.

Their corporate name and powers.

All the property belonging to Institutions of Royal Foundation vested in said Trustees.

**3.** All immovable property, and all rents and sums of money charged upon, and issuing or payable out of any immovable property, and all sums of money or moveable property, paid, given, granted, purchased, appropriated, devised or bequeathed in any manner whatsoever, for and in favor of the said Schools and Institutions of Royal foundation, to and for the purposes of education and the advancement of learning within Lower Canada, shall be vested in the said Trustees for the uses and purposes herein mentioned; And the said Trustees,

or the major part of them, may demise, let and lease any immoveable property so given, granted, purchased, appropriated, devised or bequeathed, for any term of years not exceeding twenty-one years, and have, take and receive the rents, issues and profits thereof. 41 G. 3, c. 17, s. 2, as amended by 16 V. c. 58, s. 7. Their powers in respect of it.

4. The Governor may, by an instrument under the great seal of this Province, from time to time, appoint a President or Principal of the said Corporation hereby erected. 41 G. 3, c. 17, s. 4, *part*. President of Corporation

5. In the absence of the President or Principal, the member first or senior in order of appointment, present at any meeting of the said Corporation, shall preside. 16 V. c. 58, s. 1. If President be absent, who to preside at meetings.

6. The said Corporation may appoint, from time to time, its Officers and servants, and may remove them. 16 V. c. 58, s. 2. Officers.

7. At any Meeting of the said Corporation, held according to law, the said Corporation may provide and fix by By-laws, Rules and orders, the place, times and manner in which the said Corporation shall assemble, and the number and description of members which shall be requisite for transacting the business and executing the trust of the said Corporation. 16 V. c. 58, s. 3. By-laws, &c.

8. The President and the number of members of the Corporation so fixed, being assembled at the place and times, in the manner so fixed, may make by-laws, rules, orders, constitutions and ordinances, not repugnant to the customs or laws of this Province or the express regulations of this Act, as by them or the greatest part of them, then and there present, are judged necessary and expedient, as well for the direction, conduct and government of the said Corporation of the free Schools of Royal foundation in Lower Canada, and all other institutions of Royal foundation for the advancement of learning established within Lower Canada, and of the masters, teachers, professors and students thereof, respectively, as for the management and administration, improvement and amelioration of all estates and property, real or personal in any manner paid, given, granted, purchased, appropriated, devised or bequeathed, in any manner or way for and in favour of the said Schools and institutions of Royal foundation, for the purposes of education and the advancement of learning within Lower Canada : By-laws for the management, &c., of Schools of Royal Foundation.

2. But nothing hereinbefore contained shall extend to, or shall prejudice, directly or indirectly, the religious communities existing *de facto*, at the time of the passing of the Act, 41 G. 3, c. 17, nor to any school or house of instruction then existing *de facto* in Lower Canada, nor to any Corporation legally established in Lower Canada, nor to any private school or other private establishment by individuals, for the purposes of education. 41 G. 3, c. 17, s. 4, *part*. This Act not to affect religious communities or private Schools.

By-laws made since a certain date need not be sanctioned by the Governor.

**9.** All By-laws, Rules, Orders, Constitutions and Ordinances, made by the said Corporation after the Tenth day of November, one thousand eight hundred and fifty-three, not being repugnant to any law of this Province, shall have full force and effect without being sanctioned or confirmed by the Governor; But a certified copy thereof shall be sent to the Governor through the Post Office, and he may signify his disallowance of the same within sixty days thereafter. 16 V. c. 58, s. 4.

Governor may appoint Masters of Free Schools.

**10.** The Governor may, by an instrument under his hand and seal at arms, appoint a fit and proper person to be the School-master of each free school of Royal foundation, established by virtue of this Act, and may, from time to time, remove such School-master, and appoint another in his stead, or any master so removed, or dying, or resigning his trust,—and may fix the salary or annual stipend to be allowed to each such School-master; and no such master shall teach in any free school of Royal foundation established after the passing of this Act, 41 G. 3, c. 17, without a commission for that purpose from the Governor,\* under his hand and seal at arms. 41 G. 3, c. 17, s. 10.

ADMINISTRATION AND DISPOSAL OF PROPERTY BELONGING TO  
M'GILL COLLEGE OR OTHERWISE VESTED IN THE  
SAID CORPORATION.

Terms upon which Corporation may dispose of lands held by them in trust for McGill College.

**11.** The said Corporation of the *Royal Institution for the Advancement of Learning* may alienate and dispose in perpetuity of all such portions of all lands or real estate by them held in trust for McGill College, or for any department or branch thereof, or for any Institution of Royal Foundation wholly or in part under their control, as they deem expedient for the ends of such trust, for a ground rent (*rente foncière*) or otherwise, subject to all such terms and conditions, whether in reference to time and mode of redemption of any such rent or otherwise, and with such formalities only of procedure, as they may deem advisable; And no such rent which they thus stipulate shall be redeemable nor the capital thereof exigible, otherwise than at such time or times and in such mode and after such notice as may have been stipulated, any general provision in these Consolidated Statutes to the contrary notwithstanding; except that if such rent be stipulated irredeemable, or not redeemable within at least thirty years, it shall *ipso facto* become and be redeemable and exigible at the expiration of such thirty years. 20 V. c. 53, s. 1.

Royal Institution may agree for redemption

**12.** The said Royal Institution for the Advancement of Learning, may agree with any holder of land heretofore alienated

NOTE.—\* Sections 5, 6, 7, 8, 9, 11 and 12, providing for the building of School Houses, seem to be superseded by the Common School Acts—of which paragraph 1 of section 21 of 9 V. c. 27, directs the School Commissioners to take possession of all the School-houses erected by the Royal Institution.

alienated by them under authority of the Act of the eighth year of Her Majesty's Reign, Chapter seventy-eight, in consideration of an irredeemable ground rent (*rente foncière*) subject to an increase of 25 per cent at the end of each twenty years up to one hundred, for redemption of such rent, on such terms as they deem expedient, and may take in discharge thereof the redemption money as so agreed upon, and shall deal with such redemption money as though it were received in redemption of an ordinary ground rent. 22 V. (1859.) c. 53, s. 1.

*of certain rentes foncières.*

**13.** The said Royal Institution for the advancement of Learning, if they deem it to the advantage of the said McGill College so to do, may cancel and annul any deed heretofore by them granted for the disposal of any portion of the said lands and real estate, upon such terms as by them and the other parties to such deed may be mutually agreed upon. 16 V. c. 58, s. 6, and 20 V. c. 53, s. 3.

*May cancel deeds heretofore granted by them.*

**14.** The rents, issues and profits, and sums of money by the said Corporation held, possessed or received, shall be received by the Treasurer of the said Corporation, and be by him deposited and disposed of in such manner as, from time to time, the said Corporation may direct; but the said Corporation shall, on or before the first day of February in every year, furnish to the Governor a detailed statement and account, affirmed by the Treasurer before a Magistrate or Commissioner authorized to receive affidavits, of the receipt and expenditure of such moneys during the year immediately preceding. 16 V. c. 58, s. 7.

*How revenues of Corporation shall be disposed of and accounted for.*

**15.** All sums of money, from time to time to be received by the said Corporation, on account of purchase money of any real estate by them alienated, or on account of the capital of any ground rent, shall be by them dealt with as capital only, and not as income, and shall be invested either in productive real estate, or upon security thereof, or in public stocks or securities of the United Kingdom or of this Province, as soon as possible, and in such wise as the said Corporation deems most for the advantage of their trust; and such investments may from time to time be changed as occasion may require, so always as that all proceeds thereof be ever kept as capital and re-invested in the like manner; And the said Corporation shall at all times, in their yearly statement of account rendered to the Governor, specially and in detail state all such receipts and all such investments and re-investments as have taken place during the year covered by such statement. 20 V. c. 53, s. 2.

*How money received as purchase money of real estate shall be dealt with.*

**16.** The said Royal Institution for the Advancement of Learning may expend not more than ten thousand dollars, from any capital now or hereafter in their hands, in discharge *pro tanto* of their present indebtedness incurred by reason of the re-building by them, of Burnside Hall, in the year one thousand eight hundred and fifty-six. 22 V. (1859.) c. 53, s. 2.

*May expend a certain amount in discharge of indebtedness for Burnside Hall.*

Moneys received may be invested in real estate for their own use and occupation.

**17.** Any moneys heretofore or hereafter received by the said Royal Institution for the Advancement of Learning on account of any real estate by them alienated or to be alienated, or on account of the capital of any ground rent, whether for McGill College aforesaid, or for any department or branch thereof, or for any Institution of Royal foundation wholly or in part under their control, may be by them invested in such buildings or other real estate as may be required for the actual use of such College or department or branch thereof, or institution, as the case may be. 22 V. (1859,) c. 53, s. 3.

Such investments to be included in annual report.

**18.** The said Royal Institution for the Advancement of Learning, shall, at all times in their yearly statements of account rendered to the Governor of this Province, specially and in detail, state all such receipts and all such investments or re-investments as may have taken place under authority of this Act during the year covered by such statement. 22 V. (1859,) c. 53, s. 4.

Corporation may effect certain loans.

**19.** The said Corporation may further, from time to time, obtain and take loans of money, upon such security, whether by hypothecation of their said lands or of any part or parts thereof or otherwise, and upon such other terms and conditions as they may stipulate and assume; But the total amount of such loans shall not at any one time, in the whole, exceed the sum of twenty thousand dollars. 20 V. c. 53, s. 3.

TITLE 4.

MATTERS CONNECTED WITH RELIGION.

C A P. X V I I I.

An Act concerning the Erection and Division of Parishes, and the Building and Repairing of Churches, Parsonage Houses, and Churchyards.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

APPOINTMENT, &C., OF COMMISSIONERS.

1. The Governor may, by Commission under the Great Seal of the Province, commission and appoint, in the name of Her Majesty, in each of the Roman Catholic Dioceses canonically acknowledged and erected in Lower Canada by the Ecclesiastical Authorities, five persons duly qualified and residing in the said Dioceses respectively, to be Commissioners for the purposes of this Act, and may remove them and appoint others in their stead ; and the commissioners so appointed in each diocese, or any three, or more, of them, may exercise the authority, jurisdiction and powers vested in them by this Act, until the revocation of their commission. 2 V. (3) c. 29, s. 1.—16 V. c. 125, s. 1, and 22 V. c. 5, s. 65.

Governor to appoint five Commissioners in each Roman Catholic Diocese.

Quorum.

2. The Commissioners may, collectively or severally, swear any witnesses produced before them, or any expert appointed in the course of any proceedings had before the Commissioners. 16 V. c. 125, s. 6.

Commissioners may swear witnesses or experts.

3. The commissioners shall appoint a fit person to be their secretary, and may remove him and appoint another in his stead ; and such secretary shall keep a register of all the judgments, orders and proceedings of the commissioners, and shall have the legal custody of the said register and proceedings. 2 V. (3) c. 29, s. 18.

Secretary—his appointment and duties.

4. Whenever, in any of the said dioceses more than two of the Commissioners are interested in the civil erection of any parish, or in the construction or repairing of any building for divine worship, then, on a representation to that effect made by any one of the Commissioners, the Governor may appoint, by a special commission, one or more persons not interested, to act in such case as a Commissioner or Commissioners jointly with the Commissioners not interested as aforesaid. *ibid*, s. 20.

Commissioners being personally interested, Governor may appoint others to act.

5. All cases respecting either the erection or division of Parishes, or the building and repairing of Churches, Parsonage Houses and Churchyards, and their appurtenances, shall be proceeded with and adjudged upon by the Roman Catholic Bishop or person administering the Diocese in which it is necessary to act, and by the Commissioners appointed for the said Diocese. 16 V. c. 125, s. 3.

Matters respecting erection of parishes, building of churches, &c., how to be decided.

Bailiffs of S. C. to act as Bailiffs to Commissioners.

**6.** The bailiffs of the Superior Court for Lower Canada shall, at the same time, be bailiffs of the said Commissioners, and no special affidavit shall be necessary to prove any service, advertisement, posting up, publication or deposit, when the same has been done and performed by any such bailiff, but the certificate or return in due form, drawn up by a bailiff under his oath of office, shall be considered as proof of the facts therein mentioned. 13, 14 V. c. 44, s. 11.

Such Bailiffs to be officers for purposes of this Act.

**7.** The bailiffs of the Superior Court shall be, for all the purposes of this Act, officers duly qualified to act (*exploiter*) as well for the ecclesiastical as for the civil authorities, and as well for the publication of notices as for any other purpose. 16 V. c. 125, s. 5.

#### PROCEEDINGS FOR OBTAINING THE CANONICAL DECREE.

A canonical decree may be granted on a petition of the majority of the inhabitants interested in the object thereof.

**8.** Whenever it is required to erect any new parish, to dismember or subdivide any parish, or unite two or more parishes, or to alter or modify the bounds, limits or division lines of any parish already established and erected according to law,---or when in any parish or mission, it is required to construct a parish church or chapel, or chapel of ease, or a sacristy, or other appurtenance of any such church or chapel, or a parsonage house and the appurtenances thereof, or a churchyard, or to alter or repair the same, or any of them,---in any of the said cases, on a petition of a majority of the inhabitants, (being freeholders,) interested in them, the erection, subdivision, dismemberment or union of any parish or parishes, or in any alteration or modification of the bounds or limits of any parish, or interested in the construction, or in any alteration or repairs of any church, parsonage house or churchyard as aforesaid, such petition being presented to the Roman Catholic Bishop of the diocese, wherein such erection, dismemberment, subdivision or union of a parish or parishes is to be made, or such church, sacristy, parsonage house, or churchyard and their appurtenances are to be erected or repaired,---or in case of the absence of the bishop or the vacancy of the episcopal see, then such petition being presented to the administrator of the said diocese,---the ecclesiastical authorities, or such other person as they may appoint and authorize for the purposes aforesaid, shall proceed, according to the ecclesiastical law and the practice of the diocese, to the final decree for the canonical erection of any parish, or the division or union of any parishes, or to the order and decree finally determining the location and construction of any new parish church or chapel, or chapel of ease, or sacristy, or of any parsonage house or churchyard, and the principal dimensions thereof, or any alteration or repairs to be made in and to the same, as the case may be. 2 V. (3) c. 29, s. 2.

Proceedings by ecclesiastical authorities.

Notice to parties interested.

**9.** In all the proceedings on the part of the ecclesiastical authorities, in any of the cases hereinbefore mentioned, sufficient notice

notice shall be given to the persons interested, at least ten days before, of the day and place when and where the bishop or his delegate will proceed to the spot for the purposes mentioned in the petition :

2. Such notice shall be publicly read and posted up during two consecutive Sundays, immediately after Divine service in the forenoon, at the door of the church or chapel of each of the parishes or missions in which the persons interested reside, or if there be no church or chapel, then at the most public spot in the place where the persons interested reside, and also at the door of the church or chapel of the parish or mission whence they are ministered to ; but the publications of notices required by this Act may legally be made in that one of the two parishes ministered to by the same rector, in which Divine service is performed. 2 V. (3) c. 29, s. 3.

How such notice shall be given.

ERECTION, &c., OF PARISHES.

10. Every decree for the canonical erection of a new parish, or for the subdivision, dismemberment, or union of any parishes, or with regard to the alteration or modification of the boundaries, limits and division lines of any parish already established according to law, rendered according to the canonical laws, forms and usages followed in the Roman Catholic Dioceses in Lower Canada, shall be publicly read and published on two consecutive Sundays from the pulpit in the churches or chapels of the parishes or missions interested in the said erection, dismemberment, division, union, alteration of limits, boundaries or division lines, (or, in default of such parish church or chapel, from the pulpit of the church or chapel of the parish whence the inhabitants of the parish or mission in question are ministered to),--together with a notice informing the parties interested, that on the expiration of thirty days, or one day later if the thirtieth day be a holiday (*fête d'obligation*) after the last reading and publication of the said canonical decree, ten or a greater number of the inhabitants being freeholders mentioned in the petition presented to the ecclesiastical authorities for the rendering of the said canonical decree, will apply to the Commissioners for the civil recognition thereof ; and that all having or pretending to have any opposition or claim to bring against the said civil recognition, must file the same before the expiration of the said thirty days, with the Clerk of the said Commissioners :

Decrees for the erection subdivision, &c., of parishes to be publicly read in churches.

Notice to parties interested.

2. If, within the said period, no opposition is made to the said civil recognition of the said canonical decree, and filed as aforesaid with the said clerk, or if any opposition is made and filed, and dismissed by the said Commissioners, the said Commissioners shall make their report to the Governor, in conformity to the said canonical decree. 18 V. c. 112, s. 6.

In case no opposition be made.

Proceedings to be taken on oppositions by Commissioners.

**11.** If any opposition be filed as aforesaid, and the Commissioners consider that the same ought to be taken into consideration, they may then proceed to ascertain the extent, limits, boundaries and division lines of such parish, subdivision, dismemberment or union of parishes, and may generally enquire into all things which have been done or ordered by the ecclesiastical authorities alone, or with regard to any alterations and modification made by the said authorities in the limits, boundaries and division lines of the parishes or subdivisions of parishes already established according to law ; of all which the said Commissioners shall make a report to the Governor, in which they shall set forth the bounds, limits and division lines of each parish or subdivision of parishes, and of the alterations and modifications to be made in parishes already established according to law, and shall further declare the limits, bounds and division lines, which they may think it would be most for the convenience of the inhabitants to assign :

Proceedings to effect modification of the canonical decree.

**2.** But in case they think it necessary to make any changes or modifications in the matters regulated and ordered by the canonical decree, the said Commissioners shall consult the ecclesiastical authorities hereinabove mentioned, or such persons as may be named by them for that purpose, and obtain their opinion on the subject, and communicate the same in the report, together with all remonstrances and representations which any number of inhabitants have made to them, in support of their demands or claims. 2 V. (3) c. 29, s. 4.

Commissioners in certain cases may themselves visit the locality in question.

**12.** The Commissioners, at the instance of the persons interested (or when any difficulties, objections, or oppositions arise, or when they deem it advisable either for the sake of avoiding the necessity of putting too great a number of the inhabitants to the trouble and expense of travelling, or in order that they may themselves better judge of the validity of the pretensions of the parties,) may proceed in person to the spot, after sufficient notice given in the manner hereinabove prescribed by the tenth section, or they may depute one of themselves to visit the spot, with reference to the matters aforesaid, and to report thereon to them. *Ibid*, s. 7.

Commissioners may examine all papers, plans, &c., relative to the limits in dispute.

**13.** The Commissioners may in all cases send for and examine, and if necessary take copies of all papers, plans and documents relative to all limits, bounds and division lines of parishes, or subdivisions of parishes, in the possession of any person or officer whomsoever, civil or ecclesiastical ; and if any person, having such documents in his possession, refuses or neglects to exhibit them to the Commissioners, he shall be liable to a fine of forty dollars, to be recovered by civil action in any court of competent jurisdiction. *Ibid*, s. 8.

Nothing herein relating to di-

**14.** Nothing in this Act, having relation to the dismemberment, division or subdivision of parishes already established according

according to law, or to the union of two or more parishes, or to the changing or altering the limits, boundaries, or lines of demarcation of the said parishes, shall extend to any parish which has contracted debts for the erection of churches or parsonage houses therein, until the said debts are paid and satisfied. *Ibid*, s. 5.

vision, &c., of parishes to extend to parishes having debts unpaid.

**15.** On the *procès verbal* of the Commissioners, containing their report as aforesaid, the Governor may issue a proclamation under the great seal of the Province, erecting such parish for civil purposes, and for confirming, establishing and recognizing the limits and boundaries thereof; and such proclamation shall avail as a legal erection and confirmation for all civil purposes, of the parish or parishes or subdivision of parishes therein designated, and of those which may have been formed by the dismemberment, union, or subdivision of parishes erected and recognized by the *arrêt* of His Most Christian Majesty, dated third March, seventeen hundred and twenty-two, or by any other subsequent letters patent or proclamations. *Ibid*, s. 6.

Erection, division, &c., of parishes confirmed by Proclamation issued on the report of the Commissioners.

CONSTRUCTION OF CHURCHES, &c.

**16.** Whenever any order or decree has been made by the ecclesiastical authorities, for the location, construction, alteration, removing, or repairing of any parish church or chapel, or chapel of ease, or sacristy, parsonage house, or church-yard, as above mentioned, the majority of the inhabitants, (being freeholders,) interested in such construction or repairs, may apply by petition to the commissioners, praying that a meeting of the inhabitants of such parish or mission be called for the purpose of proceeding to the election of three or more trustees to carry the said decree into effect; and the commissioners may thereupon authorize such meeting and election, by an order to that effect. 2 V. (3) c. 29, s. 9.

Appointment of Trustees for the erection of parish, church, &c.

**17.** By virtue of such order of the commissioners, the rector (or the priest having the spiritual care of, and performing the duties of rector) of the parish or mission, shall call by the sound of the bell, and after notice given from the pulpit during two consecutive Sundays, such general meeting of all the inhabitants, (being freeholders) of the parish or mission, and shall preside thereat; and at such meeting trustees shall be elected by a majority of votes; of all which a record shall be made in due form. 2 V. (3) c. 29, s. 10.

Notice of meeting for election of Trustees.

**18.** The trustees so elected shall be freeholders resident in the parish or mission for which they are elected, and shall be bound to accept the said office and to perform the duties thereof, unless exempted by the commissioners for reasons sufficient in law to exempt any person from being appointed to the office of tutor; and all such reasons shall be offered within eight days from

Who may be Trustees.

from the day of the election ; but the fact of his having five or more children, shall not be a valid reason to exempt any person so elected from serving as trustee. *Ibid*, s. 11.

Election to be confirmed by Commissioners.

Powers of Trustees to be defined by the Commissioners.

**19.** The trustees, or a majority of the trustees, so elected, shall, before they enter on the duties of their office, present a petition to the commissioners, praying that their election be confirmed, and that they be authorized to assess the proprietors of lands and other immoveable property, situate within the parish or mission for which they have been elected, and to levy the amount of the sum assessed on each individual for his portion of the contribution, as well for the purpose of effecting the construction and repairs which may be in question, as of meeting the expenses thereby occasioned and deemed necessary by the said commissioners : and the commissioners may hear, examine and decide upon the allegations and prayer of such petition, and may grant or refuse the said prayer altogether or in part, after having caused the act of election to be published in the said parish or mission, and given public notice to the inhabitants interested, of the day on which the commissioners will take the act of election and the petition of the trustees into consideration, in order that the opposants, if any, may be heard. *Ibid*, s. 13.

In case of vacancy among Trustees.

**20.** In case of the death, serious illness, madness or lunacy, removal of domicile out of any parish or mission, legal excuse or incapacity of any of the trustees, the trustees remaining in office, or the majority thereof, may present a petition to the commissioners, alleging the fact, and praying that a meeting be called of the inhabitants of the parish or mission for the purpose of proceeding to the election of a trustee, in the place of the trustee whose place is to be filled : 13, 14 V. c. 44, s. 1.

Election of new Trustees in certain cases and confirmation thereof.

**2.** Upon sufficient proof of the fact alleged, the commissioners may make an order allowing the meeting and election prayed for, which meeting shall be called, presided over and held, and the election shall be had in the manner prescribed for the election of the first trustees ; and the confirmation of the election shall be required by the trustees remaining in office, or by a majority of them, by petition presented to the commissioners for that purpose ; and the commissioners shall proceed in the manner prescribed as to the confirmation of the election of the trustees first elected ; 13, 14 V. c. 44, s. 1.

In case of default to elect a new Trustee.

**3.** If the said inhabitants neglect or refuse to elect such trustee, then the commissioners may appoint one in their default ; but the trustees so appointed shall be qualified in the manner required by the next preceding section ; *Ibid*, s. 1.

Public Hall, permission to erect, how obtained.

**4.** Should a majority of the parishioners, at the same or any other time, present a petition praying for permission to erect a public hall or any other edifice, in conformity with this Act, the

the Commissioners may accede to the prayer of the said petitioners, provided that such buildings be erected upon land belonging to the *Fabrique*, and not elsewhere. 18 V. c. 112, s. 4.

**21.** As soon as the commissioners have made an order approving the election of the trustees, and authorizing them to make an assessment, and to levy the sums assessed, the trustees shall proceed to draw up an act of assessment, which shall comprise a specification of the work to be done, and a detailed estimate of the expenses, known and unforeseen, which they deem necessary, and for the construction or repairs in question, and also a correct statement of all the lands and other immoveable property situate in the said parish or mission, (excepting church property which is not liable to such assessment,) shewing the extent and value of each lot, and the name of the real or supposed owner, and the proportionate sum of money (and the quantity of materials, if any,) which they have assessed on each lot, towards the necessary expenses of such construction or repairs :

Act of Assessment to be prepared by Trustees, what it shall contain.

2. Such act of assessment, after it has been completed, by the trustees, or a majority of them, shall be deposited during fifteen days in the parsonage house of the parish, or if there be none, in the house of some notary, or well known inhabitant of the place, in order that all persons interested may take cognizance thereof during the period aforesaid, at any time between eight o'clock in the morning and five in the afternoon ;

To be open to inspection of parties interested.

3. And the trustees shall cause public notice to be given, by a notice in writing, read publicly, and posted at the door of the church or chapel of the parish, (or in default of such parish church or chapel, at the most public place, and at the door of the church of the parish whence the inhabitants of the parish or mission in question are ministered to) on three consecutive Sundays, immediately after Divine service in the forenoon ; the said notice setting forth the place in which the act of assessment is deposited, and also the day and hour, and the place, when and where the trustees will move for its homologation before the commissioners,—in such manner as the whole has been regulated and prescribed in the order made by the commissioners. 2 V. (3) c. 29, s. 14.

Trustees to give notice, when they will move for the homologation thereof.

**22.** On the day appointed for proceeding to the consideration of the act of assessment, the trustees, or the majority of them, shall present the said act to the commissioners for homologation, and shall accompany it by sufficient written proof of its having been duly deposited, and a sufficient certificate of the publication of the notice hereinabove mentioned ; and the commissioners shall hear, judge and determine between the trustees and the parties interested, by rejecting, modifying, or confirming the said act of assessment altogether or in part, as they find it just and reasonable to do : 2 V. (3) c. 29, s. 15.

Proceedings to obtain homologation.

Qualification of signers of petition and opposants to confirmation.

No person shall be admitted to oppose the homologation either of the act of election of the said trustees, or of the act of assessment which they have made, nor shall be reckoned among the signers of the petition presented to the commissioners before trustees can be elected, nor shall be competent to vote at the election of the said trustees, unless he has attained the full age of twenty-one years, and holds separately, as proprietor, and has then held for at least six months, a lot of land or other immoveable property situate in the parish in question ;

Co-heirs.

But nothing in this section shall prevent co-heirs, being of lawful age, from making such oppositions, or from voting at the election of trustees, or from signing any petition as hereinabove mentioned. 2 V. (3) c. 29, s. 16.

Nothing herein to render protestants liable to assessment, or to interfere with Church of England parishes.

**23.** Nothing in this Act shall render any of Her Majesty's subjects of any class of protestants whatsoever, or any person whomsoever, other than Her Majesty's subjects professing the Roman catholic religion, liable to be assessed or taxed in any manner whatsoever for the purposes of this Act, or shall extend in any manner or way whatsoever to the erection, subdivision, dismemberment or union, or to the alteration of the bounds of any parish already formed, or to be formed, according to the establishment of the church of England. 2 V. (3) c. 29, s. 17.

Rates may be demanded on homologation of Act of Assessment.

**24.** When the act of assessment has been homologated by the commissioners, the trustees may exact from the assessed, the payment of their rates or assessments, and may sue for and recover the same. 2 V. (3) c. 27, s. 19.

How rates may be sued for and recovered.

**25.** All suits brought for the recovery of any sums of money to be levied under this Act, for the purposes therein mentioned, shall be brought either before the Circuit Court, without appeal from any judgment either final or interlocutory rendered by the said Court in any such suit, or before the Commissioners' Court nearest to the residence of the party sued, or before one or more Justices of the Peace of the locality in which the assessment is leviable, or in default of such resident Justice, then before the Justice or Justices nearest to the said locality ;--and all such suits may be maintained by the production of duly authenticated certificates of papers and documents, the production whereof might be required to maintain such suits without this section. 18 V. c. 112, s. 1.

Quarterly payments, if rate does not exceed \$12, otherwise payment may be made in 12 instalments.

**26.** Whenever the sum of money to be so levied on any party does not exceed twelve dollars, it shall be levied and payable in equal and quarterly payments, and not otherwise ; but if it exceeds that sum, it shall be levied and payable in twelve equal instalments, and this section shall apply to suits pending for any such sums of money on the sixteenth day of August, one thousand eight hundred and fifty-eight, except only

only that the defendant in any such case shall remain liable for any costs incurred before that day, and for which he would have been liable without this section. 22 V. c. 102, s. 1.

**27.** If the amount of the assessment levied is not sufficient to meet the necessary expenses of construction and repairs, the Trustees or the majority of them shall render to the Commissioners a faithful account of the receipts and expenditure and of the work to be done, and of the probable expense to be incurred if the work is not completed, to be sworn to by one or more of them to the best of their knowledge and belief, before a Justice of the Peace, who may administer the oath :

In case amount levied is insufficient.

2. And the Trustees shall at the same time present a petition to the Commissioners, alleging such account and the want of money to complete the works or to pay for them if they are completed, and praying authority to make a supplementary assessment ; and the said account, accompanied by vouchers and the said petition, shall be previously deposited and published at the place, during the time and in the manner prescribed by the twenty-first section of this Act, in relation to acts of assessment, and with the same formalities. 13, 14 V. c. 44, s. 2.

Proceedings as regards a supplementary assessment.

**28.** On the day appointed for the consideration of the account and petition, the trustees, or the majority of them, shall present the same with the vouchers in support thereof, to the Commissioners for homologation, and the granting of the conclusions of the petition, and shall accompany them by a sufficient certificate of the deposit, and publication thereof ; and the Commissioners shall hear and determine between the Trustees and the parties interested, by rejecting, modifying or confirming the said account altogether or in part, or by rejecting, modifying or granting the conclusions of the petition, altogether or in part, as they find it just and reasonable to do. 13, 14 V. c. 44, s. 3.

Confirmation of such supplementary assessment.

**29.** As soon as the Commissioners have made an order authorizing the Trustees to make a supplementary assessment, the Trustees and Commissioners shall proceed in the manner and with the formalities prescribed for the first assessment, as well as regards the making and drawing up, depositing, publishing and posting up, rejecting, modifying or confirming, as the levying of such supplementary assessment, and with the same powers, authority and jurisdiction. 13, 14 V. c. 44, s. 4, *part.*

Subsequent proceedings by Trustees.

**30.** The Trustees shall add to the total amount of all the expenses to be covered by the first assessment or by the supplementary assessment, if any there be, fifteen per cent, over and above the said amount, to cover deficiencies, which said fifteen per cent shall be assessed, levied and paid in like manner with the

Certain amount to be levied to cover deficiencies.

the total amount of the said expenses. 13, 14 V. c. 44, s. 4, *remainder*.

In case a less sum than that payable be found sufficient.

**31.** Whenever a less sum than that payable by virtue of any such assessment for the construction of a Church, or any other of the purposes of this Act, is found sufficient for the construction of such Church or for such other purpose, the Trustees shall not call in any instalment remaining due after such sufficient sum has been paid in, unless any fraction of any such remaining instalment is required to complete the construction of such Church, or for such other purpose, in which case the Trustees may call in the whole of the instalment, of which any fraction is so required; and the balance of the instalment so called in, after deducting therefrom such fraction or part, shall be paid over and applied as provided by this Act. 14, 15 V. c. 103, s. 2.

Assessment under this Act to be the first charge on land.

**32.** The amount of any assessment on any land to defray the expenses of the construction or repair of any Church, Sacristy, Parsonage House or Churchyard shall be the first charge on such land, and the first privileged debt which shall affect and bind the said land, without its being necessary to enregister the act of assessment or the judgment of confirmation in the whole or in part in any Registry Office. 13, 14 V. c. 44, s. 5.

Trustees to render an account yearly.

**33.** The trustees shall render a true and faithful account, once in every year, of the expenditure of the moneys entrusted to them, and of the moneys and material due to them or in their hands, and of all their proceedings in respect of the said moneys and materials:

Day on which such account is to be rendered.

2. The said account shall be so rendered on the first Sunday in December in every year, at a meeting of the inhabitant freeholders to be held in the sacristy of the parish or mission, or in the church if there be no sacristy, or in the public place if there be no church nor sacristy, immediately after high mass on the said Sunday, notice having been given from the pulpit of the church or chapel in the parish or mission, by the *curé*, or other person administering the said parish or mission, on the two previous Sundays, or at any hour appointed, notice having been given in some public place of the parish or mission, if there be no church nor chapel;

3. But when from any unavoidable accident, or other circumstance, any such meeting is not held on the said first Sunday in December, the same may take place on the second or on the third Sunday in the same month. 14, 15 V. c. 103, s. 3.

Proceedings to compel Trust-

**34.** If the trustees fail to render such account in the manner and at the time aforesaid, the inhabitant freeholders of the parish

parish or mission may assemble at the sacristy, church or public place as hereinbefore mentioned for the rendering of the account (at least eight days' notice of the time and place of such meeting having been given from the pulpit by the *curé*, or person administering the said parish or mission, or if there be no church nor chapel, then in a public place, on a requisition being made to him for that purpose by any three inhabitant householders); for the purpose of electing from among themselves three agents to demand the said account from the trustees, and to sue for the rendering of the same before any tribunal of competent jurisdiction, in case they are authorized so to do, at a meeting to be held as hereinafter provided. *Ibid*, s. 4.

tees to render such account.

**35.** The agents so appointed shall demand from the trustees any account which has not been rendered, and if the same is not rendered to their satisfaction, within thirty days after being so demanded, the said agents shall make a report accordingly at a meeting of the said inhabitant freeholders, to be called by the said agents and held as aforesaid, by a notice under their hand, published and posted at the church door, or other public place of the parish or mission, at least eight days previous to such meeting:

Agents to demand accounts and report to inhabitants.

2. If upon the report of the agents, the majority of the persons present at such meeting decide that the agents shall sue for the rendering of the account, the said agents shall sue by their name of office, and without otherwise naming them or any of them, for the rendering of the said account by the said trustees, and the costs of such action shall be advanced out of the funds of the *fabrique* of the said parish or mission;

Action may be brought to compel the rendering of the account.

3. If the agents fail to obtain a judgment in their favor, with or without costs, the Trustees shall pay the costs out of the funds in their hands, and if they have no funds, they shall levy the said costs by an assessment on the parish or mission, which assessment shall be made, advertised, deposited, presented and homologated in the same manner as other assessments which the trustees are already entitled to make, but the assessment herein mentioned shall be levied in one single payment;

If action fails costs may be levied by assessment.

4. No such action shall abate or be discontinued by the decease of any of the agents or their going out of office, but shall be continued by the other or others, with or without any new agent, or a meeting may be called and a new agent elected in manner aforesaid, but the action shall not thereby be discontinued or abated, but shall proceed as if no change had taken place in the persons being the agents; any court before which any such action is brought may, if they deem it equitable, condemn the trustees personally to pay the costs or in their capacity as trustees. *Ibid*, s. 5.

Vacancy among agents not to cause action to be discontinued.

Authority of agents to sue.

**36.** The names of the agents so chosen shall be borne upon the registers of the parish or mission, and an extract therefrom duly certified by the *cure* or officiating *cure* or first churchwarden in office, of the *Fabrique* of the parish or mission, shall be *prima facie* evidence in all courts of justice, of the election of such agents, and of their authority to sue for the rendering of the said account. *Ibid*, s. 6.

Name under which they shall bring action.

**37.** The name under which the agents shall bring any such action, shall be "the Agents of the Parish (or Mission) of (*name of the parish or mission.*)" *ibid*, s. 7.

Recital.

**38.** And whereas in certain parts of Lower Canada, it has been the custom to construct and repair churches, sacristies, parsonage houses and church-yards, in conformity with canonical decrees given and rendered by the ecclesiastical authorities, without having recourse to the authority of the commissioners, and to a forced assessment, but by means of voluntary contributions, often insufficient to pay all the expenses of construction or repairs so that sums of money have remained due to the constructors of such buildings, or to the persons who may have repaired the same or to persons who had lent or advanced moneys to pay the said expenses, altogether, or in part; and whereas doubts have arisen whether the *Fabriques* of the parishes in which such constructions and repairs have been made, are responsible for the payment of the said sums remaining due, although they have taken possession of the said churches, sacristies, parsonage houses and church-yards, and the said buildings and erections are applied to the uses for which they had been constructed, and for avoiding doubts; In any case where the ecclesiastical authorities of any Roman Catholic Diocese have made and rendered a canonical decree conformably to the provisions of the Ordinance 2 V. (3) c. 29, continued and amended by the Act 13, 14 V. c. 44, or of the Ordinance 31 Geo. 3, c. 6; allowing or ordering the construction or repair of a church, sacristy, parsonage house or churchyard, and the same has been constructed or repaired, without the inhabitant householders of the parish having had recourse to the authority of the commissioners, and to a forced assessment, and the *Fabrique* has taken possession thereof, and used the same for the purpose for which it was constructed or repaired, and moneys remain due to the builder or contractor for any such construction or repair, or to any one who has advanced moneys to pay the expenses of construction or repairs altogether or in part, or to both,---in all such cases the *Fabrique* of the parish, in which the construction or repair has taken place, is and shall be responsible for the sums so due, and shall pay the same to such builder or contractor out of its revenues only, or to the party who lent or advanced money, or to both, as the case may be, or to their respective heirs, representatives or assigns. 13, 14 V. c. 44, s. 10.

The *Fabrique* to be liable in certain cases where no assignment has been made.

**39:** Within the year next after the completion of the construction or repairs and the payments therefor, the Trustees shall render to the parish or mission at a meeting of the inhabitants thereof called by the *curé* or missionary, and held in the ordinary place and manner, a faithful account shewing the receipt and expenditure and the management of the affairs for which they were elected, which account shall be supported by vouchers and sworn to by one or more of the said Trustees to the best of their knowledge and belief, before a Justice of the Peace, who may administer the requisite oath, and they shall hand over to the *curé* and Church-wardens of the *fabrique* of the parish, or to the ministering *curé* or Missionary and Church-wardens or Trustees managing the temporal affairs of the Church of the Mission, as the case may be, every thing remaining in their possession of the moneys, materials and effects, with the acts of assessment, judgments, decrees, account books, deeds, documents and papers touching the constructions and repairs conducted and the affairs managed by them :

Trustees to render accounts within a year of the completion of works.

To be sworn to.

2. And the said *curé* and Church-wardens, or the *curé* or missionary, and the Church-wardens or Trustees conducting the temporal affairs of the church of the mission, (as the case may be,) may sue the trustees elected for the construction or repairs of the church, sacristy, presbytery or church-yard, for the rendering of the said account if the same has not been voluntarily rendered, or may contest any account rendered and compel the payment of the balance in either case ; and they may at the same time receive what is remaining due of the assessment and sue for the recovery of that which has not yet been paid ; and whatever moneys they thus receive either from the said trustees, or from parties indebted on account of their assessment, shall be deposited with the funds of the *fabrique* or mission and applied in the same manner as the other moneys of the said *fabrique* or mission. 13, 14 V. c. 44, s. 6.

Trustees may be sued to compel the rendering of an account.

**40:** Whenever the construction of any church in any parish or mission in Lower Canada, has been begun before or after the passing of this Act, by voluntary subscription, or having been constructed by voluntary subscription, any work remains to be done to such church,—the completion thereof or of the works necessary to such completion, may be proceeded with and performed in the same manner as provided for the building of churches under and in virtue of this Act, as if the construction of the said church had been originally commenced under the provisions hereof. 18 V. c. 112, s. 3.

Works begun by voluntary subscription may be completed as though begun under this Act.

**41:** The builder or contractor, who has been employed for the erection or repair of any church, parsonage house, sacristy or other building or works belonging to any *fabrique*, erected without the observance of the formalities required by law, shall have his recourse against the said *fabrique*, so soon as they have taken possession of the said building or works, for any amount

Recourse of builder against *Fabrique*.

amount that may be due to him on account of labor performed by him ; but in such case the *fabrique* shall be empowered to sue for and recover the amount of subscriptions remaining due by the parishioners, and to compel any trustee or agent, if appointed to superintend the said works, to render an account of the moneys by him collected for the said works, and of his expenditure thereof. *ibid*, s. 5.

Failure to perform duties under this Act.

**42.** If any person fails or neglects to perform any of the duties required of him by this Act, or directly or indirectly obstructs the performance of the said duties, he shall be liable to a penalty not exceeding twenty dollars, recoverable before any Justice of the Peace of the district. 14, 15 V. c. 103, s. 8.

Recital.

**43.** And whereas the Commissioners appointed in the several districts of this province, under the Act or Ordinance 31 G. 3, c. 6, concerning the construction and repairing of churches, parsonage houses and churchyards, have from time to time rendered certain judgments and sentences, and adopted divers proceedings with regard to assessments for the building, constructing or repairing of churches, parsonage houses and churchyards for certain parishes existing and established merely *de facto*, or recognized by the ecclesiastical authorities alone, without the express co-operation and assent of the civil authorities ; and whereas it is proper to prevent and avoid the questions and difficulties which might arise as to the validity of such judgments, sentences, and other proceedings on this subject ; the said judgments, sentences and proceedings shall be held to be valid,---and shall be followed and executed as if the said parishes had been legally established. 2 V. (3) c. 29, s. 21.

Certain judgments and proceedings held to be valid.

Application of this Act.

**44.** The provisions of this Act extend to parishes erected by canonical decree only before the passing of the ordinance second Victoria chapter twenty-nine, and to the construction and repair of churches, sacristies, parsonage houses and churchyards, the construction and repairing whereof was ordered or allowed by canonical decree before the passing of the said ordinance, and further proceedings, if any be necessary, may accordingly be had with respect to the same under this Act : 4 V. c. 23, s. 1, and 13, 14 V. c. 44, s. 9.

Commissioners in Kamouraska.

2. The Commissioners appointed for the District of Kamouraska before the passing of the Act twenty-second Victoria, chapter five, may continue to final judgment all proceedings instituted before them, and in all such matters their jurisdiction shall extend and shall be deemed to have hitherto extended to the present districts of Kamouraska and Rimouski ; 22 V. c. 5, s. 65.

Continuation of proceedings.

3. And notwithstanding the repeal by the Act respecting the Consolidated Statutes for Lower Canada, of any Act respecting any

any of the subjects of this Act, containing any provision authorizing any Commissioner or Commissioners other than those referred to in the foregoing provisions of this Act, to continue any proceedings commenced before him or them, such proceedings (if any there be) shall be continued and completed by such Commissioner or Commissioners, in the manner directed by such Act, but subject to the provisions of this Act as to all matters not so specially provided for. 13, 14 V. c. 44, ss. 7 and 8--16 V. c. 125, s. 4,—18 V. c. 112, s. 7.

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## C. A. P. X I X.

## An Act respecting lands held by Religious Congregations.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Lands in possession of religious congregations on 19th March, 1839, to be deemed to be held in mortmain for ever.

1. All lands, of what extent soever, which were in the possession of any parish, mission, congregation or society of christians, of any denomination whatever, by virtue of a deed vesting in them the property thereof, by sale, donation or exchange, or by legacy, or by prescription legally acquired, or in trust, or under any other title whatsoever, on the nineteenth day of March, one thousand eight hundred and thirty-nine, shall be deemed to be held in mortmain for ever, by and for the benefit of such parish, mission, congregation or society of christians, and shall, by virtue of this Act, be their incommutable property, in so far as their respective titles extend and are valid : Provided the requirements of the next paragraph of this section were duly complied with as to such lands, that is to say :

Proviso.

Provided that the titles thereto and descriptions thereof have been registered.

2. Provided the rectors or officiating Clergymen, with the church-wardens of such parish, mission, Congregation or Society of Christians, or the trustees to whom the care and administration of such lands were confided, caused the titles thereto, and a description and measurement thereof made by a sworn surveyor, to be enregistered within two years from the said nineteenth day of March, one thousand eight hundred and thirty-nine, in the office of the Prothonotary of the Court of King's Bench, for the district in which such lands were situate ; or in default of such title, caused to be enregistered, in the manner aforesaid, authentic certificates of the peaceable possession of such lands, during ten years, (such certificates being attested by seven persons, being proprietors or holders of real property in the place or in the neighbourhood thereof,) with a description and measurement of such lands, made as aforesaid by a sworn surveyor ; And provided that such titles or certificates contained the names and additions which such parish, mission, or religious congregation, and the rector, missionary, or officiating Clergyman, minister, Ecclesiastic or Religious Teachers, Church-Wardens, Trustees or other Administrators, had taken for themselves and their successors in office, to the end that by such name they might hold and possess such lands for ever, and institute and defend all actions at law necessary for the conservation of their rights therein. 2 V. (3.) c. 26, ss. 1, 2.

Contents of such titles, &c.

How congregations not forming parishes may ac-

2. Whenever any parish, mission, congregation or society of christians, of any denomination whatsoever, not being a parish recognized by the civil law of Lower Canada, is desirous of acquiring

acquiring lands for the site of the churches, chapels, meeting-houses, burial grounds, dwelling-houses for their priests, ministers, ecclesiastics, or religious teachers and school-houses, and the appurtenances thereunto necessary for the said several purposes, such parish, mission, congregation or society of christians, may appoint one or more trustees, to whom and to whose successors (to be appointed in the manner set forth in the deed of grant, concession or conveyance,) the lands necessary for each and every of the purposes aforesaid, may be conveyed; and such trustees and their successors for ever, by the name by which they and the congregation on whose behalf they act, are designated in such deed or grant, concession or conveyance, may acquire by purchase, donation, exchange, or as a legacy, and hold and possess, the lands so acquired, and may institute and defend all actions at law, for the conservation of such lands and of their rights therein:

quire lands for churches, schools, &c.

2. The successors of such trustees appointed in the manner provided in such deed of grant, concession or conveyance as aforesaid, or in the manner provided at a meeting of the congregation or society held in the manner and within the period prescribed by the Act nineteenth and twentieth Victoria, chapter one hundred and three, shall have the same rights and powers as if appointed in such deed of grant, concession or conveyance; 19, 20 V. c. 103, s. 1.

Successors of Trustees first appointed to have the same powers.

3. A copy of the record of the proceedings of such meeting, certified by the Notary in whose office a copy of such record certified by chairman and secretary of the meeting was deposited by *acte de dépôt*, in the manner prescribed by the Act last mentioned, shall be *prima facie* evidence of the contents of such record; 19, 20 V. c. 103, s. 2.

Copy of record duly certified to be *prima facie* evidence of its contents.

4. In every case wherein a parish established by law is concerned, the foregoing provisions concerning trustees, shall extend to the rector and church-wardens of such parish; and whenever any such religious congregation is thereafter constituted a parish, in the manner by law provided, the property of all lands, so acquired as aforesaid, shall be vested in such parish, and the administration and control thereof shall pass from the trustees aforesaid into the hands of the *Fabrique* or rector of such parish, or of other the person, persons, or body to whom the same should pass, according to the rules and regulations of the church to which such parish belongs;

In the case of a parish the provisions concerning Trustees to extend to Rector and Church-wardens.

5. But where any congregation or society of christians held property, as aforesaid, within any parish established by law on the said nineteenth day of March, one thousand eight hundred and thirty-nine, the property so held by such congregation or society of christians shall not be vested in such parish, but the administration and control thereof shall remain with the said trustees of such congregation or society of christians, to be held in

Property of any congregation within a parish to be vested in parish, but to be under control of the congregation.

in mortmain for ever, for the benefit of such congregation or society of christians, as aforesaid. 2 V. (3,) c. 26, s. 3.

Provisions concerning registration, &c., to be conformed to within two years.

3. Such trustees, or such rectors and church-wardens, shall, within two years after they have acquired such lands, conform to the provisions of the second paragraph of the first section of this Act, concerning the registration to be made with regard to such lands at the office of the Prothonotary, such registration being made in the office of the Prothonotary of the Superior Court, in the district in which the lands lie, and for which enregistration the prothonotaries of the several districts, respectively, shall be entitled to a fee not exceeding five cents, for every hundred words :

Extent of land to be held in cities of Quebec and Montreal.

2. But the quantity of land so acquired for the purposes aforesaid, within the walls of the cities of Quebec and Montreal, respectively, shall not, in the whole, exceed one arpent, (whereof no part shall be used as a burial ground, excepting for ecclesiastics and religious persons of either sex, or for private vaults for the donors of the ground)—and out of the walls but within the limits of the said cities, shall not exceed eight arpents in superficies ; and the quantity of land so held in any other place for the use of each parish, mission, congregation or religious society, shall not exceed two hundred English acres ; 2 V. (3,) c. 26, s. 4, *part*.

Proviso : this Act not to extend to parishes, &c., of church of England hereafter erected.

3. Nothing herein contained shall extend or apply to any parish, rectory or parsonage, lawfully erected and constituted, or which may hereafter be lawfully erected and constituted, according to the establishment of the church of England. 2 V. (3,) c. 26, s. 4, *remainder*.

Not to affect Her Majesty's rights, &c.

4. Nothing in this Act shall weaken, diminish, extinguish or affect, the rights or privileges of Her Majesty, or of any seignior, or of any person or body politic or corporate, whatever, except such rights as are hereby expressly altered or affected.

C A P . X X .

An Act respecting Registers of Marriages, Baptisms and Burials.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

FORM AND EFFECT, &c., OF REGISTERS.

1. In order by the keeping of uniform and authentic registers of the baptisms, marriages and burials in Lower Canada, to secure the peace of families, and to ascertain various civil rights of Her Majesty's subjects therein : In each parish church of the Roman Catholic communion, and also in each of the protestant churches or congregations within Lower Canada to which this Act extends, there shall be kept by the priest or minister doing the parochial or clerical duty thereof, two registers of the same tenor, each of which shall be reputed authentic, and shall be legal evidence in all courts of justice,-- in each of which the said priest or minister of such parish or church or congregation, shall enregister regularly and successively all baptisms, marriages and burials, so soon as the same have been by them performed :

The Minister of every church and congregation to keep a duplicate register of baptisms, marriages and burials.

2. The said registers shall be furnished out of the funds of the church or congregation, and previous to any entry therein, shall be presented by the said priest or minister aforesaid, to one of the Judges of the Superior Court, or to the Prothonotary of the said Court for the district in which such parish, church or congregation is situate, to be by him numbered and authenticated as hereinafter mentioned ;

Registers to be furnished out of the church funds and authenticated.

3. Such registers, so numbered and authenticated, shall be legal evidence of such baptisms, marriages or burials ; and the one of the two registers which is to remain in the hands of the priest or minister in each parish, protestant church or congregation, as hereinafter directed, shall be a bound book of strong paper, covered with calfskin or buckram, as hereinafter, to serve for enregistering the births, marriages and burials for one or several years, till such book be filled ; and the other register, shall serve for enregistering the same for one year only, commencing the first day of January, but both books shall be numbered and authenticated as hereinafter prescribed. 35 G. 3, c. 4, s. 1--22 V. c. 5, s. 32.

Registers so authenticated to be legal evidence ; period for which the books are to serve.

2. Every such register book shall be authenticated as follows, that is to say, it shall be numbered on the first and every subsequent leaf, by the number thereof written in words at full length, and shall be sealed with the seal of the Superior Court for the district in which such register is to be kept,--which sealing

How such registers shall be authenticated.

sealing shall be effected by passing a ribband or other sufficient fastening through every leaf of such register, and by bringing the ends of such ribband or fastening out and securing them under the seal of such court, inside of the binding or cover of such register; and each register shall be authenticated on the first page thereof by an attestation of the Judge or Prothonotary authorized to authenticate the same, specifying the number of the leaves contained in such register, the purposes for which it is intended, and the day and year of sealing and of making such attestation, which shall be signed at full length by the Judge or Prothonotary making the same. 2 V. (3) c. 4, s. 2, amended by 22 V. c. 5, s. 32.

Either Judge or Prothonotary may authenticate registers.

3. It shall not be necessary for any Judge of the Superior Court to number or authenticate any such Register, but the same may be numbered and authenticated by the Prothonotary of the district with the same legal effect as by any of the said Judges; but nothing herein contained shall be construed to prevent any such Judge from numbering or authenticating any such register if he thinks fit so to do. 22 V. c. 5, s. 42.

Minister to make an index to registers.

4. To each of the duplicate registers, the priest or minister as aforesaid shall make an alphabetical index of the names of the persons baptised, married and buried, with references to the folio in which each name is to be found. 35 G. 3, c. 4, s. 2.

How entries of baptisms are to be made.

5. In the entries of the baptism in the said registers, mention shall be made in words, of the day, month and year, on which the child was baptised, of the time of the birth, of the name given to the child, those of the father and of the mother, with the quality or occupation and place of abode of the father, and the name of the sponsors, if any there be:

By whom signed.

2. Such entries shall be signed in both registers by the person administering the baptism, also by the father and mother if they are present, and by the sponsors if there are any,—and if any of them cannot sign his or her name, mention shall be made thereof in the entries;

In case parents be unknown.

3. When any child is presented for baptism of which the father or mother is not known, mention thereof shall be made in the entry. *ibid*, s. 3.

How entries of marriages shall be made.

6. In the entries of a marriage in the registers aforesaid, mention shall be made in words, of the day, month and year, on which the marriage was celebrated, with the names, quality or occupation and places of abode of the contracting parties, whether they are of age or minors, and whether married after publication of banns or by dispensation or license, and whether with the consent of their fathers, mothers, tutors or curators,—if any they have in the country,—also the names of two or more persons present at the marriage, and who, if relations of the husband

husband and wife or either of them, shall declare on what side and in what degree they are related :

2. Such entries shall be signed in both registers by the person celebrating the marriage, by the contracting parties, and by the said two persons, at least,—and if any of them cannot sign his or her name, mention shall be made thereof in the said entries. *ibid*, s. 4.

By whom they shall be signed.

7. In the entries of a burial in the registers aforesaid, mention shall be made in words, of the day, month and year of the person's burial, and day of decease, if known, and of the name and quality or occupation of the person deceased ; and the said entries shall be signed by the priest or minister who performed the burial service, and by two of the nearest relations or friends there present, and if any of them cannot sign his or her name, mention shall be made thereof in the said entries. *ibid*, s. 5.

How entries of burials shall be made.

And by whom signed.

8. In six weeks at farthest after the expiration of each year, the priest or minister having then charge of any duplicate registers, shall deliver the register which has been authenticated, to serve for the said year, into the office of the prothonotary of the superior court for the district in which the parish church or congregation for which the registers have been kept is situate, and take a receipt for the same from the prothonotary ; and the other duplicate register authenticated as aforesaid, shall remain with the said priest or minister, to be by him preserved and left to his successors in office or clerical duty :

The register authenticated for one year to be delivered at the end of the year to the Prothonotary of the Superior Court.

2. Any party interested may at any time demand a copy of any entry in either of the registers aforesaid ; and the prothonotary of the said court, and the priest or minister in possession of the register, shall grant such copy, certified under his signature, which shall be received as evidence in all courts of justice. *ibid*, s. 6.

Certified extracts may be obtained.

9. Every priest or minister who neglects or refuses to comply with the true intent and meaning of this Act, either in the form of the said registers, of the entries therein to be made, or in the delivery of the proper duplicate to the prothonotary's office as aforesaid, shall for each neglect or refusal incur a penalty of not less than eight dollars and not exceeding eighty dollars, without prejudice to the right of action which any suffering party may have against him for all costs, damages and interest of a civil nature on account of such neglect or refusal as aforesaid. *ibid*, s. 7.

Penalty on Minister neglecting to comply with this Act.

10. The penalties aforesaid may be recovered by action of debt in any court of record in Lower Canada, by any person suing for the same, and one half of any such penalty shall be paid to the receiver general for the public uses of this province, and the other moiety, with costs of suit, shall be paid to the plaintiff for his own use. *ibid*, s. 9.

Penalties--how recovered and disposed of.

Application of this Act.

**11.** This Act extends to all religious communities and hospitals where persons may be interred, and all priests or ministers doing the clerical duty of such religious communities and hospitals shall be subject to the duties and penalties thereby imposed. *ibid*, s 8.

By whom registers shall be kept.

**12.** The registers to be kept as hereinabove is directed, shall be kept by every priest or minister officiating, having authority to keep registers either by virtue of this Act or of any special or other Act in force in Lower Canada, whether in a parish regularly constituted or other place within Lower Canada, under every obligation, penalty, matter and thing in this Act mentioned. 7 G. 4, c. 2, s. 1.

In case registers are lost, how baptisms, &c., may be proved.

**13.** In all cases where the register of any parish or of any protestant church or congregation cannot be found, or where none has ever been kept, nothing in this Act shall prevent the proof of baptisms, marriages or burials being made and received either by witnesses or family registers or papers or other means allowed by law, saving to the adverse party the right of impeaching or disproving such evidence; Provided always, that if any person knowingly and wilfully makes a false oath respecting any of the matters aforesaid, and is thereof lawfully convicted, such person shall be subjected to the penalties inflicted by a statute passed in the fifth year of the reign of Queen Elizabeth for the punishment of wilful perjury. 35 G. 3, c. 4, s. 13.

False swearing—perjury.

Punishment for forging or counterfeiting entries, making false entries, &c.

**14.** If any person makes, alters, forges or counterfeits, or causes or procures to be falsely made, altered, forged or counterfeited, or acts or assists in falsely making, altering or counterfeiting any entry respecting the birth, marriage or burial of any party in any register, or utters or publishes as true, any false, forged, altered or counterfeited entry as aforesaid; or a copy or certificate of an entry, knowing such copy or certificate to be false, altered, forged or counterfeited, or wilfully destroys or causes or procures to be destroyed any register whether in the keeping of any priest or minister of any parish or congregation, (or of any Prothonotary of the Superior Court), the person so offending, being thereof lawfully convicted, shall suffer such fine and imprisonment as to the court before which he is tried seems meet; provided such imprisonment be for a term not less than twelve calendar months. 35 G. 3, c. 4, s. 14.

Proviso.

Title 20 of Ordinance of 1667, as to authentication of registers, &c., repealed as to said registers.

**15.** So much of the twentieth title of the ordinance passed by His Most Christian Majesty, in the month of April, in the year 1667, and of a declaration of His Most Christian Majesty, of the ninth of April, 1736, as relates to the form and manner in which the registers of baptisms, marriages and burials are to be numbered, authenticated or *paraphé*, kept and deposited, and the penalties thereby imposed on persons refusing or neglecting to conform to the provisions of said ordinance

ordinance and declaration, are and shall remain repealed, so far as relates to the said registers only. 35 G. 3, c. 4, s. 15.

TO WHAT DENOMINATIONS THE ACT APPLIES.

**16.** The protestant churches or congregations intended in the first section of this Act, are all churches and congregations in communion with the united church of England, or with the church of Scotland, and all regularly ordained priests and ministers of either of the said churches have had and shall have authority validly to solemnize marriage in Lower Canada, and are and shall be subject to all the provisions of this Act. 35 G. 3, c. 4,--7 G. 4, c. 2, s. 2.

Protestant churches and congregations defined.

**17.** This Act extends also to the several religious communities and denominations in Lower Canada, mentioned in this section, and to the priests or ministers thereof, who may validly solemnize marriage, and may obtain and keep registers under this Act, subject to provisions of the Acts mentioned with reference to each of them respectively, and to all the requirements, penalties and provisions of this Act, as if the said communities and denominations were named in the first section of this Act, that is to say :

This Act extends to certain religious denominations.

To the Religious Congregation at Montreal denominated Baptists, subject to the provisions of the Act of the Legislature of Lower Canada, third William the fourth, chapter twenty-nine ;

Baptists.

To the Congregational Societies in Lower Canada, subject to the provisions of the Act of the said Legislature, fourth William the fourth, chapter nineteen ;

Congregational Societies.

To the Free-will Baptist Church in the township of Stanstead, subject to the provisions of the Act of the said Legislature, fourth William the fourth, chapter twenty ;

Free-will Baptists.

To the persons professing the Jewish religion, subject to the provisions of the Act of the said Legislature, ninth George the fourth, chapter seventy-five ;

Jews.

To the Methodist Protestants in connection with the Methodist Protestant Conference in the township of Dunham, subject to the provisions of the Act of the said Legislature, sixth William the fourth, chapter fifty ;

Methodists.

To the Congregations of the Methodist new connexion, and the ministers thereof mentioned in the Act or ordinance of the said Legislature, second Victoria, chapter seventeen, subject to the provisions of the said Act ;

Methodist new connexion.

- Presbyterians at Montreal.** To the Religious Congregation at Montreal denominated Presbyterians, and mentioned in the Act of the said Legislature, first William the fourth, chapter fifty-six, subject to the provisions of the said Act ;
- At Hull.** To the Congregation in the township of Hull, denominated Presbyterians, subject to the provisions of the Act of the said Legislature, third William the fourth, chapter twenty-eight ;
- Calvinists.** To the members of Calvinist Baptist Societies, members of Free-will Baptist Societies, and members of Universalist Societies, subject to the provisions of the Act of the said Legislature, sixth William the fourth, chapter forty-nine ;
- Secession church of Scotland.** To the members of the United Associate Synod of the Secession church of Scotland, subject to the provisions of the Act of the said Legislature, third William the fourth, chapter twenty-seven ;
- Universalists.** To the Religious Society called the Universalist Society in the Township of Ascot and the neighbouring Townships, subject to the provisions of the Act of the said Legislature, fourth William the fourth, chapter twenty-one ;
- Wesleyan Methodists.** To the Wesleyan Methodists in connexion with the conference of the people called Methodists, in Great Britain, subject to the provisions of the Act of the said Legislature, ninth George the fourth, chapter seventy-six, as amended by the Act of the Legislature of Canada, thirteenth and fourteenth Victoria, chapter forty-seven ;
- Unitarians.** To the Congregation of Christian Unitarians at Montreal, subject to the provisions of the Act of the Legislature of Canada, eighth Victoria, chapter thirty-five ;
- Seceders.** To the Associate Presbyterians Synod of North America, commonly known as "Seceders", subject to the provisions of the Act of the said Legislature, ninth Victoria, chapter fifty-four ;
- Divers Presbyterians.** To christian denominations known respectively as the Presbyterian Church of Canada, to United Presbyterian Synod in Canada, and the Reformed Presbyterian Church, subject to the provisions of the Act of the said Legislature, sixteenth Victoria, chapter two hundred and sixteen ;
- Adventists.** To the Adventists, in connexion with the Second Advent Conference in Canada East, subject to the provisions of the Act of the said Legislature, sixteenth Victoria, chapter two hundred and seventeen ;

To the Evangelical Lutheran Church, subject to the provisions of the Act of the said Legislature, eighteenth Victoria, chapter fifty-eight ;

Evangelical  
Lutherans.

To the German Evangelical Church at Montreal, subject to the provisions of the Act of the said Legislature, eighteenth Victoria, chapter fifty-nine ;

German Evan-  
gelicals.

To the Church of the order of the Countess of Huntingdon's Connexion, subject to the provisions of the Act of the said Legislature, twentieth Victoria, chapter one hundred and ninety-four ;

Countess of  
Huntingdon's  
connexion.

To the Methodist Episcopal Church in Canada, subject to the provisions of the Act of the said Legislature, twentieth Victoria, chapter two hundred and fourteen ;

Episcopal Me-  
thodist.

And any reference in any of the said Acts to any Act or Enactments in the Acts relating to Registers of Baptisms, Marriages and Burials in Lower Canada, repealed by the Act relating to the Consolidated Statutes for Lower Canada, shall be construed as a reference to the corresponding provisions of this Act, as respects matters subsequent to the time when this Act takes effect. *See the said Acts respectively.*

How references  
in above Acts  
are to be con-  
strued.

**18.** Nothing in this Act shall affect any provisions in any former Act confirming and making valid any Marriage in Lower Canada, or any Register of Baptisms, Marriages and Burials, or any entry in any such Register. *See 35 G. 3, c. 4, ss. 10, 11, 12, 13, "confirming certain Registers, on certain conditions"--7 G. 4, c. 2, s. 2, "confirming Marriages by Ministers of the Church of Scotland"--44 G. 3, c. 11, "confirming Marriages by divers Ministers, or by Justices of the Peace, on certain conditions"--1 G. 4, c. 19, "confirming certain Marriages in the District of Gaspé"--5 G. 4, c. 25, "confirming certain Marriages in the District of St. Francis"--2 W. 4, c. 5, "confirming certain entries in Registers in Gaspé"--18 V. c. 245, "confirming Marriages solemnized by one W. McWatie."*

Former Acts  
confirming  
marriages and  
registers of  
marriages in  
Lower Canada  
not affected by  
this Act.

#### YEARLY RETURNS BY PROTHONOTARIES.

**19.** The Prothonotaries of the Superior Court, in the several districts of Lower Canada, shall annually prepare and digest, from the registers of baptisms, marriages and burials, deposited in their respective offices, a triplicate statement and return of the number of baptisms, marriages and burials, that have taken place during the preceding year in their respective districts, distinguishing the number of males baptized and buried from that of females, and classing them by parishes or seigniories and townships, or reputed townships or settlements not comprehended in any parish, seigniorie or township, and by counties, agreeably to the form prescribed for that purpose in the schedule

Prothonotaries  
to prepare an-  
nual statements  
of the number  
of baptisms,  
marriages and  
burials, &c.

Such statements to be laid before the Governor at a certain time.

to this Act ; which triplicate statement and returns, the said Prothonotaries shall respectively, within fifteen days after the time by this Act appointed for delivering the said Registers into their respective offices, lay before the governor, and before the other two branches of the legislature, if the same be in session, if not, then within the first six days after the meeting of the ensuing session thereof. 6 G. 4, c. 8, s. 1.

Fees allowed to the Prothonotaries for such service.

**20.** For the said service, the said Prothonotaries respectively shall be entitled to a compensation not exceeding the following rates, that is to say :—for examining the registers in order to prepare the statement and returns aforesaid,—one dollar per register; and for the draft and copy of the said general statement and return of the district, according to the form in the schedule, accompanied by and including the parochial, township, settlement and county returns,—eight dollars ;and for each additional copy of such general statement and return of the district, accompanied by and including the said parochial, township and county returns,—four dollars ; which compensation shall be paid from and out of any unappropriated moneys of the province, under warrants to that effect directed by the governor to the receiver general of the province. 9 G. 4, c. 8, s. 2.

How paid.

SCHEDULE.

General Statement and Return of Baptisms, Marriages and Burials, in the District of

Year.	Counties.	Parishes, seigniories, townships, or cities.	Baptisms.		Marriages.	Burials.		Increase of population, ascertained by the difference between baptisms and burials.	Total per counties. — Increase of population.	Remarks.
			Males.	Fem's		Males.	Fem's			
182	Port-neuf.	Grondines,	60	75	30	55	65	15		
		St. Catharine.	50	52	20	40	45	17	32	
	Mont-calm.	St. Jacques	86	82	60	67	64	37	66	
		St. Alexis.	45	39	26	25	30	29		
	Total...		241	248	136	187	204	98	98	

C A P. X X I.

An Act respecting Interments and Disinterments.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

INTERMENTS.

1. No deceased person shall be interred until after the expiration of twenty-four hours at the least from the death of such person, under a penalty of twenty dollars, upon every person in any way concerned or assisting, or taking part in, or being knowingly present at such interment :

Interments not to take place till twenty-four hours after death.

2. But nothing in this section contained shall be construed to interfere with the observance of any Regulation made in this behalf by any Board of Health in pursuance of chapter thirty-eight of the Consolidated Statutes of Canada. 16 V. c. 174, s. 3.

Regulations of Board of Health however to be observed.

DISINTERMENTS.

2. On a petition being presented to any Judge of the Superior Court, either in term or in vacation, by any person praying for leave to disinter a body or bodies buried in any Church, Chapel or burial-ground, with a view to the erection, repair or alienation of a Church, Chapel or burial-ground, or with a view to re-interment in another Church, Chapel or burial-ground, or to the reconstruction or repair of the tomb or coffin in which a body has already been buried, and indicating, in the case of a proposed removal of any body or bodies the burial-ground or the Church or Chapel, to which it is proposed to effect the removal, and on proof being made on oath to his satisfaction of the truth of the allegations contained in such petition, such Judge may ordain that the body or bodies shall be disinterred as prayed for :

Judge may, on petition and proof, make order for disinterments.

2. Such order, sealed with the Seal of the Superior Court, and signed by the Prothonotary, being duly served upon or presented to the person owning or having the legal charge or custody of such Church, Chapel or burial-ground, shall be a sufficient authority for the disinterment prayed for, and shall save harmless every person concerned or taking part in any such disinterment ; 16 V. c. 174, s. 1.

Such order to be sufficient authority for such disinterment.

2. The body of any person who died of a contagious disease shall not be disinterred until after the expiration of three years from the interment of such body. 16 V. c. 174, s. 2.

In case of death from contagious disease.

3. Whenever it is determined by competent authority of the Roman Catholic Church in Lower Canada to remove any old burial

Bodies may be removed from an burial

old to a new burial ground, permission being obtained from a Judge.

burial ground, or to open a new burial ground, within any parish or mission of that Church, any Judge of the Superior Court may, on a petition being presented by the parish priest or missionary, and by the majority of the church-wardens of the Roman Catholic Church or Congregation to which such old burial ground belongs, or to whose use it is applied, grant them a permission to cause or to allow all or any of the bodies buried in such old burial ground to be removed to such new burial ground. 19, 20 V. c. 57, s. 1.

Parish priest or church-wardens to keep a register of bodies removed.

4. Such parish priest, missionary or church-wardens, as the case may be, shall cause a register to be kept of all bodies removed from such old burial ground, shewing, as far as may be possible, the names and surnames of the deceased whose bodies are so removed, and also the names and surnames of those requiring such removal, or that they were removed by order of such priest or missionary, and of the church-wardens of such church or congregation. 19, 20 V. c. 57, s. 2.

Register to be certified.

5. Such register shall be certified by such priest or missionary ministering to the church or congregation to which such old burial ground belongs. 19, 20 V. c. 57, s. 3.

Application for disinterment to be accompanied by affidavit.

6. No application made to any such priest or missionary, or to any such church-wardens, for the removal of any particular body, shall be granted, unless accompanied by an affidavit as required by the second section of this Act. 19, 20 V. c. 57, s. 4.

How the affidavit shall be sworn to.

7. Such affidavit may be sworn to before a Judge or Commissioner for receiving affidavits, or before the priest or missionary, or before any of the said church-wardens, all of whom are hereby empowered to administer the requisite oath. 19, 20 V. c. 57, s. 5.

Authority of R. C. Bishop required for disinterment.

8. Before proceeding to any disinterment in any burial ground under this Act, permission to that effect shall be obtained from the Superior Ecclesiastical authority of the Roman Catholic Diocese in which the same is situate. 19, 20 V. c. 57, s. 7.

Application of certain expressions.

9. The expression "burial ground" shall apply to any portion of a burial ground to be removed as aforesaid;—and the words "church-wardens" shall include any officers of a Roman Catholic Church or Congregation having the management of its burial ground, by whatever name they may be known. 19, 20 V. c. 57, s. 6.

C A P. X X I I .

An Act respecting good order in and near places of Public Worship.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

**1.** In this Act, the word " church " means and includes any church, chapel or other building or place used for public worship.

" Church," meaning of word in this Act.

**2.** It shall be the duty of the church-wardens in office in each parish or settlement of Lower Canada, to maintain good order in and about the church of such parish or settlement, as well within as without each church, and in the public hall attached or adjacent to the parsonage house or presbytery, as also in the roads or public places adjoining the same, and to enforce this Act, and to prosecute offences committed against the same ; and every church-warden who refuses or neglects to perform the duties so imposed upon him in his capacity aforesaid, shall incur for every neglect or refusal a penalty not less than two dollars, and not exceeding eight dollars. 7 G. 4, c. 3, s. 2.

Church-wardens to maintain good order, and to prosecute offenders.

Penalty.

**3.** Any person who causes any disturbance in the church, in any parish or settlement, during divine service, or in any wise indecently or irreverently conducts himself in or about such church, or resists the church-wardens, or any person in the execution of the duties imposed on him by this Act, or insults them or any of them, shall be forthwith arrested by any of the said church-wardens, or by any constable or peace officer, and be conducted before a justice of the peace ; and upon the oath of any such church-warden, constable or peace officer, or of any one credible witness, that such person has caused any such disturbance, or conducted himself indecently or irreverently, or otherwise misdemeaned himself as aforesaid, or on confession of the offender, the said justice of the peace shall fine such person in a sum not exceeding eight dollars, nor less than one dollar ; and if such person shall be unable forthwith to pay such fine, he shall, by warrant under the hand and seal of such justice, be committed to the common gaol of the district where the offence shall have been committed, there to remain for the space of fifteen days, unless such fine be sooner paid :

Persons causing disturbance or behaving irreverently to be arrested by church-wardens.

Penalty.

**2.** Any person who remains or loiters without any such church or place used for public worship, or in the highways and public places adjacent thereto, or in the public hall attached or adjacent to the parsonage house or presbytery, or who so remaining and loitering without the said church, or in the highways and public places adjacent thereto, doth, upon being

Persons loitering in or about churches to be arrested.

being directed to retire or to enter the said church during divine service, refuse or neglect so to do, shall be arrested by any or either of the said church-wardens, and be conducted before a justice of the peace; and on oath made by such church-wardens or either of them, or of one or more credible witness or witnesses, that such person hath loitered without any such church, or hath refused, in manner aforesaid, to retire or to enter such church, or on confession of the offender, such justice of the peace shall fine such person in a sum not exceeding four dollars, nor less than one dollar; and if such person is unable forthwith to pay such fine, he shall, by warrant under the hand and seal of such justice, be committed to the common gaol of the district where such offence is committed, there to remain for the space of eight days, unless such fine be sooner paid. *Ibid*, s. 3.

Penalty.

Officers of Militia to have powers of church-wardens under this Act.

**4.** All officers and sergeants of militia, and other peace officers in each parish, seignior, township or settlement or other extra-parochial place, shall have the same powers as those delegated to the church-wardens by this Act, in the execution of the duties imposed upon them by this Act. *Ibid*, s. 5.

Persons loitering or tipping in taverns during Divine Service.

**5.** Every officer and non-commissioned officer of militia, or other peace officer, shall cause to be arrested and carried before any justice of the peace, every person whom he finds on any Sunday or holiday, during divine service, loitering or tipping in any house of public entertainment, or in any place of public resort, whether within doors or in the open air, where any ale, wine, spirits or strong drink are sold or distributed on a Sunday, or holiday, during divine service as aforesaid, within the limits of his parish or settlement, and also every person whom he finds cursing and swearing or provoking to fight, drunk, or using violence in the streets, highways or other public places, and such person so conducted before such justice of the peace, may be condemned to pay a fine not exceeding four dollars, nor less than one dollar; and if such person is unable to pay such fine forthwith, he shall be committed, by warrant under the hand and seal of such justice, to the common gaol of the district in which such offence is committed, there to remain for the space of eight days, unless such fine be sooner paid. *Ibid*, s. 6.

Penalty.

Penalty on persons riding or driving fast near churches.

**6.** Any person attending at, as well in going to as returning from divine service at any such church, who, on approaching to or returning from the same, within the distance of ten arpents therefrom, drives, whether on horseback, or in a carriage, at any faster pace than a slow and moderate trot, shall, for every such offence, incur a penalty not exceeding two dollars, nor less than one dollar. *Ibid*, s. 7.

Constables may be appointed to

**7.** Any two justices of the peace, on the request of the church-wardens or any rector or priest officiating in any church  
or

or place of public worship within Lower Canada, may appoint one or two constables for the purpose of assisting the church-wardens in office, in the performance of the said duties imposed upon them by this Act, which constables shall obey the orders and directions of the church-wardens in office, and may be prosecutors of persons offending. *Ibid*, s. 8.

assist church-wardens.

8. All penalties and forfeitures for any offence against this Act shall be levied by distress and sale of the goods and chattels of the offender, by warrant of distress, under the hand and seal of a justice of the peace for the district where such offence, neglect or default shall happen, rendering the overplus of such distress (if any there be) to the party or parties, after deducting the costs of suit and the charges of making the distress; which warrant such justice of the peace shall grant, after complaint to him made upon conviction of the offender by confession or upon the oath of one or more credible witness or witnesses; and all penalties and forfeitures levied under the authority of this Act shall be paid, one half to the informer and the other half to Her Majesty for the purposes of the Lower Canada Judicature Act of 1857, except in the case next hereinafter mentioned; but no church-warden, constable or peace officer, prosecuting as such, shall be entitled to any part of any fine, but only to his cost, and in such case the whole penalty shall go to Her Majesty for the purposes of the said Act. *Ibid*, part of s. 9, and 20 V. c. 44, s. 113.

How penalties under this Act shall be enforced.

Appropriation of penalties.

9. Any church-warden, constable or peace officer shall be a competent witness in all matters relative to the execution of this Act, notwithstanding he be the prosecutor or informer. 7 G. 4, c. 3, s. 10.

The prosecutor may be a witness.

10. All suits or actions for offences against this Act shall be commenced within one month next after the commission of the offence, and not afterwards. *Ibid*, part of s. 9.

Limitation of action.

11. If any action or proceeding is brought against any church-warden, constable or peace officer aforesaid, for any thing done in virtue of this Act, he may plead the general issue, and give the special matter and this act in evidence; and if a judgment or verdict is given against the plaintiff, or he becomes non-suit or discontinues his action or proceeding, the judge before whom the matter is brought or tried, shall allow to the defendant double costs. 7 G. 4, c. 3, s. 11.

General issue may be pleaded in actions against church-wardens, &c.

12. Separate copies of this Act, of the first, seventh and eighth sections of chapter seven and of chapter twenty-three of the Consolidated Statutes for Lower Canada, and of the fifth section of an Act of the British parliament, passed in the fourteenth year of the reign of His late Majesty, George the Third, chapter eighty-eight, shall be, (if the same have not been so under the said Act 7 G. 4, c. 3,) forwarded to the curate of each parish within Lower Canada and by such curate

Copies of this and other Acts to be forwarded to the curates of parishes.

curate delivered over to the church-warden on duty (*en charge* for the time being, to be by him handed over to his successors in office, to be preserved among the papers of the *fabrique*, and shall be read yearly at the first general meeting of the church-wardens, after the election of any church-warden or church-wardens, which church-warden or church-wardens shall also read the same, or cause the same to be publicly read at the church door of the parish, on the three first sundays of September in every year, immediately after divine service in the morning, under a penalty of four dollars for each offence. *Ibid*, s. 12.

This Act not to affect prosecutions under sec. 18 of cap. 90 of Con. Statutes of Canada.

**13.** This Act shall not prevent or affect any prosecution under the eighteenth section of chapter ninety of the Consolidated Statutes of Canada, nor shall the said section prevent or affect any prosecution under this Act, except that no person shall be punished under both Acts for the same offence.

C A P . X X I I I .

An Act respecting the sale of goods on Sundays.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

**1.** Except as hereinafter provided--No shop-keeper, pedler, hawker, tavern-keeper or other person keeping a public house of any description, in any part of Lower Canada, shall sell or retail any goods, wares or merchandise, wine, spirits or any other strong liquors, during the Lord's day, commonly called Sunday ; and every person of the description abovesaid, who sells or retails such goods, wares or merchandise, wine, spirits or other strong liquors on the Lord's day, shall incur for the first offence, a penalty which shall not exceed twenty dollars, and for the second and every subsequent offence, shall incur a penalty not less than twenty dollars nor more than forty dollars. 45 G. 3, c. 10, s. 1.

Penalty on persons selling goods, wares or spirituous liquors on Sundays.

**2.** This Act shall not hinder the said shop-keepers, tavern-keepers, and other persons who keep public houses, to sell and furnish, on the Sunday, wine, spirits or other strong liquors to sick persons or travellers, nor prevent selling at the church doors of the country parishes on Sundays, the effects arising from public gatherings, for the benefit of churches, or those destined for pious purposes. 45 G. 3, c. 10, s. 2,--14 15 V. c. 100, s. 12 and 18 V. c. 117, s. 1.

But wine or spirits may be furnished to travellers, &c.  
Exception as to goods sold for pious purposes.

**3.** The said fines and forfeitures shall be recoverable before one of Her Majesty's justices of the peace nearest to the place where the offence is committed, who shall hear and determine such offence in a summary way, either by voluntary confession of the party accused, or upon the oath of one or more credible witnesses, other than the prosecutor, except where such prosecutor is a church-warden, constable or peace officer, in which case he shall be a competent witness ; and in default of payment of the sum forfeited, it shall be recovered by seizure and sale of the offender's goods and chattels, by warrant under the hand and seal of such justice, addressed to any peace officer or sergeant of militia, and any surplus of the money so recovered after deducting the forfeiture and reasonable charges of seizure and sale, taxed by a justice of the peace, shall be returned to the owner. 45 G. 3, c. 10, s. 3,--and 7 G. 4, c. 3, s. 10.

How the fines shall be recovered.  
And enforced.

**4.** The one half of the said fines and forfeitures shall belong to the person prosecuting, and the other half shall belong to Her Majesty and shall be paid to the Receiver General for the public use of the Province. 45 G. 3, c. 10, s. 4.

Fines appropriated.

**5.** No prosecution shall be instituted against any person for any such fine or forfeiture unless it be commenced within two months after the offence committed. 45 G. 3, c. 10, s. 5.

Limitation of actions.

T I T L E

*A suivre la sect. 1.*

Et il ne sera pas loisible de vendre aucun effets, marchandises ou aucunes propriété mobilière ou immobilière le dimanche, en vertu de l'autorité d'aucune cour de justice dans le Bas Canada, et toute telle vente faite le dimanche sera nulle et de nul effet. 18 V. c. 117, s. 1.

## TITLE . V .

## MUNICIPAL AND RURAL MATTERS.

## CAP . XXIV .

## An Act respecting Municipalities and Roads in Lower Canada.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

## EXTENT OF THIS ACT.

*As to Roads and Bridges constructed by the Province.*

Act not to apply to certain works unless ceded to municipalities.

1. This Act shall not apply to roads or bridges under the control of the Commissioners of Public Works, unless and until the same have been relinquished to the municipal authorities ; nor to roads in possession of any individual proprietor or company under any Act or By-law : 18 V. c. 100, s. 3.

It shall apply after such cession.

2. But whenever any road or bridge, theretofore under the control of the Commissioners of Public Works, or of any trustees or other like authority, or of any incorporated company or individual proprietor, ceases to be under such control, such road or bridge shall thereupon be vested in the local municipality or municipalities in which it lies, as a public road, and shall be maintained and dealt with under the provisions of this Act. *Ib.*, par. 2.

*As to Localities.*

Act not to extend to those parts of certain parishes included in cities or towns.

2. The provisions of this Act shall not extend to that portion of the parish of Montreal which forms the city of Montreal as incorporated by law,—nor to those portions of the parishes of Quebec and St. Roch respectively which form the city of Quebec as incorporated by law,—nor to that portion of the parish of St. Hyacinth the Confessor which forms the city of St. Hyacinth as incorporated by law,—nor to that portion of the parish of Three-Rivers which forms the city of Three-Rivers as incorporated by law,—nor to that portion of the *parish of St. Jean*, which forms the town of St. John's as incorporated by law ; 18 V. c. 100, s. 4, par. 1, *as amended by* 20 V. c. 129,—and 22 V. c. 106.

So that—

The municipality of the parish of Montreal shall comprise only that portion of the said parish which is without the limits of the said city of Montreal ;

Municipalities of parishes of Montreal, Quebec, St. Roch and St. Hyacinth, defined.

The municipality of the parish of Quebec shall comprise only that portion of the said parish which is without the limits of the said city of Quebec ;

Quebec.

The municipality of the parish of St. Roch shall comprise only that portion of the said parish which is without the limits of the said city of Quebec ;

St. Roch.

That part of the parish of St. Hyacinth the Confessor which is without the limits of the said city of St. Hyacinth, shall, for the purposes of this Act, be deemed to be an extra-parochial place, and shall be annexed to the adjoining parish of Notre-Dame de St. Hyacinth ; 18 V. c. 100, s. 4, par. 2.

St. Hyacinth.

The municipality of the parish of Three-Rivers shall comprise only that portion of the said parish which is without the limits of the said city of Three-Rivers ; and for the purposes of this Act, the parish of Three-Rivers shall be understood to comprise all that tract of country being *on the first day of July, 1855*, within the ministration of the ecclesiastical authorities (*desserte*) of the parish of Three-Rivers, including the several concessions upon the St. Lawrence and in the rear of such concessions, up to the tract comprised within the ministration (*desserte*) of the parish of Pointe-du-Lac, and as far as the field St. Etienne ; 18 V. c. 100, s. 4, par. 4.

Municipality of parish of Three-Rivers, defined.

The municipality of the parish of (*St. Jean*) shall comprise only that portion of the said parish which is without the limits of the town of St. John's ; 18 V. c. 100, s. 4, par. 2 and 4, *as amended by 20 V. c. 129,—and 22 V. c. 106.*

Municipality of parish of (*St. Jean*), defined

2. The provisions of this Act shall also extend to the municipality of the town of Sherbrooke, as it *was on the said first day of July, 1855*, as if the same had been erected into a town municipality under this Act ; and the said municipality of the town of Sherbrooke, and the townships of Ascot and Orford shall be, for the purposes of this Act, included within the county of Compton ; 18 V. c. 100, s. 4, par. 5.

Act to extend to the town of Sherbrooke.

The said town defined.

3. The provisions of this Act also extend to the settlements of *Ste. Anne des Monts*, except in so far as they are repugnant to the provisions of the Act 12 V. c. 126, which Act shall remain in force, except that the municipality of *Ste. Anne des Monts* and the municipal Council thereof shall possess all the powers conferred by this Act not only on parish and

How this Act shall apply to *Ste. Anne des Monts* and Cape Chat. 12 V. c. 126.

township corporations and councils, but also on county corporations and councils;

Proviso.

But the said municipality of *Ste. Anne des Monts* shall not, for the purposes of this Act, form part of the county of Gaspé; 18 V. c. 100, s. 4, par. 6.

How this Act shall apply to the Magdalen Islands.

4. The provisions of this Act shall also apply to the Magdalen Islands, which, for the purposes of this Act, shall form a separate municipality under the name of the municipality of the Magdalen Islands, and the municipal council thereof shall be composed of five members, and shall be presided over by a mayor, as if the said islands formed only one parish or township;—but the said council shall possess all the powers conferred by this Act not only on parish and township corporations and councils, but also on county corporations and councils: And the said municipality of the Magdalen Islands shall not, for the purposes of this Act, form part of the county of Gaspé; 18 V. c. 100, s. 4, par. 7.

To what localities this Act shall apply.

*Iberville?*

5. To the several localities which have been constituted municipalities, or as to which provision has been made with respect to municipal matters, by special Acts passed since the said first day of July, one thousand eight hundred and fifty-five, and in force,—the provisions of this Act shall apply in the manner provided by the Acts respectively, and subject to the provisions of the same. (*See the several local Acts.*)

EXISTING PROCÈS VERBAUX, SCHOOL DIVISIONS, &c.,  
CONTINUED:—CITATION OF THIS ACT.

*Procès-Verbaux* orders, &c., to remain in force.

3. Notwithstanding the repeal of any enactment by the fifth section of the Lower Canada Municipal and Road Act of 1855, any *procès-verbal* or order lawfully made and in force immediately before the commencement of that Act, shall remain in force, until it be otherwise lawfully ordered under this Act, and any penalty or forfeiture incurred, or any assessment due under any such enactment, before the commencement of the said Act, may be recovered as if the said Act had not been passed:

Certain parishes and townships to remain municipalities for the purposes of the Acts 9 V. c. 27, and 12 V. c. 50.

2. And each parish, township, or place which, immediately before the time when the said Act came into force and effect, was a municipality for the purposes of the Act 9 V. c. 27, or of the Act 12 V. c. 50, relating to common schools, shall continue to be a municipality within the meaning of the said last mentioned Acts, and for all the purposes thereof. 18 V. c. 100, s. 5.

Short Titles of Municipal Acts, and mode of referring to them or any section of them.

4. In citing the Act 18 V. c. 100, or any of the Acts amending it, in any Act of parliament, or in any instrument, document or proceeding, it shall be sufficient to use the expression “The Lower Canada Municipal and Road Act, (1855, or as the case may

may be, mentioning the year in which it passed)"; and in any process for enforcing the remedies or penalties given or imposed by any such Act, it shall be sufficient, without specifying more particularly the cause of complaint or offence, to refer by number, according to the copies of the Act printed by the Queen's Printer, to the section or sections under which the proceeding is taken: 18 V. c. 100, s. 6,—and the Acts 19, 20 V. c. 10, s. 1,—20 V. c. 41,—22 V. c. 101.

2. The provisions in the next preceding paragraph apply to this Act, which may be cited as *The Consolidated Lower Canada Municipal and Road Act*,—or by its title in full. Citing this Act.

INTERPRETATION.

5. The interpretation Act applies to this Act; and the following terms, whenever they occur in this Act, have respectively the following meanings, that is to say: Interpretation clause.

1. The term "parish" means not only any territory erected into a parish either by civil or ecclesiastical authority, but applies, in like manner, to any part of a parish incorporated under this Act, and also includes any extra-parochial place or part of a parish or part of a township annexed to a parish under this Act, and the parish to which such extra-parochial place or part of a parish is annexed, conjointly,—and also includes a township annexed to a parish under this Act, and the parish to which such township is annexed, conjointly,—unless the context is inconsistent with such interpretation; Parish.

2. The term "township" means not only any territory erected into a township, but applies in like manner to any part of a township incorporated under this Act, and also includes any part of a township or parish annexed to a township under this Act, and the township to which such part of a township or parish is or shall be annexed, conjointly,—and applies also to two townships annexed to each other for the purposes of this Act, conjointly,—unless the context is inconsistent with such interpretation; Township.

3. The term "municipality" means any territory incorporated under this Act; Municipality.

4. The term "county municipality" means a county incorporated under this Act; County municipality.

5. The term "local municipality" means any territory incorporated under this Act, except a county, and applies equally to parish, township, town and village municipalities; Local municipality.

6. The term "county council" means the municipal council of a county, incorporated under this Act; County Council.

- Local Council. 7. The term "local council" means the municipal council of a local municipality ;
- Chief Officer. 8. The term "chief officer" applies equally to the warden of a county and to the mayor of a local municipality ;
- County Councillor. 9. The term "county councillor" means a member of a county council ;
- Local Councillor. 10. The term "local councillor" means a member of a local council ;
- Owner. 11. The term "owner" applies not only to an individual proprietor, but also to several co-proprietors and to any corporation or association of persons in whom the right of ownership in any real or personal property mentioned in this Act is vested ;
- Road. 12. The term "road" means a public highway, and includes all bridges upon it, and all ditches, fords and other works and things therewith connected, unless it is otherwise expressed or the context is inconsistent with such interpretation ;
- Public Bridge. 13. The term "public bridge" means any bridge of more than eight feet in span ;
- Lot. 14. The term "lot" means not only a lot of land in any range or concession in its entirety, but signifies also any subdivision of such lot, and any parcel of land owned or occupied by any one person or by several persons conjointly, and includes all buildings and other improvements thereon, unless the contrary is expressed or the context is inconsistent with such interpretation ;
- Public notice. 15. The term "public notice" means a notice given, or to be given, to the inhabitants of the whole, or of any part or parts of any municipality or of several municipalities ;
- Special notice. 16. The term "special notice" means a notice given or to be given to any member or officer of any municipal council, or to any other person under this Act, or in pursuance of any by-law passed by any such council, for the purpose of informing him of any appointment or of any other fact, or of requiring him personally to attend, or be present at any particular place, or for any other object ;
- District. 17. The term "district" means a judicial district as (*now*) established by law, (*for civil purposes* ;)
- County. 18. And the term "county" means each and every county as defined in the Parliamentary representation Acts of 1853 and 1855, (16 V. c. 152, and 18 V. c. 76.)—except that for the

the purposes of this Act, the Island of Orleans, in the county of Montmorenci, shall form a separate municipal county, by the name of the municipal county of the Island of Orleans ;—and all that part of the said county which lies to the north of the River St. Lawrence, shall also form a separate municipal county, by the name of the municipal county of Montmorenci. 18 V. c. 100, s. 7.

NOTICES UNDER THIS ACT.

6. Every public notice, under this Act, shall be given in the manner following, that is to say :

1. The person required to give such notice shall cause the same to be drawn up in the English and French languages, unless the use of either of the said languages be dispensed with in the manner hereinafter provided, and then in that one of the said languages, the use of which is not so dispensed with ;

Mode in which public notices shall be given.

After signing it, he shall publish it by causing a true copy thereof, certified by him, to be posted up on the front door of at least one church or chapel, or other place of public worship, if any there be,—and, whether there be or not any place of public worship, at some other place of public resort in the local municipality, or in each of the local municipalities, to the inhabitants of which such notice is addressed ;

How they shall be published.

If such notice be given within the limits of a parish, the person required to give the same shall cause it to be read at the door of every such church or chapel, at the issue of divine service in the forenoon, on the Sunday next following the day on which the same was published by posting a copy thereof as aforesaid ;

If in a parish.

If such notice be for the purpose of announcing a public meeting, or the future adoption of any proceeding under this Act, the person required to give it shall specify therein the day, hour and place at which such public meeting is to be held, and the purpose or purposes for which it is convened, or the day, hour and place at which such proceeding is to be had ;

If it be to call a public meeting.

And every such notice shall be published by posting a copy thereof, as aforesaid, at least seven clear days before the day appointed for such public meeting or proceeding ; 18 V. c. 100, s. 8.

Publication.

2. Every special notice shall be given in the manner following, that is to say :

Special notice.

Mode in which special notices shall be given.

The person required to give such notice shall cause it to be drawn up in the language of the person to whom it is addressed, if such language be the English or the French, or if it be any other language, then, in either the English or the French language, and after having signed it, shall serve it on the person to whom it is addressed, by causing a true copy thereof to be delivered to him personally, or left with some grown person at his domicile ;

Contents.

And in every such special notice, the person required to give the same shall mention distinctly the fact intended to be communicated to the person to whom it is addressed, the time and place at which he is required to attend or be present, or such other object as the notice is given for ; 18 V. c. 100, s. 9, par. 1.

Certificate of publication of service.

[Form D.]

3. The person required to give any notice, whether it be a public or a special notice, shall cause a certificate or certificates of the publication or service of such notice to be annexed to or endorsed upon the original notice, stating distinctly the manner in which, and the time or times, and place or places at which the same was so published or served ; 18 V. c. 100, s. 9, par. 2.

Attestation of such certificate.

4. The truth of the facts stated in every such certificate shall be attested on oath by the person making the same ; And the person required to give such notice shall deliver the original notice with such certificate or certificates to the secretary-treasurer of the council to the affairs of which it relates, and the secretary-treasurer shall file the same amongst the records of the council ; 18 V. c. 100, s. 9, par. 3.

Notices by Secretary-Treasurer.

5. But nothing in this section shall prevent the secretary-treasurer of any council from giving or certifying any notice either public or special ; and whenever any such notice is given by the said officer, the certificate of the publication or service thereof shall be attested under his oath of office, if he has taken such oath, and if not, by a special oath. 19, 20 V. c. 101, s. 2,—and 20 V. c. 41, s. 8.

#### GENERAL ORGANIZATION OF MUNICIPALITIES.

Inhabitants of each county incorporated.

7. The inhabitants of every county shall be a corporation or body politic under the name of " The corporation of the county of " (inserting the name of the county) :

And those of each parish or township.

2. The inhabitants of every parish and township shall be a corporation or body politic, under the name of " The corporation of the parish (or township or townships, or of the part of the parish or Township, (as the case may be) of " (inserting the name of the proper parish or township) ;

3. The inhabitants of every town and village, being a body corporate *on the first day of July, 1855*, or being declared such by this Act, or for the incorporation of which the formalities hereinafter prescribed shall have been observed, *or which has been incorporated by any special Act*, shall be a corporation or body politic under the name of the corporation of the town (or village, *as the case may be*) of *(here insert the name of the town or village)*. 18 V. c. 100, s. 10.

And those of certain towns and villages.

PROVISIONS APPLICABLE TO MUNICIPAL COUNCILS GENERALLY.

*Corporate Power and Name.*

8. Every such corporation shall have perpetual succession, and may sue and be sued under its corporate name in all courts of justice ; may acquire by purchase, donation, devise or otherwise, any real or personal property, and may hold or enjoy, or alienate the same ; may enter into all contracts necessary to or connected with the exercise of its functions, powers and authority ; and shall have all other collective rights and powers necessary for the performance of the duties imposed upon, and for the exercise of the authority vested in it : 18 V. c. 100, s. 11, *as amended by 19, 20 V. c. 101, s. 3.*

General corporate powers.

Further general powers.

2. Every such corporation shall be represented by a council, to be composed as hereinafter provided with special reference to county councils and local councils respectively ;—and all the powers, authorities, duties and obligations of every such corporation shall be exercised and performed by such council and its officers ; 18 V. c. 100, s. 11, par. 2.

Corporation to act by a Council.

3. The council of a county municipality shall be called “ The municipal council of the county of \_\_\_\_\_ ” (*inserting the name of the county*) ; 18 V. c. 100, s. 11, par. 3.

Names of Councils of counties.

4. The council of a local municipality shall be called “ The municipal council of the parish (or township or townships, or of the part of the parish or township, or town or village, *as the case may be*) of \_\_\_\_\_ ” (*inserting the name of the parish, township, town or village*) ; 18 V. c. 100, s. 11, par. 4.

Of parishes, townships, towns or villages.

5. The county council shall be composed of the mayors of the several local municipalities of the county, in which mayors have been elected or appointed ; 18 V. c. 100, s. 11, par. 5.

Composition of County Councils.

6. Every local council shall be composed of seven councillors, to be elected or appointed in the manner hereinafter provided ; 18 V. c. 100, s. 11, par. 6.

Of Local Councils.

7. No councillor shall in any case receive or be entitled to any wages, allowance, profit or emolument, whatever, for his services

Councillors not to be paid as such ; nor hold

office under  
Council.

services as such councillor ; nor shall any councillor hold any subordinate office under any municipal council, or become surety for the performance of the duties of any such officer ; 18 V. c. 100, s. 11, par. 7.

Oath of office  
to be taken by  
Councillors.

8. Each member of a council shall, immediately after his election or appointment, take an oath well and faithfully to perform the duties of his office ; 18 V. c. 100, s. 11.

[Form N.]

Every municipi-  
pality to have  
a common seal.

9. Every municipal corporation shall have a common seal ; and every instrument or document in writing which might be signed by the chief officer of any such corporation shall be equally valid without his signature, provided the seal of the corporation and the signature of the secretary-treasurer be affixed thereto. 19, 20 V. c. 101, s. 3.

#### SESSIONS OF MUNICIPAL COUNCILS.

Quarterly Ses-  
sion of County  
Councils.

9. Unless it be otherwise provided by any by-law made as hereinafter provided,—a general quarterly session of each county council shall be held on the second Wednesday in each of the months of March, June, September and December, at the place determined upon by the council, except the first general session, the time and place of holding which shall be appointed in the manner hereinafter provided : 18 V. c. 100, s. 12, par. 1, *as amended by* 20 V. c. 41, s. 3, par. 1. See s. 15.

Monthly Ses-  
sion of Local  
Councils.

2. Unless it be otherwise provided by any by-law made as hereinafter provided,—a general monthly session of each local council shall be held on the first Monday in each month, at the place determined upon by the council, except the first general session, the time and place of holding which shall be appointed in the manner hereinafter provided ; 18 V. c. 100, s. 12, par. 2, *as amended by* 20 V. c. 41, s. 3, par. 1. See s. 15.

Holidays.

3. But if any of the days so fixed be the Queen's Birthday or a holiday (*fête d'obligation*), such general session shall commence and be held on the day next following ; 18 V. c. 100, s. 12, par. 3.

Special Ses-  
sions of any  
Council.

4. A special session of any council may also be convened by the chief officer, or any two members of such council, after special notice, given to all the other members, by the person requiring such session ; And every session, whether general or special, shall commence at the hour of ten in the forenoon, unless otherwise determined by by-law, notice or adjournment ; 18 V. c. 100, s. 12, par. 4.

Hour of meet-  
ing.

[Form L.]

Notice of spe-  
cial meetings of  
a Local Coun-  
cil.

5. The secretary-treasurer of every local council shall give or cause to be given public notice of any special session of the council, orally at the door of the parish church, or if there be no such church, then in the most public place within the municipality, setting forth in such notice the object of such session ;

6. And such special sessions, as well as those appointed by law, shall, as far as possible, be held in the vicinity of such parish church, or of the most public and frequented place if there be no such church; and the office of the secretary-treasurer shall be established in the place where such sessions are held; 22 V. c. 101, s. 19.

Where such special sessions shall be held.

7. The chief officer of the council, or in his absence such one of the councillors as shall be chosen by a majority of votes of the councillors present,—or, in case of an equal division of votes, the senior in age of such councillors,—shall preside; 18 V. c. 100, s. 12, par. 5.

Who shall preside at meetings.

8. All disputed questions shall be decided by a majority of the votes of the members present, not including the chairman; and when the votes are equally divided, the chairman shall give the casting vote; 18 V. c. 100, s. 12, par. 6.

Questions, how decided.

9. But the chief officer of every council has and always had a right to vote upon all disputed questions which can only be decided by the votes of two thirds of the members of such council; 20 V. c. 41, s. 5, par. 10.

As to two third votes.

10. The sessions shall be held with open doors; 18 V. c. 100, s. 12, par. 7.

Open doors.

11. Every council, and any two of its members, when there is not a quorum present, may adjourn any general or special session to a subsequent day, but no such adjournment *when there is no quorum*, shall be made until after the expiration of one hour from the failure of the quorum; 18 V. c. 100, s. 12, par. 8.

Adjournments.

12. No adjournment of the session of a county council shall be made to any time less than seven clear days after the day on which such adjournment is made,—and no adjournment of the session of a local council shall be made to any time less than two clear days after the day on which the adjournment is made, unless, in either case a *quorum* of the council is present when such adjournment is made;—And special notice of every adjournment shall be given by the clerk to all the members of the council who were not present at the time it was made, if there was not a *quorum* present at that time; 18 V. c. 100, s. 12, par. 9.

Further limitation as to adjournments.

[Form M.]

Notice of adjournment.

13. No council shall be dissolved by the fact of any session thereof not having taken place. 18 V. c. 100, s. 12, par. 10.

Failure of Sessions not to dissolve Council.

**CHIEF OFFICER TO BE A JUSTICE OF THE PEACE.**

10. Every chief officer of a municipal council shall be *ex officio* a justice of the peace within the limits of the municipality wherein he has been elected or appointed, so long as he shall

Chief Officer to be *ex officio* a Justice of the Peace.

shall continue to act as such chief officer. 18 V. c. 100, s. 12, par. 11.

APPOINTMENT OF OFFICERS—THEIR DUTIES, &c.

Secretary-Treasurer.

11. Every council shall, at its first general session, or at a special session held within fifteen days from the first day of such first general session, appoint an officer who shall be called the "secretary-treasurer" of the "municipal council of the county (or parish or township or townships, or of the part of the parish or township or town, or village, as the case may be,) of \_\_\_\_\_," inserting the name of the municipality : 18 V. c. 100, s. 13, par. 1.

Duties of Secretary-Treasurer.

1. The secretary-treasurer of every council shall attend all sessions of the council, and shall enter all the proceedings thereof in a register to be kept for that purpose, and he shall allow persons interested therein to inspect the same at all reasonable hours ;

To have custody of papers, &c.

2. He shall be the custodian of all the books, registers, valuation rolls, collection rolls, reports, *procès-verbaux*, plans, maps, records, documents and papers kept or filed in the office of the council ;

Copies certified by him to be authentic.

3. Every copy or extract of or from any such book, register, valuation roll, collection roll, report, *procès-verbal*, plan, map, record, document or paper, certified by such secretary-treasurer, shall be deemed authentic ; 18 V. c. 100, s. 13, par. 2.

Secretary-Treasurer to give security.

4. Every person appointed secretary-treasurer to a council, shall, before acting as such, give the security hereinafter mentioned ; 18 V. c. 100, s. 13, par. 3.

How such security shall be given.

5. He shall furnish two sureties, who shall be approved by a resolution of the council, before they shall be admitted as such ; all such sureties shall be bound jointly and severally with the secretary-treasurer, and their obligation shall extend to the payment of all sums of money for which the secretary-treasurer may at any time be accountable to the corporation, including principal, interest and costs, as well as for all penalties and damages to which he may become liable in the exercise of his office ; 18 V. c. 100, s. 13, par. 4.

Two sureties required.

Form of security bond; deposit of bond, &c.

[Form O.]

6. Every such security may be given by a bond executed before notaries, or before a notary and two witnesses, and accepted by the chief officer of the council,—or by bond under private signature in duplicate ;—The secretary-treasurer shall deliver a duplicate of such bond, if executed under private signature, or a copy thereof if executed before notaries or before a notary and two witnesses, to the chief officer who shall

shall be the custodier thereof; and another copy, or the other duplicate, shall be filed by such secretary-treasurer among the records of the council; 18 V. c. 100, s. 13, par. 5.

7. Every such security-bond, when duly registered in the registry office for the county or registration division in which the secretary-treasurer resides, shall carry with it a hypothec (*hypothèque*) only on the immoveable property therein designated; And it shall be the duty of the chief officer of the council to cause it to be registered immediately on receipt thereof; 18 V. c. 100, s. 13, par. 6.

Registration of bond.

Chief Officer to have it registered.

8. The secretary-treasurer of every council shall receive all moneys payable to the municipality;—and he shall, whenever thereunto authorized by the council, pay out of such moneys all orders drawn upon him by any person thereunto authorized by this Act, for the payment of any sum to be expended or due by the municipality;—but no such draft or order shall be paid by the said secretary-treasurer, unless the same shews sufficiently the use to be made of the sum mentioned in such order, or the nature of the debt to be paid thereby; 18 V. c. 100, s. 13, par. 7.

Duties of Secretary-Treasurer; receipts and payments.

9. The secretary-treasurer shall keep in due form books of account, in which he shall enter each item of receipt and expenditure, according to its date, mentioning at the same time the names of the persons who have paid any moneys into his hands, or to whom he has made any payment, respectively; and he shall keep all vouchers for expenditure; 18 V. c. 100, s. 13, par. 8.

Accounts and books.

10. The secretary-treasurer shall render to the council, on the thirtieth day of June and on the thirty-first day of December in each year, or oftener if required by such council, a detailed account of his receipt and expenditure attested by him on oath; 18 V. c. 100, s. 13, par. 9.

Rendering accounts.

11. The secretary-treasurer's books of account and vouchers shall be open for inspection at all reasonable hours, to the council, and to each of the members thereof, to the municipal officers by them appointed, and also to all persons liable to assessment in the municipality; 18 V. c. 100, s. 13, par. 10.

Accounts to be open to members of Council

12. The secretary-treasurer, or any person who has filled that office, may be sued by the chief officer of the council or by any person thereunto duly authorized by the council, in the name of the corporation of the municipality, before any court of competent jurisdiction, to compel him to render an account; and in any such action he may be condemned to pay damages for having failed to render such account; and if he renders an account, he shall be condemned to pay such balance as he acknowledges to have in his hands, together with such other

Mode of compelling Treasurer to render accounts and pay, &c.

Judgment. other sums as he ought to have debited himself with, or as the court thinks he ought to be held accountable for;—And every judgment pronounced in any such suit, shall include interest at twelve per cent on the amount *thereof*, by way of damages together with costs of suit; 18 V. c. 100, s. 13, par. 11.

*Contrainte par corps* to enforce judgment. 13. Every such judgment shall carry *contrainte par corps* against the secretary-treasurer, according to the laws in force in such cases in Lower Canada, if such *contrainte* be demanded in the action to compel the rendering of the account; 18 V. c. 100, s. 13, par. 12.

Council may appoint auditors. 14. Every Council, at its first meeting, after being duly organized, shall appoint one or two Auditors, who shall examine and report annually upon all accounts affecting the Corporation or relating to any matter or thing under its control or within its jurisdiction; 22 V. c. 101, s. 8.

Council may appoint other officers. 15. Every council may appoint such other officers as are necessary for carrying into effect the provisions of this Act or of any by-laws or regulations of such council; 18 V. c. 100, s. 13, par. 13.

Delivery of moneys, &c., by an officer to his successor. 16. Every municipal officer, whether elected or appointed, shall, within eight days from the day on which he ceases to hold such office, deliver to his successor in office, if then elected or appointed, or if not, within eight days after the election or appointment of such successor, all moneys, keys, books, papers and *insignia* belonging to such office; 18 V. c. 100, s. 13, par. 14.

His representative to deliver the same in case of his death, &c. 17. If any such officer dies or absents himself from Lower Canada, without having delivered up all such moneys, keys, books, papers and *insignia*, it shall be the duty of his heirs or other legal representatives to deliver the same to his successor in office within one month from his death, or from his departure from Lower Canada; 18 V. c. 100, s. 13, par. 15.

Successor may recover the same if not delivered. 18. And in every such case the successor in office of such officer shall, besides all other legal remedies, have a right of action before the circuit court, either by *saisie revendication*, or otherwise, to recover from such officer or from his legal representatives, or any other person in possession of the same, all such moneys, keys, books or *insignia*, with costs and damages, for the benefit of the municipality;—and every judgment rendered in any such action may be enforced by *contrainte par corps* against the person condemned, according to the laws in force, in such cases, in Lower Canada, if by the declaration such *contrainte* is demanded; 18 V. c. 100, s. 13, par. 16.

Appointments valid though 19. No appointment of any municipal officer shall be held to be void solely by reason of its having been made after the period

period hereinbefore fixed for making such appointment; and any act done by any person previous to the appointment of a secretary-treasurer to any council, which might or should have been done by such officer if appointed, shall have the same force and effect as if the same had been done by such secretary-treasurer so duly appointed; 19, 20 V. c. 101, s. 4.

made after the time fixed.

20. Every appointment of an officer by a municipal council shall be made by a resolution of such council; and the secretary-treasurer shall without delay give special notice thereof to the person appointed; 18 V. c. 100, s. 14, par. 1.

Mode of appointing officer—notice.  
[Form P.]

21. Every officer so appointed, except a secretary-treasurer, shall remain in office for a period of two years from the date of his appointment, and no longer, unless re-appointed; 18 V. c. 100, s. 14, par. 2.

Term of office.

22. Every such council may remove any officer appointed by it, and may also remove any officer appointed by the governor and not being a member of such council, provided another person be appointed in his stead by the same resolution proposing to remove such officer, but not otherwise. 18 V. c. 100, s. 14, par. 3.

Officer may be removed on certain conditions.

POWERS COMMON TO ALL MUNICIPAL COUNCILS.

12. Every council may make and may from time to time amend or repeal a by-law or by-laws for all or any of the following purposes, that is to say: 18 V. c. 100, s. 15.

All municipal Councils may make By-laws concerning—  
[Forms I & J.]

1. For the maintenance of order and decorum during the sessions of the council, and for compelling the members thereof to attend such sessions and to perform their duties; 18 V. c. 100, s. 15, par. 1.

Order, &c., at Sessions.

2. For the purchase and acquirement of moveable or immoveable property for the use of the municipality, and for the sale and disposal of the same when no longer required; 18 V. c. 100, s. 15, par. 2.

Acquiring and disposing of property.

3. For the construction, acquirement, leasing, or repairing of any building required by the municipality, either for the sessions of the council or for other municipal purposes within the scope of its functions; 18 V. c. 100, s. 15, par. 3.

Constructing or leasing, &c., buildings.

4. For the erection, construction, widening, altering or repairing of such fences, ditches, drains or watercourses as the interests of the inhabitants require to be so erected, constructed, widened, altered or repaired, at the expense of the municipality; 18 V. c. 100, s. 15, par. 4.

Construction, &c., of fences, ditches, &c.

Regulating ferries.

Licenses for ferries.

5. For regulating any ferry under its control,—for fixing the tolls to be charged for crossing the same,—for authorizing any officer to grant a license to keep such ferry,—and for fixing the sum to be paid for such license, and the other conditions on which such license shall be granted, and for imposing penalties on any ferryman or other person contravening such by-laws ;

Limitation as to period of licenses, &c.

But no such license shall be granted for more than one year, and no such by-laws shall make the tolls payable by any of the inhabitants of any local municipality or of any part of a local municipality, on any ferry, less than those payable by other persons, or give any undue advantage to any such inhabitants with respect to such tolls ; 18 V. c. 100, s. 15, par. 5.

Acquiring roads or bridges from Government.

6. For the acquirement from the government, gratuitously or for consideration, of any public road or public bridge made or erected at the expense of the province, or of the late province of Lower Canada, within the limits of the municipality, or of such portion of any such road or bridge as lies within, or partly within and partly beyond the said limits, with the lands and dependencies required for the use or management of the same ; 18 V. c. 100, s. 15, par. 6.

Raising and levying money by rates equally imposed.

7. For raising and levying any sums of money necessary for any purpose within the scope of the functions of such council ; such sums to be raised by rates equally assessed upon all the persons liable thereto, in proportion to the value of their assessable property ; 18 V. c. 100, s. 15, par. 7.

Aiding in construction of roads benefiting the municipality, though not in it.

8. For raising and levying moneys in aid of the construction, maintenance or repair of any road leading to the municipality, or of any bridge or other public work beyond the limits of the municipality, whereby the inhabitants thereof may, in the opinion of the council, be sufficiently benefited to warrant the granting of such aid ; 18 V. c. 100, s. 15, par. 8.

Borrowing money and issuing bonds and debentures, &c., for assisting in construction of Railways.

9. For borrowing any sum of money necessary for any of the purposes within the scope of the functions of the council,—or for giving assistance to the construction of any railroad under the provisions of the *eighteenth section* of the “Railway Clauses Consolidation Act,”—or for taking stock in, or lending money to any incorporated railway, road or bridge company in whose railway, road or bridge the inhabitants of the municipality are, in the opinion of the council thereof, sufficiently interested to warrant them in taking such stock or lending such money for the advancement of such work ; (the principal and interest of such sum payable either in this province or elsewhere, and either in the currency of this province or of the country where the same may be payable);—or for issuing debentures or bonds for any of the purposes mentioned in this section, every such debenture or bond being issued for a sum not less than one hundred dollars, and being payable in not less than five and  
not

[Form M. M.]

not more than thirty years ;—or for the management of any sinking fund provided by any such by-law ;

Managing Sinking Fund.

But no by-law made under this section shall have any force or effect—unless it be made for a sum not exceeding twenty per cent on the aggregate valuation of the property thereby affected according to the valuation-rolls then existing,—nor unless it imposes a yearly rate sufficient, according to such valuation-rolls, to pay the interest on the sum to be borrowed, and two per cent. over as a sinking fund ;—nor unless it has been approved in the manner hereinafter provided ; 18 V. c. 100, s. 15, par. 9.

Total amount limited.

Rate for interest and Sinking Fund.

Every such by-law must be approved in the manner provided by the Act passed in the sixteenth year of Her Majesty's reign, *chapter twenty-two*, as amended by the Act passed in the eighteenth year of Her Majesty's reign, *chapter thirteen*, and all the provisions of the said Acts shall apply to every such by-law except in so far as they may be inconsistent with any of the provisions contained in this section ;

By-laws must be approved under 16 V. c. 22, and 18 V. c. 13.

The building of a town hall by a local or county municipality shall be one of the purposes for which the municipal loan Fund for Lower Canada may be applied, and the benefit thereof obtained ; 22 V. c. 101, s. 24.

Municipal Loan Fund of Lower Canada to what purpose appropriated.

No such by-law shall be repealed or altered until the whole sum borrowed and the interest thereon have been paid off, except by some other by-law approved by the governor in council, the repeal or alteration of which shall be subject to the like conditions ;

By-law not be repealed, except, &c.

Whenever any such by-law is passed by a county council, the principal and interest of the loan shall be payable by all the local municipalities in the county ;—And the secretary-treasurer of the county council shall in each year apportion the amount to be paid by each such local municipality according to the assessment rolls then in force in each respectively ; 18 V. c. 100, s. 15, par. 9.

Money borrowed by a county for Railway purposes as aforesaid, to be paid by local municipalities within it.

But nothing contained in the foregoing provisions of this sub-section shall in any way relate to or affect any by-laws made or to be made under the authority of the said Act passed in the sixteenth year of Her Majesty's reign, *chapter twenty-two*, as amended by the said Act passed in the eighteenth year of Her Majesty's reign, *chapter thirteen* ; 19, 20 V. c. 101, s. 5.

Nothing in above provisions of this sub-section to affect By-laws made under 16 V. c. 22, and 18 V. c. 13.

10. For depositing the funds of the municipality or investing the same at interest, in any chartered bank or public security of the province ; 18 V. c. 100, s. 15, par. 10.

Depositing money.

Paying damages done by rioters.

11. For indemnifying persons who have lost buildings or other property destroyed either wholly or in part by rioters within the municipality ; 18 V. c. 100, s. 15, par. 11.

Paying officers.

12. For the remuneration of the officers of the corporation in addition to any fees, penalties or per centage which they may be entitled to under the authority of this Act or of any other law ; 18 V. c. 100, s. 15, par. 12.

Defining duties of officers and enforcing performance thereof.

13. For defining the duties of all the officers appointed by the council or by the governor, and imposing penalties upon the said officers for neglect of duty in cases in which such duties have not been sufficiently defined, or such penalties have not been determined by law ;—But no such fine or penalties shall in any case exceed the sum of twenty dollars for any one offence ; 18 V. c. 100, s. 15, par. 13.

Taking securities from officers, contractors, &c.

14. For requiring sufficient security in such manner and to such amount as the council thinks proper, from all persons accountable for the moneys of the municipality, and from all contractors with the council or its officers, whenever such security has not been specially regulated by law ; 18 V. c. 100, s. 15, par. 14.

Imposing and collecting penalties.

15. For imposing and collecting, by seizure and sale of the goods and chattels of the offender, any reasonable penalty not exceeding in any case twenty dollars, and for imposing reasonable punishment by imprisonment, not exceeding thirty days, for the breach of any of the by-laws or regulations of the Council : 18 V. c. 100, s. 15, par. 15.

Imposing imprisonment.

Other local regulations.

16. For making such other local regulations, not contrary to law, as the good of the inhabitants of the municipality requires : 18 V. c. 100, s. 15, par. 16.

Number of general sessions.

17. For limiting the number of its general sessions to not less than one in each year for a county council, and to not less than four in each year for a local council ; 20 V. c. 41, s. 3, par. 1.

Maps and documents in the possession of individuals relating to public property.

18. For obliging any person who has in his possession any maps, plans, titles, writings or other documents relative to any road, street, lane, public place or other property in the municipality, to give communication thereof to the said council, or to any of its officers, and to permit such officer, or other person appointed for that purpose by the principal officer of the municipality, to take a copy thereof ; 20 V. c. 41, s. 3, par. 2.

Special tax on parties interested in any public works.

19. Every council may, by *resolution*, impose and levy upon the parties interested in any work undertaken for the benefit of the municipality, or of any part of the inhabitants of the municipality, a special tax to provide for the payment of such work, although the performance thereof has not been preceded or followed by the formalities required by law. 20 V. c. 41, s. 3, par. 3.

PUBLICATION OF BY-LAWS.

**13.** Every municipal council shall publish each by-law by it by causing a written copy thereof, certified by the secretary-treasurer of the council, to be posted up, within fifteen days from the date thereof, on the front door of at least one church or chapel, or other place of public worship (if any there be), and whether there be or not any place of public worship, at some other place of public resort, in each of the parishes, townships, or parts of parishes or townships, towns and villages, the inhabitants or any portion of the inhabitants of which are interested in such by-laws :

Publication by posting up copies of By-laws.

Such copy shall be in English and in French, unless the use of one of the said languages is dispensed with in the municipality, in which case it shall be in the language not so dispensed with ;

In what language.

In parishes, the council shall also cause all by-laws to be published, by causing them to be read at the door of the church of the parish to which they relate, immediately after divine service in the forenoon, on each of the two Sundays next after the passing of such by-laws ;

In parishes.

And every such council may also cause all or any of such by-laws to be published in any newspaper printed in the district, or in any adjoining district. 18 V. c 100, s. 16.

And by insertion in newspapers.

PERSONS DISQUALIFIED OR EXEMPT FROM ACCEPTING OFFICE AS MEMBERS OR OFFICERS OF MUNICIPAL COUNCILS.

**14.** No person in holy orders, or a minister of any religious denomination, nor any member of the executive council, nor any judge of the court of Queen's bench, the superior court, or the court of vice-admiralty, nor any sheriff or clerk of any court of justice (except clerks of commissioners' courts for the trial of small causes),—nor any officer of Her Majesty's army or navy on full pay,—shall be elected or appointed as a municipal councillor, nor appointed to any office under any municipal council :

Persons disqualified as members.

No person receiving any pecuniary allowance from the municipality for his services, nor any person having directly or indirectly, by himself or his partner, any contract, or any share or interest in any contract, with or on behalf of the municipality, shall be qualified to be elected or appointed or to act as a councillor of such local municipality ;

As to contractors with the Council.

Provided, firstly, that no person shall be disqualified from acting as municipal councillor, by reason of his being a proprietor or shareholder in any incorporated company which has any contract or agreement with any local council as aforesaid ;

What shall be a contract under this section.

And, secondly, that the word “contract” in this section, shall not extend to any lease, sale or purchase of any lands, tenements or hereditaments, or to any contract for such lease, sale or purchase, or for the loan of money, or to any agreement for the loan of money only,—but any municipal councillor having any interest in any matter in this second proviso mentioned, shall not vote at any meeting of the municipal council, or of any committee thereof, of which he is such councillor as aforesaid, upon any question arising upon the matter in which he is so interested as aforesaid; 18 V. c. 100, s. 17,—*amended by* 19, 20 V. c. 101, s. 6, *and* 22 V. c. 101, s. 6, par. 1.

Persons exempting from serving except by their own consent.

2. No member of the provincial legislature,—no person holding any civil appointment under the imperial or provincial government, or under either house of the legislature,—no practising physician, surgeon or apothecary,—no schoolmaster actually engaged in teaching,—no branch pilot,—no miller, being the only one employed in a mill,—no person over sixty years of age,—nor the clerk of any commissioners’ court,—shall be bound to accept the office of municipal councillor or any office under any municipal council;

Persons having already served.

And any person having been, within the two years next preceding, a member of a municipal council, or an officer under any such council, and any person who has paid a penalty for refusal or neglect to accept of any such office, shall be exempt from serving in the same office during the two years next after such service or payment; 18 V. c. 100, s. 17, par. 2.

Past elections of such Clerks of Commissioners’ Courts declared valid.

3. Clerks of commissioners’ courts who were elected municipal councillors before the *sixteenth* day of *August*, 1858, *and having accepted the office*, are hereby declared to have been legally elected; 22 V. c. 101, s. 2.

Appointment in place of Councillor elected and disqualified or claiming exemption.

4. If any person disqualified, or exempt and claiming exemption from serving as a councillor, be elected, it shall be the duty of the warden or registrar, immediately on his becoming aware of the fact, to notify the same, through the provincial secretary, to the Governor, who may appoint without delay another councillor in the stead of such person so elected. 18 V. c. 100, s. 17, par. 3.

#### SPECIAL POWERS OF COUNTY COUNCILS.

County Councils to have certain powers under 12 V. c. 56.

15. All the powers vested by the Act passed in the twelfth year of her Majesty’s reign, chaptered fifty-six, and intituled, *An Act to authorize the formation of Joint Stock Companies in Lower Canada, for the construction of Macadamized Roads, and of Bridges and other works of like nature*, in the municipalities and municipal councils therein mentioned, are transferred to and vested in the county councils constituted under this Act. 18 V. c. 100, s. 18.

**16.** Every county council may make, and from time to time may amend or repeal, a by-law or by-laws for all or any of the following purposes, that is to say : 18 V. c. 100, s. 19.

They may make by-laws concerning—  
[Form I.]

1. For appointing the place at which all sessions of the county council, after the first session, shall be held ;—and every place so appointed shall thereafter be the county town (*chef-lieu du comté*) ; But if the first session of such council was held at a place which at the time of the passing of Lower Canada Municipal and Road Act, 1855, was the *place of holding the meeting of the municipal council* of a county or division of a county, the concurrence of two-thirds of the members for the time being of such council shall be necessary for the making of a by-law appointing any other place for holding the subsequent sessions of such council ; 18 V. c. 100, s. 19, par. 1.

Place of sitting.

If the first meeting was held at a place where a County Council met at the passing of 18 V. c. 100.

And whenever a registry office has been established, or a public edifice for the use of the county council has been provided, or is in course of construction, at a place appointed by by-law under the said Act for the sittings of such council, such sittings shall continue to be held at the place so appointed, until otherwise determined by the legislature ; 19, 20 V. c. 101, s. 7.

Place of sitting of any County Council to be permanent when a Registry Office is built at it.

2. For the acquirement or construction and maintenance of a court house and gaol, in the place lawfully appointed for that purpose, and for providing means in aid of the acquirement, construction or maintenance of any such buildings ; 18 V. c. 100, s. 19, par. 2—*and see* 20 V. c. 44.

Construction, &c., of a Court House and Gaol.

3. For the acquirement or construction and maintenance of an office for the registration of deeds, either apart from or forming part of any court house situate within the county, and for the construction and maintenance therein of a fire-proof vault for the preservation of such deeds ; and for providing means for the acquirement or construction and maintenance of such office, and also for the transcription of any deeds which the council deems it expedient to transfer and deposit in such office, for the convenience of the inhabitants of the county ; 18 V. c. 100, s. 19, par. 3.

Maintenance of an office for registration of deeds, &c.

4. For placing toll-bars, and for levying tolls on persons, animals and vehicles passing over any roads or bridges within the limits of the county ; But it shall not be lawful, by any such by-law, to make the tolls payable by any of the inhabitants of any local municipality or of any part of a local municipality, less than those payable by other persons for the use of the road or bridge therein mentioned, or to give any undue advantage to any such inhabitants with respect to such tolls ; 18 V. c. 100, s. 19, par. 4.

Turnpikes.

Limitation.

Tolls to be equal in all.

Fire in the woods, &c.

5. For determining the periods of the year during which fire may be applied to logs, bush and other wood for the purpose of clearing land within the limits of the county, and for compelling persons so applying fire to adopt such precautions as may be deemed requisite to prevent such fire from extending to adjoining forests, crops and other property ; 18 V. c. 100, s. 19, par. 5.

Regulating fees to proper officer or Treasurer.

6. For regulating the fees to be paid for the services rendered by the *proper officer* by the council for that purpose, or by the secretary-treasurer, either in making reports or *procès-verbaux*, or in furnishing copies of documents at the request of any person or number of persons, whenever the county council, or any local council within the county, deems it just that such fees should not be made a charge upon any municipality in the county, but should be paid by the person or persons requiring such services ; 18 V. c. 100, s. 19, par. 6.

County Councils to make By-laws, &c.

7. Every county council shall also have power to make, in the month of March of every year, by-laws for the following objects :

Intoxicating liquors.

For prohibiting and preventing the sale of all spirituous, vinous, alcoholic, and intoxicating liquors, or to permit such sale subject to such limitations as they shall consider expedient ; 19, 20 V. c. 101, s. 8, par. 1.

Licenses to sell the same.

For determining under what restrictions and conditions, and in what manner the revenue inspector of the district shall grant licenses to shop keepers, tavern keepers, or others, to sell such liquors ; 19, 20 V. c. 101, s. 8, par. 2.

Sum payable for license.

For fixing the sum payable for each such license, but such sum shall in no case be less than the sum payable therefor, on the first day of July, 1856 ; 19, 20 V. c. 101, s. 8, par. 3.

Governing persons so licensed.

For the ordering and governing of all shop keepers, tavern keepers, or other retailers of such liquors, in whatever place they may be sold, in such manner as the council deems proper and expedient for the prevention of drunkenness ; 19, 20 V. c. 101, s. 8, par. 4.

Licenses not to be granted for places where sale of intoxicating liquors is prohibited.

And no revenue inspector shall grant any license for the sale of any such liquors aforesaid, in any Municipality where such sale has been prohibited by by-law, nor in any Municipality where a by-law determining the restrictions and conditions under which such licenses may be granted has been passed, otherwise than in conformity with the provisions thereof, provided a copy of such by-law has been transmitted by the secretary-treasurer to such revenue inspector. 19, 20 V. c. 101, s. 12.

Proviso.

FIRST SESSION OF COUNTY COUNCILS,—ELECTION OR APPOINTMENT OF WARDEN, &c.

17. The first general session of every county council shall be held at the time and place to be fixed for that purpose by the Registrar, who shall give notice thereof to each member of the council;—and every subsequent session shall be held at the place appointed for that purpose by the county council, as provided in *the next preceding* section: 18 V. c. 100, s. 20, par. 1.

First session.

2. Five members of the county council in every county comprising seven or more local Municipalities, and three members of such council in every county comprising any number of local Municipalities less than seven, shall form a *quorum*; 18 V. c. 100, s. 20, par. 2.

Quorum of County Councils.

3. The registrar, or in his absence, one of the members of the council present to be chosen for that purpose by a majority of votes,—or if the votes be equally divided, the senior in age of the members present,—shall preside at the first general session; 18 V. c. 100, s. 20, par. 3.

Who shall preside at first meeting.

4. The members of the county council shall, at the said first session, choose from amongst themselves some fit and proper person, to be the Warden of the county; and if the votes are equally divided, the person presiding at the said session, whether such person be a member of the council or the Registrar, shall give the casting vote;—And the Registrar shall cease to have the right to preside, so soon as the Warden so chosen has taken the oath of office; 18 V. c. 100, s. 20, par. 4.

Election of Warden.

Warden to preside when chosen.

5. If no election of a Warden is so made at the said first session of the council, then the Governor, upon the fact being notified to him by the Registrar, shall appoint without delay one of the members of the council to be Warden of the county; 18 V. c. 100, s. 20, par. 5.

Governor to appoint Warden if none be elected.

6. The Warden so elected or appointed shall hold his office until the next general election of councillors, and thereafter until another person is appointed in his stead; unless such Warden, if elected by the county council, be removed before that time (as he may be) by a vote of two thirds of the members of the council, or unless such Warden, if appointed by the Governor, be removed (as he may be) by the Governor; If the Warden be removed by a two-third vote of the county council, the said council shall appoint another at the same session, otherwise the Governor shall appoint one, on being notified of the fact by the Registrar or by the Secretary-treasurer of the county council; If the Warden be removed by the Governor, another shall be appointed by the Governor. 18 V. c. 100, s. 20, par. 6.

Term of office of Warden.

Removal of Warden by Council.

His place, how to be filled.

PROVISIONS CONSEQUENT ON THE ABOLITION OF THE OFFICE  
OF COUNTY SUPERINTENDENT.

Office of County Superintendent abolished.

**18.** The office of County Superintendent having been abolished by the Lower Canada Municipal Road Amendment Act of 1857: 20 V. c. 41.

Powers of County Superintendent, how exercised hereafter.

1. All the powers and privileges, theretofore conferred upon the county superintendent, shall be exercised in the manner following: 20 V. c. 41, s. 8, par. 2.

In respect of any county works, by the county council;

In respect of any local works, by the local council;

Work in which several Counties are interested.

In respect of any work in which several counties are interested, by the Warden of the counties in which the work was originally proposed, and the said Warden shall summon a meeting of delegates, and shall preside thereat; 20 V. c. 41, s. 8, par. 1, 2, *as amended by* 22 V. c. 101, s. 10.

Appointment of "proper officer" in place of County Superintendent.

Every council may, by resolution, appoint a proper person to prepare any *procès-verbal*, or perform any other duty theretofore devolving upon the council in respect of any such work, and the person so appointed shall be understood to be intended by the expression "*the proper officer*" in the following provisions of this Act, and he shall be held to be one of the municipal officers, and shall be bound to fulfil all formalities required with regard to the matters entrusted to him, and subject to the same penalties as other municipal officers for any neglect of duty; 20 V. c. 41, s. 8, par. 3.

Petitions relative to works.

Every petition relative to any such work in which one or more counties are interested shall be addressed to the county council,—and every petition relative to any local work, shall be addressed to the local council, and the petition shall be handed into the Secretary-treasurer of the council to which it is addressed, who shall present it forthwith to the council if it is then sitting, or if it is not sitting, then at the next ensuing session; 20 V. c. 41, s. 8, par. 5.

Secretary-Treasurer to keep a repository.

The Secretary-treasurer of each county council, and of each local council shall keep a Repository in which he shall refer in a summary manner, and as near as may be in the order of their dates, to all registers, reports, *procès-verbaux*, valuation rolls, collection rolls, judgments, resolutions, maps, plans, returns, notices, letters and papers whatsoever which may come into his possession in the exercise of his functions; 18 V. c. 100, s. 21, par. 6, 7, *as amended by* 20 V. c. 41, s. 8, par. 6.

And deliver copies of documents.

He shall deliver to any person applying for the same a copy of any document in his possession or custody, or of record in his

his office, upon payment of such fees as shall be fixed by the (county) council; and every such copy, certified by him as correct, shall be *prima facie* evidence of the contents thereof; and he shall allow all such documents to be inspected at reasonable hours by all persons interested therein. 18 V. c. 100, s. 21, par. 6, 7,—20 V. c. 41. s. 8, par. 6.

Copies to be evidence, &c.

COUNTY DELEGATES.

19. In every county there shall be three delegates to represent the interests of the county at every meeting of delegates held under the provisions of this Act, and to exercise and perform, in conjunction with delegates sent from another, or several other counties, as the case may be, the powers and duties hereinafter mentioned: 18 V. c. 100, s. 22, par. 1.

There shall be three delegates for each county.

2. The Warden shall be *ex officio* one of the said delegates;—the two other delegates shall be such two members of the county council as shall be appointed for that purpose at the first session held after the general election of local councillors, or at a special session held within fifteen days from the first day of such general session;—and the said delegates shall hold their office as such during their tenure of office as county councillors, and no longer; 18 V. c. 100, s. 22, par. 2.

Warden to be one,—other two how appointed.

Term of office.

3. And whenever any one of such delegates dies, or is absent or incapacitated to attend to his duties from sickness or any other cause, the county council shall appoint another delegate or other delegates in the stead of the delegate or delegates deceased, absent or incapacitated. 18 V. c. 100, s. 22, par. 3.

Vacancies how filled.

POWERS COMMON TO ALL LOCAL COUNCILS.

20. The powers and authority of each local council (in addition to the powers hereinbefore conferred upon all municipal councils) shall extend to the following objects: 18 V. c. 100, s. 23.

Local Councils may make By-laws concerning—

1. To the opening, constructing, making, levelling, pitching, raising, planting, improving, preserving and maintaining of any new or existing highway, road, street, side-walk, crossing, alley, lane, bridge, ford or other communication within the municipality, and to the planting of trees along such highway or communication; the stopping up, pulling down, widening, altering, changing, diverting or cleaning of any such highway, road, street, side-walk, crossing, alley, lane, bridge, ford or other public communication within such municipality, in conformity with the provisions of this Act relative to all such matters; the taking possession of any land or real property required for any such purposes, and the making provision for the indemnity to be paid to the owners of such land or real property;

Opening, making and repairing roads, bridges, &c.

But

Rate not to be levied for certain purposes or on certain persons.

But no town or village council shall levy any assessment from persons not residing or holding assessable property within the limits of such town or village, or shall require from any such persons the performance of any labor, towards the construction or maintenance of public roads within the limits of such town or village;—except only that any such Council may levy an assessment from persons residing or holding assessable property outside of the limits of such Town or Village, or require from any such person the performance of labor, towards the construction or maintenance of any bridge or bridges, within the limits of such Town or Village, in accordance with any *procès-verbal* or By-law, relative to the construction and maintenance of any such bridge or bridges, in force before the *first day of July, 1855*, or before the incorporation of any such town or village subsequently to that day; 18 V. c. 100, s. 23, par. 1, amended by 19, 20 V. c. 101, s. 11, par. 3, and 22 V. c. 101, s. 23.

Opening and adorning public squares, &c.

2. To the opening, enclosing and maintaining, at the expense of the municipality, such squares, parks or public places, as may be conducive to the health or convenience of the inhabitants;—to ornamenting the same by planting trees therein or otherwise, and causing trees to be planted along any side-walk or footpath, at the expense of the municipality; 18 V. c. 100, s. 23, par. 2.

Prevention of abuses prejudicial to agriculture.

Pounds, &c.

Animals running at large.

Fees to Pound Keepers.

Damages by animals.

3. To the prevention or removal of abuses prejudicial to agriculture and not specially provided for by law;—the establishment of public pounds for the safe keeping of animals and poultry, found astray or doing damage on the public roads or bridges, or on the lands of others than the owners of such animals or poultry;—the determination of the periods of the year when such animals and poultry either may be allowed to run or should be prevented from running at large;—the fees to be taken by the keepers of such pounds;—the damages payable by the owners of such impounded animals or poultry;—the manner in which such animals or poultry shall be sold, in the event of their not being claimed within a reasonable time, or in case the damages, penalties and expenses shall not have been paid according to law, or to any by-laws made for the said purpose; 18 V. c. 100, s. 23, par. 3.

Pits and precipices.

4. To the making of regulations as to pits, precipices and deep waters, or other places dangerous to travellers; 18 V. c. 100, s. 23, par. 4.

Dogs and tax on dogs.

5. To the imposition of a tax on the owners or harbourers of dogs; the making of regulations, whenever the public peace and safety may require it, to keep dogs tied up and to prohibit them being at large, and for killing all dogs found at large contrary to such regulations; 18 V. c. 100, s. 23, par. 5.

6. To the licensing of carters and common carriers; 18 V. Carters. c. 100, s. 23, par. 7.

7. To the regulation of the manner in which any theatrical performance or other public exhibition shall be held, and the imposition of a tax, not exceeding twenty dollars, upon every such performance or exhibition,—which tax, if not paid on demand, may be levied out of the goods and chattels of all or any of the persons connected with such performance or exhibition, under a warrant of distress signed by the mayor of the municipality;—and to the prohibition of any such performance or exhibition tending to endanger public safety or morality; 18 V. c. 100, s. 23, par. 8.

Public Exhibitions.  
Levying fines.  
[Form W.]

8. To the making or procuring of maps, plans or surveys of the municipality, whenever the council deems it expedient to make or procure the same;—but no such map or plan shall be procured at the expense of the municipality, unless it be drawn by a provincial surveyor upon a scale of at least four inches to the mile; 18 V. c. 100, s. 23, par. 9.

Maps, plans and surveys of the municipality.

9. To the dividing of the municipality into inspectors' divisions, and subdividing any such division into overseers' sections; 18 V. c. 100, s. 23, par. 10.

Dividing municipality for road purposes.

10. Every local council may make by-laws to prevent or prohibit the sale of all spirituous, vinous, alcoholic and intoxicating liquors, in any year when the county council has failed in the month of March to regulate by by-law such sale; 19, 20 V. c. 101, s. 11, par. 5.

Local Council may prohibit the sale of intoxicating liquors in certain cases.

11. Every local council may accept from the school commissioners of any school municipality situate within the limits of the local municipality, the collection roll for school rates, or a certified copy thereof, and may, by resolution, declare that the collection of the rates shall be made at the same time and in the same manner as that of the municipal assessments;—and any secretary-treasurer, charged with the collection of such rates, shall hand over the entire amount, so soon as he shall have collected them, to the secretary-treasurer for schools entitled to receive the same; 20 V. c. 41, s. 5, par. 1.

School rates may be collected at the same time as the municipal assessments.

12. Every local council may from time to time make, alter or repeal by-laws for the granting of licenses to pedlars and other travelling traders and artists, and for preventing them from carrying on their traffic or practising their art without being licensed thereto; 20 V. c. 41, s. 5, par. 2.

Licenses to pedlars, &c.

13. Every local council may compel all traders, whether wholesale or retail, *other than tavern-keepers and retailers of intoxicating liquors*, to take out and to pay such council for a license to keep a shop or store, and may regulate the amount to be

Local Councils may oblige all traders to take and pay for a license.

be paid for such license ; but such amount shall not exceed twenty dollars ; 22 V. c. 101, s. 16.

Preventing fast driving and gambling.

14. Every local council may make by-laws to prevent parties from driving or riding faster than an ordinary trot, in the streets, or public places comprised within a radius of one mile from the principal church in the local municipality ;—and for preventing gambling and the keeping of gambling houses in the municipality. 22 V. c. 101, s. 17.

#### ERECTING UNINCORPORATED VILLAGES.

Formation of unincorporated villages by By-laws of the Local Councils.

21. Whenever there are, within the limits of a local municipality, at least forty inhabited houses erected within a space not exceeding sixty superficial arpents, the council of such local municipality shall have full power and authority to pass a by-law defining the limits of such tract and recognizing its existence as an unincorporated village, under such name as they may please to assign thereto ; and from and after the date of the publication of any such by-law, the local council shall have the same power and authority to make by-laws for such unincorporated village as the council of any *incorporated* town or village erected under this Act. 19, 20 V. c. 101, s. 11, par. 1.

#### SPECIAL POWERS OF TOWN AND VILLAGE COUNCILS

Town and village Councils may make By-laws concerning—

22. In addition to the powers hereinbefore conferred upon all local councils, the municipal council of every town and village municipality may make by-laws for all or any of the following purposes, that is to say : 18 V. c. 100, s. 24.

Markets.

1. For establishing markets or market places ;—for abolishing any market or market place within any such municipality, or for appropriating the whole or any part of the site of any market or market place for any other public use whatsoever ; reserving nevertheless to any person aggrieved by any act of such council respecting any such market or market place, any recourse which he lawfully has against the municipality for any damage suffered by him by reason of such act ; 18 V. c. 100, s. 24, par. 1.

Proviso.

Appointment, &c., of Clerks of Markets, and other market officers, stalls, duties, sales of certain articles, &c.

2. For regulating and defining the duties and powers of the clerks of the markets within the municipality, and of all other officers employed on the said markets ; and for leasing stalls and stands for the sale, and offering for sale, of every description of articles or goods whatsoever upon the said markets ;—and for imposing duties or taxes on all persons vending upon such markets any provisions, vegetables, butchers' meat, grain, fowls, hay, straw, coal, salt, cord-wood, shingles, or any thing else whatsoever ;—for prohibiting the sale, or exposure for sale, by any person not resident within the municipality, of any such provisions

provisions or other thing elsewhere than upon such markets and in such other places as may be appointed for that purpose by any such by-law;—and for regulating the conduct of all persons vending or purchasing upon the said markets; 18 V. c. 100, s. 24, par. 2.

3. For imposing duties upon wagons, carts, sleighs, boats, canoes and vehicles of all descriptions, in which articles are exposed for sale upon any such market, or in any street or upon any beach within the municipality, and for regulating the manner in which such vehicles shall be placed when used for any such purpose; 18 V. c. 100, s. 24, par. 3.

Duties on vehicles in which articles are brought to market.

4. For regulating the weighing or measuring of cord-wood, lumber, shingles, coal, salt, hay, straw and grain, brought within the municipality for sale;—for regulating and determining whether any other articles purchased or sold within the municipality shall be weighed or measured, or both;—and for appointing persons to weigh and measure any or all such things, and for fixing and determining the remuneration to be paid to such officers and the duties to be performed by them; 18 V. c. 100, s. 24, par. 4.

Weighing and measuring certain articles.

Fees.

5. For regulating, fixing and determining the weight of bread, sold or offered for sale within the municipality, and for compelling bakers to mark with the initials of their respective names the bread made by them, and for confiscating bread of insufficient weight or unwholesome quality; 18 V. c. 100, s. 24, par. 5.

Weight of bread.

Marking Baker's names, &c.

6. For increasing the personal commutation to be paid in each year by each person subject to perform statute labour on the roads and streets within the municipality, to an amount not exceeding one dollar for each person;—and for obliging every such person to pay the amount of such personal commutation so determined upon, without allowing any such person to offer his personal labour in lieu of such commutation;—and for exempting from the payment of such commutation persons or any class of persons whom the council deems it expedient to exempt by reason of their want of means; 18 V. c. 100, s. 24, par. 6.

Commutation of statute labour.

7. For assessing the proprietors of real property for such sums as are at any time necessary to defray the expenses of making or repairing any common sewer under any public street or road within the municipality, and for regulating the manner in which such assessments shall be collected and paid; 18 V. c. 100, s. 24, par. 7,—*as amended by 19; 20 V. c. 101, s. 13.*

Assessing for making sewers.

8. For obliging the proprietors of real property situate within the limits of the municipality to fence in and enclose such real property; 18 V. c. 100, s. 24, par. 8.

Fencing real property.

Removing encroachments on streets, &c.

9. For directing and requiring, at any time, the removal of any door-steps, stairs, porches, railings or other projections into, or obstructions in, any public street or road within the municipality, by and at the expense of the proprietors of the real property in or connected with which such projection or obstruction is found ; 18 V. c. 100, s. 24, par. 9.

Altering level of side-paths, &c.

10. For establishing or altering the level of the foot-paths or side-walks in any street or road within the municipality, in such manner as the council shall deem conducive to the convenience, safety and interest of the inhabitants ; provided always, that the council may make compensation out of the funds of the municipality, to any person whose property shall be injuriously affected by any such alteration of the level of any foot-path in front thereof ; 18 V. c. 100, s. 24, par. 10.

Compensation in certain cases.

Pulling down decayed buildings.

11. For pulling down and removing, when deemed necessary, all old walls, chimnies or buildings in a state of dilapidation or decay ; and for fixing at what time, by what means, and at whose expense, the same shall be so pulled down and removed ; 18 V. c. 100, s. 24, par. 11.

Preventing accidents by fire, and making arrangements for extinguishing fires.

12. For preventing accidents from fires,—and for regulating the conduct of persons present at any fire within the municipality ;—and (among other by-laws for the same purpose) for regulating the mode of placing stoves or stove-pipes, flues, furnaces or ovens, or the mode of keeping ashes ;—for obliging proprietors or occupiers of houses to provide themselves with proper fire-buckets, and to have ladders from the ground to the roofs of their houses, and from such roofs to the tops of the chimnies ;—for preventing any person from entering any stable, barn, shed or out-house, with a light not enclosed in a lantern, or from entering any such building with a lighted cigar or pipe, or from carrying into the same any fire not properly secured ;—for preventing any person from lighting or having any fire in any wooden shed or out-house or other wooden building, unless such fire be placed in a chimney or in a stove of iron or metal, or from carrying fire in or through any street or public place, garden or yard, unless such fire be confined in some metal vessel ;—and for compelling the proprietors or occupants of barns, lofts or other buildings containing combustible or inflammable materials, to keep the doors thereof closed when not necessarily required to be open ; 18 V. c. 100, s. 24, par. 12.

Obliging certain tradesmen to construct furnaces in a certain manner.

13. For preventing any baker, potter, blacksmith, brewer, manufacturer of pot ashes or pearl ashes, or other manufacturer or person, from building, making or having any oven or furnace, unless such oven or furnace communicates with, and opens into, a chimney of stone or brick, rising at least three feet higher than the top of the house or building in or in connexion with which such oven or furnace is placed ; 18 V. c. 100, s. 24, par. 13.

14. For providing that gunpowder be safely kept in boxes of copper, tin or lead ; for regulating the quantity which may be kept in each house or building not being a powder magazine, and for prohibiting the sale thereof after sun-set ; 18 V. c. 100, s. 24, par. 14.

Keeping and sale of gunpowder.

15. For preventing the erection of furnaces for making charcoal, and for regulating the manner in which quick lime may be kept or deposited ; 18 V. c. 100, s. 24, par. 15.

Furnaces for lime and charcoal.

16. For preventing persons from throwing up fire works, firing off crackers (*pétards*), discharging fire-arms, or lighting fire in the open air, in any of the streets or roads, or in the neighborhood of any buildings, groves, hedges or fences within the municipality ; 18 V. c. 100, s. 24, par. 16.

Discharging fire-works.

17. For defraying, out of the funds of the municipality, all such expenses as the council deems just to incur, for the purchase of engines, or any other kind of apparatus, or any article whatsoever necessary for the prevention of accidents by fire, and for facilitating the means of arresting the progress of fires ; 18 V. c. 100, s. 24, par. 17.

Purchasing fire-engines, &c.

18. For preventing thefts and depredations at fires, and for punishing any person who resists, opposes or ill-treats any member or officer of the council while in the execution of the duty assigned to him, or in the exercise of any power or authority with which he is invested in virtue of any by-law made under the authority of this section ; 18 V. c. 100, s. 24, par. 18.

Preventing thefts, &c., at fires.

19. For defraying, out of the funds of the municipality, any expense incurred by the council for assisting any person employed by such council, who has received any wound or contracted any sickness or disease while attending at any fire, or for assisting or for providing for the wants of the family of any person who has lost his life at any fire while so employed ;— and for granting rewards in money, medals or otherwise, to persons who have performed any meritorious action at any fire, or in saving persons from drowning or from other serious accidents ; 18 V. c. 100, s. 24, par. 19.

Compensating person wounded or performing services at fires, or the families of persons killed.

20. For investing the members of the council and such officers as shall be designated in such by-laws, with the power to cause to be blown up, pulled down, or otherwise destroyed, any building or fence which any such member, or any such officer, deems it necessary to direct to be pulled down or destroyed for the purpose of arresting the progress of any fire,— and for providing and paying an indemnity, when justly due, to the owners of any building or fence so blown up, pulled down or destroyed, or to any person sustaining any damage or injury from any such act ; 18 V. c. 100, s. 24, par. 20.

Authorizing the destruction of houses to stop fires, &c.

Compensation.

Regulating masters, servants, &c.

21. For regulating the conduct of apprentices, servants, labourers and hired persons and the conduct of masters and mistresses towards their said apprentices, servants, labourers or hired persons, in the municipality ; 18 V. c. 100, s. 24, par. 21.

Preventing gambling.

22. For preventing gambling and the keeping of gambling houses in the municipality ; 18 V. c. 100, s. 24, par. 22.

Preserving public health.

23. For establishing a board or boards of health in the municipality, and for appointing the members of such board or boards,—and for securing the inhabitants of the municipality from contagious and pestilential diseases, or diminishing the danger resulting from the existence of such diseases ; 18 V. c. 100, s. 24, par. 23.

Compelling cleanliness in yards, &c.

24. For compelling the proprietors or occupants of houses to clean all stables, outhouses, privies and yards connected therewith, at such times and in such manner as the council deems expedient ; 18 V. c. 100, s. 24, par. 24.

Preventing the deposit of filth in streets, &c.

25. For preventing the throwing, into any public street or road, of any sweepings, filth, dirt, rubbish or ordure, and for enforcing the removal thereof ; and for preventing and removing all encroachments and nuisances in or upon any street or road ; 18 V. c. 100, s. 24, par. 25.

Authorizing officers to inspect property to see that By-laws are complied with.

26. For authorizing such officers as may be appointed by the council for that purpose, to visit and examine at suitable times and hours to be fixed in and by such by-laws, as well the inside as the outside of all houses, buildings and real property of any description in the municipality, for the purpose of ascertaining whether the by-laws, to be made as aforesaid, have been duly observed,—and for obliging all proprietors, possessors or occupants of such houses, buildings or real property, to admit such officers and persons into and upon the same at the times and hours, and for the purposes aforesaid ; 18 V. c. 100, s. 24, par. 26.

Preventing violent riding or driving.

27. For preventing persons from passing along the public streets or roads in any vehicle or on horseback at any faster pace than an ordinary trot ; 18 V. c. 100, s. 24, par. 27.

Providing lock-up house in default of Goal.

28. For providing, within the municipality, if there be no district gaol therein, a lock-up-house or other place for the safe keeping of persons sentenced to any term of imprisonment not exceeding thirty days under any of the provisions of this Act, or of the Ordinance mentioned in the next following section. 18 V. c. 100, s. 24, par. 28.

PROVISIONS OF THE QUEBEC AND MONTREAL POLICE ORDINANCE,  
RELATING TO DISORDERLY PERSONS EXTENDED TO TOWN  
AND VILLAGE MUNICIPALITIES.

**23.** The eighth, ninth, tenth and eleventh sections of the Police Ordinance of the legislature of Lower Canada, passed in the second year of Her Majesty's reign, intituled: *An Ordinance for establishing an efficient system of Police in the Cities of Quebec and Montreal*, as amended by an Act passed in the seventh year of Her Majesty's reign, intituled: *An Act to alter and amend certain provisions of the Ordinance of the Governor and Council of Lower Canada of the second year of Her Majesty's reign*; intituled, *An Ordinance for establishing an efficient system of Police in the Cities of Quebec and Montreal*, and by an Act passed in the ninth year of Her Majesty's reign, intituled: *An Act to amend the Act amending certain provisions of the Ordinance for establishing an efficient system of Police in the Cities of Quebec and Montreal*, does and shall extend to and have force of law in every town and village municipality erected or existing under the provisions of this Act, of which the said sections shall be held to form part; And in every case where, under any of the provisions contained in the said section of the said Ordinance so as aforesaid amended, a justice of the peace may commit any person brought before him, in either of the cities mentioned in the said ordinance, to the common gaol or house of correction, any justice of the peace may commit any person brought before him in any such municipality to imprisonment for any term not exceeding thirty days, either in the common gaol of the district, or in any lock-up-house or other place provided by the municipal council for that purpose: 18 V. c. 100, s. 25,—20 V. c. 41, s. 7.

Parts of certain Ordinances of Lower Canada 2 V. c. 2, as amended by 7 V. c. 21, and 9 V. c. 23, extended to towns and villages.

To what place offenders may be committed.

For the establishment, construction and maintenance of water works, for the purpose of providing wholesome water for the inhabitants of the municipality;—for taking possession of any lands necessary for the purposes of such water works, or for the passage of the canals through which the water is to flow, whether such land be situate within or without the limits of the municipality, and whether or not the proprietors consent to such taking possession;—and for imposing and raising by tax whatever amount the council deems requisite to ensure the construction and maintenance of such water works;—But the amount of any indemnification for expropriation and for any damages caused by the construction or maintenance of any such water works, shall be determined in the manner provided for similar cases by this Act. 20 V. c. 41, s. 6, par. 2.

Construction of water works provided for.

Power to take property, and impose taxes.

WHO MAY VOTE AT ELECTIONS OF MEMBERS OF LOCAL COUNCILS.

**24.** The persons hereinafter mentioned, and none other, shall be entitled to vote at any election of members of any local council, that is to say:

Qualification of voters at municipal elections: as to property.

Every

Every person of the male sex, of the full age of twenty-one years, and a natural born or naturalized subject of Her Majesty, who, at the time of giving his vote at such election, is possessed, as proprietor, either in his own right or in the right of his wife, and for his own proper use and benefit, or for the use and benefit of his wife, of a real estate in the local municipality in which the election is held, in *fief*, in *censive*, in *franc-allevu*, or in free and common soccage, of the yearly value of at least eight dollars, or who holds, as a tenant or lessee, in such local municipality, an estate of the yearly value of at least twenty dollars, and who (in either case) has resided in such local municipality during at least the year next preceding the day of the opening of such election, and has paid all rates or local taxes due by him at any time before the election, whether the same were imposed for municipal or educational purposes. 18 V. c. 100, s. 26,—*as amended by 22 V. c. 101, s. 3.*

## ELECTIONS OF COUNCILLORS.

Meeting of qualified electors every second year.

**25. 1.** A public meeting of the inhabitants qualified to vote shall be held in each local municipality on the second Monday in January, in one thousand eight hundred and sixty, and on the same day in every second year thereafter, for the general election of local councillors; and such meeting in any local municipalities in which a village municipality is situate, may be held within the limits of the village municipality: 18 V. c. 100, s. 27,—*as amended by 22 V. c. 101, s. 6.*

The term "Registrar" to include "Deputy Registrar."

**2.** The term "registrar," in any of the following provisions, shall include the deputy registrar; 18 V. c. 100, s. 27.

Notice of meeting and by whom given in first instance.

**3.** Public notice of every such meeting shall be given by the warden of the county, or, in his absence or default, by the registrar;—and the said councillors may be chosen from among the inhabitants of the local municipality,—or, if the same be a parish or township municipality, from among the inhabitants of any town or village municipality within the limits of such parish or township—or partly from one class and partly from the other,—whether they be or be not qualified to vote at such election; But no person shall be so elected unless at the time of his election he is possessed, as proprietor, either in his own right or in the right of his wife, of a real estate held in *fief*, in *censive*, in *franc-allevu*, or in free and common soccage, in the municipality for which the election is held, of the value of four hundred dollars; 18 V. c. 100, s. 27,—*as amended by 19, 20 V. c. 101, s. 14.*

Who may be elected.

[Form A.]

Qualification of Councillor.

Appointment of a person to preside at such meetings.

[Form C.]

**4.** The registrar or the warden, as the case may be, shall appoint a fit and proper person to preside at each of such meetings, and shall give to such person special notice of his appointment, and of the time and place at which the first session of the councillors elected at the meeting to be presided over by him, will be held; 18 V. c. 100, s. 27, par. 2.

5. If on the day appointed for the general election of local councillors, the person, named by the registrar or warden to preside at the meeting, is absent therefrom, then the senior justice of the peace there present, or in the absence of a justice of the peace, any person chosen from amongst themselves by a majority of the persons constituting such meeting, shall preside thereat, and shall perform, in so far as regards the said election and the proceedings consequent thereupon, the duties required to be performed by the person appointed by the registrar or warden; 18 V. c. 100, s. 27, par. 3.

Who shall preside in default of the person so appointed.

6. No person shall be disqualified for election as a councillor because he presides at the election; 18 V. c. 100, s. 27, par. 4.

Person presiding not disqualified.

7. The person presiding shall, during the election, be a conservator of the peace, and shall be invested with the same powers for the preservation of the peace, and the apprehension, imprisonment, holding to bail, trying or convicting violators of the law, as are vested in the justices of the peace, whether he does or does not possess the legal property qualification of a justice of the peace; 18 V. c. 100, s. 27, par. 5.

Powers of person presiding for preserving the peace.

8. In order to maintain the peace and preserve order at every such election,—the person presiding thereat may command the assistance of all justices of the peace, constables and other persons residing in the county, and may also swear in as many special constables as he deems necessary; he may also commit to the charge and custody of any constable or other person, on view, for any period not exceeding forty-eight hours, any person whom he finds breaking the peace or disturbing public order at any such election, or he may, by a warrant under his hand, commit the offender to the common gaol of the district in which the municipality is situate, or to any lock-up house or other place established for the safe keeping of prisoners in any municipality within the county, for any period not exceeding ten days; 18 V. c. 100, s. 27, par. 6.

Such person may command assistance, swear in special constables, &c.

[Form U.]

[Form V.]

9. If there be more than seven candidates at any election, the person presiding shall take down, or cause to be taken down, the votes of the electors present, in a poll book kept for that purpose, and shall declare the seven candidates who have the largest number of votes in their favor, to be duly elected councillors;—and if an equal number of votes be polled for any two or more of the candidates, the person presiding may vote, but he shall vote in such case only; and he shall give his casting vote in favor of such candidate or candidates as he thinks fit; and he may give such casting vote, whether he is otherwise qualified to vote or not;—and whenever the election is not opposed by more than three persons qualified to vote thereat, the person presiding shall declare the candidates duly elected; 18 V. c. 100, s. 27, par. 7.

Poll book to be kept if more than seven candidates.

Casting vote.

Poll may be continued to second day if all votes not polled on first.

10. If the votes of all the electors present have not been polled by the hour of five in the afternoon of the first day of the said meeting, the person presiding shall adjourn the proceedings thereof to the hour of ten in the forenoon of the following day, when he shall continue to take down the votes; and he shall close the election at the hour of five in the afternoon of the said second day (whether any more votes remain to be polled or not), and shall then declare duly elected councillors such of the candidates as are entitled to be so declared elected; 18 V. c. 100, s. 27, par. 8.

To be closed if no vote be offered for an hour.

11. If, at any time after the votes have commenced to be polled, either on the first or on the second day of the said election, one hour elapses without any vote being polled, it shall be the duty of the person presiding, after the expiration of the said hour, to close the said election and declare duly elected as councillors such candidates as are entitled to be so declared elected, provided no person has been, within the last hour, prevented from approaching the poll by violence, and notice of his being so prevented has been given to the person presiding; 18 V. c. 100, s. 21, par. 9.

Provided persons have not been prevented from voting by violence.

Voter may be required to take an oath.

12. Every person tendering his vote shall, before voting, if required by the person presiding, or by any one of the candidates at the said election, or by any person representing any such candidate, or by any inhabitant qualified to vote at the said election, take the following oath before the person presiding:—

Oath.

“ I swear (or affirm) that I am entitled to take part in the proceedings of this meeting, that I am twenty-one years of age, that I am duly qualified to vote at this election, that I have paid all local rates or taxes due by me, and that I have not already voted at this election. So help me God ;” 18 V. c. 100, s. 27, par. 10.

Notice to be given to Councillors elected.

[Form E.]

13. The person presiding at any such election shall, within two days from the close of the election, give special notice of his election to each of the councillors so elected, and of the place, day and hour determined upon by the Registrar or Warden, and at which such councillor will be required to attend, for the holding of the first session of the council after such election;—the councillors so elected shall enter upon the duties of their office, as such, respectively, on the day of their election, and remain in office until the day of the next general election, and thereafter until their successors are elected or appointed; 18 V. c. 100, s. 28, par. 1.

Entry into office.

Notice to Warden or Registrar.

[Form F.]

14. The person presiding at every such meeting shall, within eight days after the day appointed for such meeting by a letter under his hand, inform the Warden, or, if there be no such officer, the Registrar, of the result of such meeting, and

(if

(if an election took place,) of the names, occupation and residence of each of the councillors elected thereat; and shall deliver up the poll book kept at such election, and certified by him, to the warden or registrar; And the warden or registrar, (as the case may be,) shall deliver to the secretary-treasurer of the county council, without delay, if there be then any such officer, and, if not immediately after his appointment, all such letters and poll books, together with a certificate or certificates of the public notice of all such meetings held in the county having been duly given; 18 V. c. 100, s. 28, par. 2.

Delivering of poll books, &c.

15. If any such meeting does not take place at the time appointed in the public notice, or if it takes place and no election of councillors be made, or less than seven councillors be elected thereat, the registrar or warden, so soon as the fact comes to his knowledge, shall notify the same to the provincial secretary, for the information of the Governor, who, if no election has taken place at such meeting, shall select and appoint seven councillors duly qualified as aforesaid, and who, if any number less than seven councillors have been elected at such meeting, shall appoint a sufficient number of councillors to complete the required number; and the councillor or councillors so appointed, shall have the same powers, perform the same duties, and be subject to the same penalties as if they had been elected; 18 V. c. 100, s. 29, par. 1, *as amended by* 19, 20 V. c. 101, s. 15.

Appointment of Councillors by the Governor, if they are not elected.

Their powers..

16. The councillors so appointed shall enter upon the duties of their office as such, respectively, on the day on which special notice of their appointment is given to them by the registrar or warden, and remain in office until the day of the next general election, and thereafter until their successors are elected or appointed; 18 V. c. 100, s. 29, par. 2.

Entry into office.

Term of office.

17. The registrar or warden, in giving such special notice, shall also notify the councillors so appointed of the place, day and hour at which the first session of the council after such appointment is to be held; and the said day shall be some day between the first and second Sundays after such notice. 18 V. c. 100, s. 29, par. 3.

Place and time of first session to be notified to them.

SESSIONS OF LOCAL COUNCILS, ELECTION OR APPOINTMENT OF MAYOR, &C.

26. The seven councillors elected or appointed as aforesaid, shall meet at the place, on the day, and at the hour determined upon by the Registrar or Warden for holding the first session of the council after their election or appointment; and at all other subsequent sessions of the council: 18 V. c. 100, s. 30, par. 1.

First meeting, &c.

2. Four members of the council shall form a *quorum*; 18 V. c. 100, s. 30, par. 2.

Quorum.

Appointment of Secretary-Treasurer and Mayor.

3. On the first day of every such first session of the council, the councillors then present, after having appointed a secretary-treasurer, shall elect one of their number to be the Mayor of the local municipality; and every such officer shall be designated as "the Mayor of the parish (or township or townships, or of the part of the parish or township, or town or village, as the case may be) of (inserting the name of local municipality); 18 V. c. 100, s. 30, par. 3.

Who shall be Mayor if no election is made on first day of session.

4. If no election of a Mayor takes place as aforesaid on the first day of the said session of the council, then the person who was elected councillor by the greatest number of votes, or the senior in age of any two of such councillors who have been elected by an equal number of votes (such number being greater than the number recorded in favor of any other of such councillors,) shall be the Mayor;—and if any one or more of such councillors have been elected, and the others appointed by the Governor, that one of the persons so elected by the greatest number of votes shall be the Mayor;—and if all the said councillors have been appointed by the Governor, then the councillor first named in the letter making their appointment known, shall be the Mayor; 18 V. c. 100, s. 30, par. 4.

If all the Councillors are appointed by the Governor.

Notice of election signified to Warden, &c.

[Form Q.]

5. The secretary-treasurer of the local council shall, immediately after the election or appointment of the Mayor, signify such election or appointment to the Warden of the county, or to the Registrar if there be no Warden at the time of such election or appointment. 18 V. c. 100, s. 30, par. 5.

#### VACANCIES IN LOCAL COUNCILS.

Vacancies in the Council, how filled up.

27. Whenever any councillor dies, or has been absent from the local municipality, or has been incapable to act as such through infirmity, illness or otherwise, for three calendar months, the remaining councillors, shall, at the next meeting of the council after such decease or after the expiration of the said three months, choose from among the inhabitants of the municipality another councillor in the stead of the councillor so deceased, absent or incapacitated :

Vacancy not to affect acts of others.

1. But notwithstanding the decease, absence or incapacity to act of any such councillors, the remaining councillors shall continue to exercise the same powers and perform the same duties as they would have been required to exercise or perform, if the decease, absence or incapacity to act of such councillor, had not occurred; 18 V. c. 100, s. 31, par. 1.

If the person occasioning the vacancy be the Mayor.

2. If the councillor, in whose stead another has been elected as aforesaid, is the Mayor, then the members of the council shall, on the first day of the first session of the council next after the election of his successor to the office of councillor, elect

elect another Mayor in the manner above prescribed ; 18 V. c. 100, s. 31, par. 2.

3. Every councillor, so elected or appointed in the stead of another, shall remain in office for the remainder of the period for which his predecessor had been elected or appointed, and no longer ; 18 V. c. 100, s. 31, par. 3. Term of office of new Councillor.

4. Every council may authorize any one of its members to retire from office and choose another in his stead, in the manner above mentioned ; 20 V. c. 41, s. 4, par. 1. Retirement of Members of Council.

5. Any person, who, not being obliged to accept the office of municipal councillor, has nevertheless accepted it, may retire at any time from the said office, upon giving public notice in writing to the secretary-treasurer of the local council of which he was a member ; and he shall be replaced in the manner prescribed in cases of decease ; 20 V. c. 41, s. 4, par. 2. Certain Councillors enabled to retire.

6. When the person who has thus retired from office is at the same time the Warden of the county, the secretary-treasurer of the local council shall, within eight days after the receipt of the said notice, transmit a copy thereof to the secretary-treasurer of the county council, and so soon as a Mayor has been elected to replace the person retiring from office, the county council shall proceed to the election of a new Warden. 20 V. c. 41, s. 4, par. 3. When the Councillor retiring is the Warden of the county.

APPOINTMENT OF CERTAIN OFFICERS BY LOCAL COUNCILS.

28. In addition to the officers, which every municipal council is hereinbefore required to appoint, every local council, at its first general session, or at a special session to be held within fifteen days from the first day of such general session, shall also appoint : Certain other officers to be appointed.

1. As many inspectors and overseers of roads and bridges, inspectors of fences and ditches and pound keepers as the council deems expedient ; 18 V. c. 100, s. 32. Road officers, fence viewers and pound-keepers.

Each local council shall also appoint,—

2. Three valuator's ; each of whom shall be possessed of a property qualification equal to that required of municipal councillors by this Act ; and the appointment of any person not so qualified shall be null and void ; Each valuator shall, immediately after his appointment, take an oath well and faithfully to fulfil the duties of his office ; Valuator's ; their qualification and oath of office.

3. Every valuator appointed after the first day of July, one thousand eight hundred and fifty-six, shall remain in office until the next triennial appointment of valuator's, to make the valuation Term of office of Valuator's.

valuation roll for the municipality as hereinafter prescribed ; 19, 20 V. c. 101, s. 24, par. 2.

Period for the appointment of Valuators.

4. The appointment of valuers shall be made at the time and in the manner prescribed by the above sub-section, as to road officers, if such appointment takes place in the year fixed for the general election of councillors, and if in any other year, then, at the general monthly session in the month of January, or at a special session held within fifteen days after such general session. 19, 20 V. c. 101, s. 24, par. 3.

ANNEXATION OF PARTS OF PARISHES AND TOWNSHIPS AND OF EXTRA PAROCHIAL PLACES.

29. For the purposes of this Act, subject to the exceptions hereinafter mentioned, the following territorial arrangements shall be made :

Extra-parochial places.

1. Every extra-parochial place shall be annexed to one of the adjoining parishes in such county ; and such extra-parochial place shall thenceforth, for all the purposes of this Act, form part of the said parish ;

Parishes in townships.

2. Every parish shall of itself form a separate municipality, unless such parish be comprised and included in a tract of land erected into a township, in which case it shall not of itself form a separate municipality, but shall form a part of the municipality of such township ; 18 V. c. 100, s. 33, par. 1.

Parishes, &c., partly in one county and partly in another.

3. Whenever a parish or a township lies partly in one county and partly in another, each part shall be annexed to some adjoining parish or township in the county within which it lies, unless there are at least three hundred souls therein, in which case the said part of such parish or township shall of itself form a municipality, under the name of " The corporation of the " north," " south," " east" or " west" part (*as the case may be*) of the parish or township of " (inserting the name of the parish or township) ; 18 V. c. 100, s. 33, par. 2.

Case of a parish extending into a township in another county provided for.

4. But whenever a township or part of a township in one county is annexed to a tract of land in another county to form a parish, then,—unless the population of such township or part of a township amounts to three hundred souls, in which case such township or part of a township shall form a separate municipality,—such parish shall be a separate municipality, and shall, for all municipal purposes, be held and considered as forming part of the county in which the remaining portion of the parish is situate ; 19, 20 V. c. 101, s. 9, par. 9.

Every township to be a Municipality.

5. Every territory erected into a township beyond the limits of lands comprised and included in fiefs and seigniories, and wholly situate in one and the same county, (whether such township

township is or is not wholly or in part erected into a parish) shall, except in the cases hereinafter provided for, form a municipality under the name of the "corporation of the township of \_\_\_\_\_" (*insert here the name of the township*); 18 V. c. 100, s. 33, par. 3,—22 V. c. 101, s. 29.

Exception.

6. When the population of a township does not amount to three hundred souls, such township shall not of itself form a municipality, but shall be annexed to some adjoining parish or township in the same county, and shall form part of the township or parish to which it is thus annexed; 18 V. c. 100, s. 33, par. 4.

Exception as to township having less than 300 souls, which shall be annexed to another Municipality.

7. When a parish wholly situated in one and the same county includes any town, village or township, no councillors shall be elected in that part which lies beyond the limits of such town, village or township, but such part of such parish shall be annexed to some adjoining parish or township, except when there is in such part a population of, at least, three hundred souls, in which case, the said part of the said parish shall form by itself a municipality, under the name of "The Corporation for the "North" "South" "East" or "West" "Part of the parish of \_\_\_\_\_" (*here insert the name of the parish*); 18 V. c. 100, s. 33, par. 5.

Parishes including town, village or townships.

Exception if it has less than 300 souls.

8. But any parish of which an incorporated town or village forms part, shall be designated by the name of the municipality of the parish of \_\_\_\_\_ (*insert the name of the parish*) provided that the population of the said parish, not included within the limits of such town or village, exceeds three hundred persons; 20 V. c. 41, s. 2, par. 3.

How parishes shall be designated in certain cases.

9. Whenever it is represented to a county council that the residents of any two or more townships, no one of which contains a population sufficient to constitute a municipality, are desirous of being united for the purpose of forming jointly a municipality, such county council may unite for that purpose so many of such townships, under the joint names thereof, as are necessary to make the joint population of such united townships amount to three hundred souls;—and from and after the first day of January next after the publication of the resolution declaring such annexation, the townships so united shall form a local municipality, and an election of councillors for such municipality shall take place in such month of January, in the manner prescribed by this Act, *notwithstanding that such time be not the year and month fixed by this Act for holding an election*; and the councillors so elected shall remain in office until the next general election of councillors; 19, 20 V. c. 101, s. 9, par. 8.

County Councils may, upon proper application, unite two or more townships containing each less than 300 souls.

10. Every such annexation of an extra-parochial place, or of a parish or township, or part of a parish or township, to another parish

Annexation of extra-parochial

places, &c.,  
how effected.

[Form K.]

parish or township, shall be made by a resolution of the county council ;—and the secretary-treasurer of the council shall, immediately after the passing of every such resolution, give public notice of such annexation, not only by publishing a copy of such resolution in the manner provided by this Act with respect to public notices generally, but also by causing the same to be inserted in at least one newspaper published in the district or in an adjoining district, if there be no newspaper published in the district where such annexation has taken place ; 18 V. c. 100, s. 33, par. 6.

Separation  
when such  
place contains  
more than 300  
souls.

11. But whenever it appears, by a general census, or by a special enumeration of the inhabitants, that any locality so annexed contains a population exceeding three hundred souls, the county council shall by another resolution declare that the resolution under which such locality was so annexed, shall be revoked from the first day of January then next ;—and from and after the day so appointed for the revocation of the former resolution, the locality therein mentioned shall cease to be so annexed, and shall thenceforward form a separate municipality ; 18 V. c. 100, s. 33, par. 7.

Enumeration  
to be made in  
certain cases.

12. And the county council may at any time, and shall, whenever required by any two or more persons resident in any locality so annexed, cause a special enumeration of the inhabitants thereof to be made by some municipal officer, or other person appointed by the council for the purpose ; 18 V. c. 100, s. 33, par. 8, *as amended by* 20 V. c. 41, s. 8.

Costs of enu-  
meration, how  
paid.

13. But if it appears from such enumeration that the locality so annexed does not contain a population of three hundred souls, the persons requiring such enumeration shall reimburse to the council the costs thereof, for the payment of which costs the county council shall require security from such persons before causing the enumeration to be made ; 18 V. c. 100, s. 33, par. 9.

Certain places  
to continue to  
form distinct  
municipalities.

14. But notwithstanding the provisions of the *next preceding paragraph*, every parish, township, or part or parts of a parish or township, the inhabitants whereof were on the first day of July, one thousand eight hundred and fifty-five, entitled to elect two members of the county council, shall each continue to form a distinct municipality, unless and until its limits have been changed by virtue of some other provision of this Act ; 18 V. c. 100, s. 33, pars. 6, 7, 8, 9, 10,—20 V. c. 41, s. 2, par. 1.

By-laws not to  
be vitiated by  
certain error in  
designating the  
Municipality.

15. And whereas the local councils of certain territories erected into townships and also into parishes, and which, under the *thirty-third section of* 18 V. c. 100, respectively form municipalities by the name of the corporation of such township, have by error passed by-laws under the name of the corporation of such parish,—

parish,—no by-law heretofore passed by any such local council shall be null by reason of such erroneous designation therein assumed, but on the contrary every such by-law shall be judged of in respect of its validity, and shall be interpreted and acted on in all other respects, as though it had been passed in the name of such township and not of such parish; 22 V. c. 101, s. 29.

SPECIAL LOCAL PROVISIONS.

16. The following places, that is to say: the parishes of *St. Anicet*, *Ste. Julienne de Rawdon*, and *St. Alphonse de Li-guori*, in the district of Montreal,—the parishes of *St. Norbert d'Arthabaska* and *St. Christophe d'Arthabaska*, in the district of Three Rivers,—all that portion of the township of Shipton, in the district of St. Francis, comprising the first eight ranges thereof, to be designated hereafter as the *Township of Shipton*, and all the remaining ranges of the same township to be designated hereafter as the *Township of Cleveland*,—and the place known as *Mont Carmel*, and forming part of the parish of *La Rivière Ouelle*, in the district of Kamouraska,—shall each form a separate municipality;—all that part of Upton which comprises the eighth, ninth, tenth, eleventh, twelfth and thirteenth ranges of Upton shall, for the purposes of this Act, be annexed to and form part of the parish of St. Hugues, and all the ranges of the said township which now constitute the parish of St. Ephrem d'Upton, shall form a separate municipality; 18 V. c. 100, s. 33, par. 11.

Certain pa-  
rishes and parts  
of townships or  
parishes to be  
municipalities,  
&c.

The following places shall each constitute a distinct and sepa-  
rate municipality as they have done since the first day of  
January, one thousand eight hundred and fifty-eight, that is to  
say :

Certain places  
to constitute  
distinct muni-  
cipalities.

The parish of St. Germain, in the county of Drummond, in-  
cluding the sixth, seventh, eighth, ninth, tenth, eleventh,  
twelfth and thirteenth ranges of the township of Grantham,  
under the name of the municipality of the *parish of St. Ger-  
main*;—the remainder of the township of Grantham, with the  
townships of Wendover and Simpson, under the name of the  
*Municipality of Grantham, Wendover and Simpson*;—the north  
part of the township of Winslow, in the county of Compton,  
under the name of the *Municipality of North Winslow*, the  
south part of the said township, under the name of the *Muni-  
cipality of South Winslow*; and the limits of the two Muni-  
cipalities last mentioned shall be fixed and determined by a  
by-law of the county council; and the extent of ground desig-  
nated in a proclamation inserted in the number of the *Canada  
Gazette*, published by authority under date of the seventh day  
of February, one thousand eight hundred and fifty-seven, as  
being intended to form a separate municipality after the first  
day of January then next, under the name of the Corporation of  
the

Parish of St.  
Germain.

Grantham,  
Wendover,  
&c.

North and  
South Win-  
slow.

Village of St. Césaire.

the *Village of St. Césaire*, shall be detached from the municipality of the parish of St. Césaire, and shall form a distinct and separate municipality under the name aforesaid. 20 V. c. 41, s. 2, par. 2.

ERECTION OF TOWNS AND VILLAGES.

Erection of town and village—how effected.

**30.** The erection of any tract of land into a town or village municipality, shall take place in the manner hereinafter provided, that is to say: 18 V. c. 100, s. 34.

Petition by forty electors.

[Form R.]

Reference to proper officer.

1. Whenever a petition is presented to any county council by thirty or more inhabitants qualified to vote at the election of local councillors, praying for the erection into a town or village municipality of any tract of land lying within the limits of the local municipality in which the petitioners reside, and clearly defined in such petition, the county council shall refer such petition to the person appointed as the *proper officer* for the purpose, with an order to visit the said tract of land and to report on the said petition; 18 V. c. 100, s. 34, par. 1,—*as amended by* 19, 20 V. c. 101, s. 16.

His report.

[Form S.]

2. The said officer shall give public notice of the day and hour at which he will visit such tract of land and commence his examination thereof, and shall hear all parties; 18 V. c. 100, s. 34, par. 2.

If the number of houses be too few.

3. If there be not at least forty inhabited houses erected upon some part of such tract, within a space not exceeding sixty superficial arpents, the said officer shall report the fact to the county council, whose duty it will be in such case to reject the petition; 18 V. c. 100, s. 34, par. 3,—*as amended by* 19, 20 V. c. 101, s. 16.

And if the number be sufficient.

Limits to be assigned.

4. But if forty inhabited houses are erected on such tract within the said space of sixty superficial arpents, the said officer shall define in his report, and describe in a plan accompanying the same, the limits which, in his opinion, should be assigned to the said tract of land when erected into a separate municipality;—and if the limits so defined and described are different from the limits mentioned in the said petition, he shall specify in his report the motives of such deviation; 18 V. c. 100, s. 34, par. 4,—*as amended by* 19, 20 V. c. 101, s. 16.

Deposit of report, &c.

5. After having made and signed such report, the said officer shall deposit a copy thereof and of the plan accompanying the same in the office of the county council; 18 V. c. 100, s. 34, par. 5.

Homologation of amendment of report by County Council.

6. The county council may homologate every such report, with or without amendment, after having caused public notice to be given to the inhabitants of the local municipality from which

which it is proposed to detach such tract of land, of the day and hour at which they will proceed to the examination thereof, and after having heard their said proper officer and the parties interested (if required to do so) upon the merits thereof; 18 V. c. 100, s. 34, par. 6. [Form T.]

7. If after the lapse of two months from the day of the deposit of a copy thereof in the office of the county council, no amendment has been made to the said report, it shall be considered as having been homologated by the county council; 18 V. c. 100, s. 34, par. 7. Presumed homologation, if no amendment.

8. But if before the expiration of that time the said report be amended by the county council, the county council shall cause to be entered upon the original, or on a paper annexed thereto, all such amendments as they have made upon or annexed to the copy thereof; 18 V. c. 100, s. 34, par. 8. If amendment be made.

9. In either case the *secretary-treasurer or proper officer* shall, after the expiration of the said period of two months, transmit to the provincial secretary a true copy of the said report and of any amendments which may have been made thereto, and of all plans and other documents connected therewith; 18 V. c. 100, s. 34, par. 9. Copy to Provincial Secretary.

10. The Governor may thereupon, by an order in council, approve or reject the said report, whether the same be amended or not by the said municipal council, or modify or amend the same in such manner as he deems expedient; 18 V. c. 100, s. 34, par. 10. Governor in Council may approve, reject or amend.

11. If, by the said order in council, the said report be approved, with or without amendments, then the Governor may issue a proclamation under his hand and seal, declaring the name to be given and defining the limits to be ascribed to such tract of land as a separate municipality; 18 V. c. 100, s. 34, par. 11. Proclamation, if approved, with or without amendments.

12. From the first day of January next after the expiration of the two months immediately following the date of the said proclamation, the tract of land, the limits whereof have been so defined, shall be detached from the local municipality whereof it theretofore formed part, and its inhabitants shall be a corporation or body politic, to all intents and purposes whatsoever, by the name of "The Corporation of the Town or Village of (as the case may be) \_\_\_\_\_," (insert the name of the town or village); 18 V. c. 100, s. 34, par. 12. Effect of Proclamation and when it shall take effect.

13. The said proclamation shall be published in the *Canada Gazette*, and at least two copies of such proclamation, duly certified by the provincial secretary, shall be by him sent to the county council, whose duty it shall be to give public notice thereof; 18 V. c. 100, s. 34, par. 13. Publication of Proclamation.

Towns must contain 3,000 souls.

14. No tract of land shall be erected into a town municipality unless it be shewn by the report of the proper officer that there are at least three thousand inhabitants within such tract ; 19, 20 V. c. 101, s. 16, par. 1.

Village containing 3,000 souls may be made a town.

15. The Governor may, upon due proof that the number of inhabitants in any village, previously incorporated as such, amounts to three thousand souls, issue a proclamation creating such village a town municipality ; 19, 20 V. c. 101, s. 16, par 2.

Council of the parish, &c., may still be held in town or village.

16. The municipal council of any parish or township municipality may hold their sessions in any town or village within the limits of such parish or township after the erection of such town or village into a separate municipality, as well as before ; 18 V. c. 100, s. 34, par. 14.

Towns and villages being municipalities when the Act 18 V. c. 101 was passed to continue such.

17. Every town, borough or village, forming a separate municipality immediately before the first day of July, one thousand eight hundred and fifty-five, shall continue to exist as a separate municipality within the limits it then had, until the same are changed under the foregoing provisions ; 18 V. c. 100, s. 34, par. 15.

Union with another municipality, if necessary.

18. But upon a petition presented by at least two thirds of the assessable inhabitants of any town, borough or village, being on the day last aforesaid, or having been thereafter erected into a separate municipality, the Governor may issue a proclamation uniting such town, borough or village to some adjoining local municipality, if he is satisfied that such union will promote the interests of such town, borough or village ; 18 V. c. 100, s. 34, par. 15.

When the Proclamation under sub-section 18 of section 30 shall take effect.

19. But no proclamation for uniting a town or village municipality to some adjoining local municipality shall have any force or effect until the first day of January next after the expiration of the two months immediately following the date of such proclamation ; 19, 20 V. c. 101, s. 16, par. 4.

Warden to cause Councilors to be elected, and Council organized.

20. The warden of the county in which any newly erected town or village municipality is situate, shall cause an election of councilors to be had, and shall organize the council thereof so soon as the proclamation erecting the same takes effect, notwithstanding that such time be not the year and month fixed by *this Act* for holding the general elections of local councilors ; but the councilors so elected shall remain in office until the next general election of councilors, and no longer. 19, 20 V. c. 101, s. 16, par. 3.

#### CONTESTED ELECTIONS.

Circuit Court to decide them.

31. If the election of all, or of one or more, of the councilors of any local municipality be contested, such contestation shall

shall be decided by the circuit court sitting in the circuit within the limits of which the place of election is situate: 18 V. c. 100, s. 35.

2. Every such election may be so contested by one or more of the candidates or by any ten at least of the inhabitants qualified to vote at such election; 18 V. c. 100, s. 35, par. 2. Who may contest.

3. The said contestation shall be brought before the court, by a petition signed by the petitioner or petitioners, or by an attorney duly authorized, setting forth in a clear manner the grounds of such contestation; 18 V. c. 100, s. 35, par. 3. To be brought before Court by petition.

4. A true copy of the petition, with a notice stating the day on which the petition will be presented to the court, shall be first duly served upon the councillor or councillors whose election is contested, at least eight days before the day on which the petition is presented to the court; and a return of the service shall be drawn up and signed in due form upon the original of the petition by the person who made the service;—But no such petition shall be received after the term next following the election thereby contested, unless such election took place within the fifteen days next preceding the first day of such term, in which case the petition may be presented on the first day of the second term, but not later;—nor shall any such petition be received unless security for costs be given by the petitioners; 18 V. c. 100, s. 35, par. 4. Service of copy of petition.  
Time within which petition must be presented.

5. If the court is of opinion that the grounds set forth in the petition are sufficient in law to avoid the election, it shall order proof to be adduced, and the parties interested to be heard on the nearest day which it deems expedient, and shall proceed in a summary manner to hear and try the said contestation;—The evidence may be taken down in writing or given orally in whole or in part, as the court shall order; and if the trial of such contestation is not concluded at the close of the term of the court during which it began, the judge shall continue the same in vacation, and shall adjourn from day to day until he has pronounced his final judgment upon the merits of the same; and every such judgment so pronounced and all proceedings had in any such case in vacation, shall have the same effect as if the same had been pronounced or had in term; 18 V. c. 100, s. 35, par. 5. Adduction of evidence and hearing.  
Trial may be continued in vacation, and judgment given.

6. The court may, on such contestation, confirm the election, or declare the same to be null and void, or declare another person to have been duly elected, and may in either case award costs to or against either party, which costs shall be taxed and recovered in the same manner, and by the same means, as costs are taxed and recovered in actions of the first class brought in such circuit court; and the court may order its judgment to be served upon the warden, or if there be no such What may be ordered and regulated by judgment.  
Service of judgment on Warden.

such officer, then upon the registrar of the county, by such person as it shall appoint for that purpose, at the expense of the party condemned to payment of costs as aforesaid; 18 V. c. 100, s. 35, par. 6.

Irregularities in election, how to be considered.

7. If any defect or irregularity in the formalities prescribed for the election are set forth in any such petition, as a ground of contestation, the court may admit or reject the objection, according as such defect or irregularity may or may not have materially affected the election; 18 V. c. 100, s. 35, par. 7.

Proceedings if the election be declared void.

8. The court or judge, declaring the election of any councillor or councillors to be void, shall, in and by the judgment in that behalf, name the day, not being sooner than ten days nor later than twenty days from the date thereof, for which a public meeting of the inhabitants of the local municipality shall be called in order to make another election, and the warden, or if there be no such officer, the registrar, so soon as he hath cognizance of the judgment, shall call a meeting of the inhabitants of the local municipality for the day so named in the judgment, and shall proceed to the election of another councillor or councillors in the stead of the councillor or councillors whose election has been so declared null and void; and the same formalities shall be observed at such election as are required to be observed at every general election of councillors; 18 V. c. 100, s. 35, par. 8, *as amended by 22 V. c. 101, s. 7.*

New election.

[Form A 2.]

Election of Mayor or Warden may be contested.

9. The election of the Mayor of any local municipality or of the Warden of any county, may also be objected to and contested, and such contestation may be proceeded upon and decided in the same manner, and by the same means, as the contestation of the election of a councillor or councillors; but no such election of a Mayor or Warden shall be so objected to or contested by any other than a member of the council who elected him; 18 V. c. 100, s. 35, par. 9.

Proviso.

If election of Mayor be declared void.

10. If, by the judgment of the court, the election of a Mayor or of a Warden be declared null and void, then the council shall proceed to the election of a person to serve in his stead as such Mayor or Warden, within one month from the date of such judgment. 18 V. c. 100, s. 35, par. 10.

#### APPOINTMENTS BY THE GOVERNOR.

Governor to be informed by Chief Officer or Registrar of failure to elect or appoint any Councillor or Officer, and to appoint to the vacant office.

32. Whenever a calendar month has elapsed after the time when any chief officer of a municipal council, or any municipal councillor or councillors should have been elected either by the inhabitants of a municipality, or by a municipal council, or when any officer should have been appointed by any municipal council, under any of the provisions of this Act, *which precede this section*;—the chief officer of such municipal council,

council, or in his absence, or upon his default, the Registrar of the county, shall, by letter under his hand, addressed to the provincial secretary, inform the Governor of the fact, and the Governor shall thereupon appoint such councillor or officer;— And every such appointment shall be made known by a letter under the hand of the provincial secretary addressed to such chief officer or registrar, who, upon receipt thereof, shall give special notice of such appointment to the person so appointed, and also to the secretary-treasurer of the council of the municipality for which such person is appointed: 18 V. c. 100, s. 36, par. 1.

Appointment, how made. [Form X.]

2. After the expiration of forty-five clear days from the time when such election or appointment should have taken place under any of the provisions of this Act *which precede this section*, the chief officer of the council (if there be any such officer) and the registrar shall be held to be in default of giving such information, if neither of them has in the interval addressed and transmitted to the provincial secretary the letter required by the last paragraph;—And in such case the Governor shall make such appointment upon being informed of the vacancy required to be filled up, by any two persons qualified to vote in the municipality; 18 V. c. 100, s. 36, par. 2.

How information may be given if Chief Officer or Registrar fail to give it.

Appointment by Governor.

3. The Governor may revoke any appointment by him made. 19, 20 V. c. 101, s. 17.

Appointment by Governor may be revoked.

PROPERTY AND DEBTS OF FORMER MUNICIPALITIES.

**33.** All moneys which on the first day of July, 1855, were or ought to have been in the hands of the secretary-treasurer of any municipality, and which belonged to any municipality which then ceased to exist, shall be paid into the hands of the secretary-treasurer of the county in which the place where the sittings of the council of such municipality were held is situate, and shall be at the disposal of the council of the said county, to be applied first to the discharge of the debts and expenses of the municipality which so ceased to exist, and afterwards to the discharge of those which the said county council may have itself contracted;—saving the recourse of any other county of which any part may have been within the municipality so ceasing to exist, for a share of such moneys proportionate to the population of such part as compared with that of the whole municipality so ceasing to exist: 18 V. c. 100, s. 37, par. 1.

Moneys to be paid over to Treasurer of new County Council, and how applied.

Recourse of any other County, saved.

2. The county council shall have a right of action, for the recovery and payment of all such moneys as aforesaid; and the said moneys shall be afterwards employed or paid by the secretary-treasurer according to the order which he receives from the county council, in pursuance of the provisions aforesaid; 18 V. c. 100, s. 37, par. 2.

Recovery of such money if not paid over.

Assessments,  
&c., due, &c.,

3. All assessments or rates of any kind whatsoever, which, on the day last aforesaid, were due to any such municipality ceasing to exist, shall belong respectively and shall be paid to the local municipality within the limits of which they were imposed; in the same manner as if the said assessments or rates had been imposed in the said local municipality by and in virtue of this Act; 18 V. c. 100, s. 37, par. 3.

Transfer of  
property of  
old municipa-  
lities to those  
under this Act  
and the Acts  
consolidated.

4. From and after the first day of July, 1855, all the property, moveable as well as immoveable, which then belonged to any municipality ceasing to exist, has belonged to the County municipality created by and in virtue of the Lower Canada Municipal and Road Act of 1855, within which the place where the sittings of the council of the municipality ceasing to exist were held is situate, in the same manner as if the said property had been acquired by the last mentioned county municipality; saving the recourse of any other county of which any part may have been within the municipality so ceasing to exist, for a share of the value of such property proportionate to the population of such part as compared with that of the whole municipality so ceasing to exist; 18 V. c. 100, s. 37, par. 4.

Recourse of  
other municipa-  
lities, saved.

Debts, con-  
tracts, &c., of  
municipalities  
ceasing under  
the Act 18 V.  
c. 100, by what  
municipality to  
be paid or en-  
forced.

5. The debts, contracts and agreements of any municipality which ceased to exist by the coming into force of the Lower Canada Municipal and Road Act of 1855, (18 V. c. 100,) became thereafter the debts, contracts and agreements of and shall be recoverable or enforceable by or from the county in which the place where the sittings of the council of the municipality so ceasing to exist were held, is situate, in the same manner as if the said debts had been contracted by and the said contracts and agreements had been entered into by the latter municipality, saving the recourse of such county to recover from any other county within the limits of which any part of the municipality ceasing to exist was situate, a share of any sum paid in discharge of any such debt, proportionate to the population of such part of such municipality as compared with the whole population thereof;—And it shall be lawful for any county council to cause a rate or rates to be levied on the assessable properties in any locality within such county forming a separate municipality, or part of a municipality, or parts of several municipalities, for the payment of any debt or debts contracted or work or works done for the advantage of any such locality by any county or parish municipality heretofore existing, or upon the whole county if the debt or debts was or were contracted or such work or works performed for the benefit of the whole county;—and every such rate may be levied for the satisfaction of any equitable claim, whether such debts were contracted or such works performed according to the formalities required by law or not; 18 V. c. 100, s. 37, par. 5.

Recourse a-  
gainst other  
municipalities.

Rates to be le-  
vied for dis-  
charging such  
debts.

6. The population referred to in this section shall be that established by the new census taken in the year 1852. 18 V. c. 100, s. 37, par. 6. Population, how determined.

DELIVERY OF PAPERS, &c.

34. Every person who formerly held the office of *grand voyer*, or any municipal officer under any Act or law relating to the municipal or road system, and the heirs, testamentary executors or curators of any such officer who is dead or absent from Lower Canada, was bound to deliver to the secretary-treasurer of the municipal council of the county to which they relate, within fifteen days after the 1st July, 1855,—or if such secretary-treasurer was not then appointed, within eight days of his appointment,—all books, registers, *procès-verbaux*, assessment rolls, resolutions, copies of judgment, maps, plans, returns and other documents and papers in his or their possession, or under his or their control, relating to such office, to remain deposited and of record in the office of the council and in the custody of the secretary-treasurer : 18 V. c. 100, s. 38, par. 1. Papers relative to Road law to be delivered, and to whom.

2. The secretary-treasurer of each county council has had and shall have a right to take possession of all and every such books, papers and other things wherever he can find the same, in the event of their not being delivered to him by the proper officer or person within the delay hereinbefore allowed, and has also had and shall have a right of action to recover the same with damages, as indemnity to the county council and costs, before any circuit court, by *saisie revendication* or otherwise from such officer or from his heirs, executors or curators, or from any other person having possession thereof:—And judgment in every such action by which delivery or the payment of damages or both has been ordered, may be enforced by *contrainte par corps* against the person condemned, according to the laws in force in such cases in Lower Canada, if by the declaration such *contrainte* is demanded ; 18 V. c. 100, s. 38, par. 2. Action to compel such delivery. Enforcing judgment in such action.

3. Any town or village municipality may demand from the council of the municipality from which such town or village has been separated, or from the council of any other municipality which has them in its possession, and such council shall, on such demand, give up to such town or village municipality, all documents or papers of any kind whatsoever, relating exclusively to the territory included in such village or town municipality, and shall allow the secretary-treasurer of such village or town municipality, or other officer appointed for that purpose, to take copies of such parts of all other documents as relate to such territory, without any further fee than for the certificate of the authenticity of such copies. 19, 20 V. c. 101, s. 16, par. 5. Certain documents to be furnished to a new town or village.

## ROADS, BRIDGES AND OTHER PUBLIC WORKS.

*Classification and general provisions applicable to them.*

- Roads, &c., to be classified.**      **35.** Roads, bridges and other public works shall, for the purposes of this Act, be divided into three classes: 18 V. c. 100, s. 39.
- Provincial works.**      1. Provincial works,—comprising all roads, bridges and other public works made and held by the provincial government ;
- County works.**      2. County works,—comprising all roads, bridges and other public works made or maintained at the expense of a county or of several counties, or of the inhabitants or any number of the inhabitants of more than one local municipality in a county ; and
- Local works.**      3. Local works,—comprising all roads, bridges and other public works made or maintained at the expense of any one local municipality, or of the inhabitants of any portion thereof; 18 V. c. 100, s. 39, pars. 1, 2, 3.
- Roads classified.**      4. Roads are further distinguished as front roads and by-roads ;
- Front roads.**      5. Front roads are those whose general course is across the lots in any range or concession, and which do not lead from one range or concession to another in front or in rear thereof ;
- By-roads or routes.**      6. By-roads (*routes*) are those whose general course is lengthwise of the lots in any range or concession, or which lead from one range or concession to another in front or rear thereof, or to a *banal* mill, or to a bridge or ferry not on the line of a front road ; and all other roads not being front roads ;—But any council may, by resolution, declare any other road to be a by-road ;
- Roads between two concessions.**      7. A front road passing between two ranges or concessions is the front road of both, unless one of them only has another front road, in which case it is the front road of the range or concession not having another front road ;—but any council may, by resolution, declare any other road to be a front road ;
- Front roads of any lot.**  
**Width of.**      8. That part of the front road of any range or concession, which is upon, or in front of, any lot, is the front road of such lot ; 18 V. c. 100, s. 40, pars. 1, 2, 3, 4.
- Front road.**      9. No front road opened after the first day of July, one thousand eight hundred and fifty-five, shall be less than thirty-six feet French measure, in width ;

10. No by-road and no road leading to a banal mill opened after the day last aforesaid, shall be less than twenty-six feet French measure, in width ; Of by-roads.

11. Nothing herein contained shall be construed to prevent any road from being made wider than is above provided, if it is so ordered by *procès-verbal*, or by-law ; Different width made by order, by-law, &c.

12. Except where it is otherwise provided by some *procès-verbal* or by-law, there shall be on each side of every road, a ditch three feet in width, properly constructed and having sufficient fall in the direction of its length, to carry off the water ; and there shall be small drains across the road at all places where the same are necessary for the free passage of the water from one ditch to the other ; these ditches and drains shall be held to be part of the road ; 18 V. c. 100, s. 41, pars. 1, 2, 3, 4. Ditches in ordinary cases.

13. Ditches may be dispensed with or made of less width than is above provided, if the nature of the ground renders it advisable, and if it is so ordered by any *procès-verbal* or by-law ; 18 V. c. 100, s. 41, par. 5. May be dispensed with.

14. If, in order to convey the water from off any road, it is deemed necessary to make any water course upon or through the lands of any person, such necessity shall be declared by the *procès-verbal* or by-law which regulates the making and maintaining such water course, as part of the work belonging to the road ;—And if any *procès-verbal* or by-law, touching any such water course, was in force on the first day of July, one thousand eight hundred and fifty-five, it shall remain in force unless and until annulled or altered by a *procès-verbal* or by-law under this Act or the Acts consolidated by it ; 18 V. c. 100, s. 41, par. 6. Water-courses conveying water from roads through lands of any person.

15. Every person, upon whose lands such water course has been directed to be made, shall allow the same, and shall also allow free access thereto for the purpose of making and maintaining it ; being first compensated (if he has not before received compensation) in the manner hereinafter provided ; 18 V. c. 100, s. 41, par. 7. Water course allowed to be made.  
Compensation.

16. No council shall direct the demolition of any mill-dam, on the ground that the same is an obstruction to a water course, but the right to erect any dam and the rights and liabilities of all parties in respect thereof, whether for damage or otherwise, shall be adjudicated on and determined according to the ordinary rules of law ; 22 V. c. 101, s. 22. Councils may not order the demolition of dams.

17. Every road declared a public highway by any *procès-verbal*, by-law or order of any grand voyer, warden, commissioner or municipal council, legally made and in force on the first day of July, one thousand eight hundred and fifty-five, shall Certain ways declared roads under this Act.

shall be held to be a road within the meaning of this Act, until it is otherwise ordered by competent authority; 18 V. c. 100, s. 41, par. 8.

Roads used as such for a certain time.

18. And any road left open to and used as such by the public, without contestation of their right, during a period of ten years or upwards, shall be held to have been legally declared a public highway by some competent authority as aforesaid, and to be a road within the meaning of this Act; 18 V. c. 100, s. 41, par. 9.

Ground occupied by road, in whom vested.

19. The ground occupied by any road shall be vested in the local municipality in which it lies, and such road may be discontinued, or its position in any part may be altered by *procès-verbal*, but shall not otherwise be alienated;—and whenever a road is discontinued, if the land on each side belongs to the same person, the said ground shall *pleno jure* become the property of such person,—or if the land on each side belongs to two different owners, then half the breadth of the road shall become the property of each of them, unless one of them has furnished land for a road in the place of that so discontinued, in which case the whole shall become his property; 18 V. c. 100, s. 41, par. 10.

And if the road be discontinued.

Punishment for certain offences touching roads.

20. No person shall drive at any pace faster than a walk over any bridge exceeding twenty feet in length, unless such bridge is wholly of brick or stone,—nor shall any person cut, deface or injure any part of any bridge, rail or post, or any mile stone or mile post, or any inscription thereon, or any work or thing forming part of or serving to the use of any road, or any trees lawfully planted on any side-walk, or in any way to obstruct or render inconvenient or dangerous the use of any road;—and for every such offence the offender shall incur a penalty not exceeding four dollars, nor less than one dollar. 18 V. c. 100, s. 41, par. 11.

#### FERRIES.

Where both sides are in one locality.

36. Ferries in cases where both sides of the river or water to be crossed lie within the same local municipality, shall be under the control of the municipal council thereof: 18 V. c. 100, s. 42, par. 1.

In the same County but not in the same locality.

1. Ferries, in cases where both sides of the river or water to be crossed lie within the same county, but not within the same local municipality, shall be under the control of the county council; 18 V. c. 100, s. 42, par. 2.

Money arising from ferries, to whom to belong.

2. The moneys arising from any license for a ferry shall, if the ferry be under the control of a local municipality, belong to such municipality,—and if it be under the control of the county council, they shall belong one moiety to each of the local

local municipalities between which the ferry lies ;—and such moneys shall be applied to road purposes ; 18 V. c. 100, s. 42, par. 3.

3. Ferries over any river, stream or water, the two banks of which are not situate in the same county, (excepting the ferry between the city of Quebec and the parish of Notre-Dame de la Pointe Lévi, and the ferries between the city of Montreal and the parish of Longueuil,) shall be under the control of the local municipalities situated upon such river, stream or water ;—and each council upon each shore, shall, with respect to the regulation of any such ferry, as far as the middle of such river, stream or water, have the same power as is conferred upon it by *section twelve* of this Act, with respect to all other ferries under its control ; 20 V. c. 41, s. 5, par. 3.

Ferries between County and County.

Except at Quebec and Montreal.

4. Nothing herein contained shall enable any municipal council to authorize any person to keep a ferry within the limits for which an exclusive privilege has been granted by law to the proprietor of any toll-bridge ; 18 V. c. 100, s. 42, par. 5.

Exclusive privileges saved.

5. Any person acting as a ferryman at any ferry under the control of any municipal council without a license from such council or beyond the limits assigned to him by such license, shall incur a penalty of four dollars, for each person or thing so ferried over by him. 18 V. c. 100, s. 42, par. 6.

Penalty for acting without license.

FORDS OVER RIVERS.

37. Fords over rivers shall be kept free from loose stones, and impediments, and the bottom shall be kept as smooth and even as practicable, and such fords shall be properly marked out with poles or *balises*. 18 V. c. 100, s. 43.

To be kept even at bottom.

WINTER ROADS..

38. From the first day of December in each year, until the first day of April in the next following year, all fences by the sides of roads,—and all line fences or fences making an angle with a road, to the distance of at least twenty-five feet from it,—shall be taken down to within twenty-four inches from the ground, leaving only the upright posts or pickets standing above that height, except only within the limits of villages, and in places where the fences stand at least twenty-five feet from the side of the highway, or where, in consequence of hedges, or fences not removeable without great expense having been erected, the proper council or officer may permit them to remain, on such conditions as he thinks proper : 18 V. c. 100, s. 44, par. 1.

Fences to be taken down at certain seasons.

Exception ; villages, hedges, &c.

Site of road. 2. Winter roads *upon the snow* shall be made in such places as the inspectors shall from time to time determine; 18 V. c. 100, s. 44, par. 2.

Through what property to be carried. 3. They may be carried upon or through any field or inclosed ground, except such as are used as orchards, gardens or yards, or are fenced with quick hedges or with fences which cannot, without great difficulty or expense, be removed or replaced, through which they shall not be carried without the consent of the occupant; 18 V. c. 100, s. 44, par. 3.

By whom to be kept up. 4. They shall be kept in order by the persons who are bound to keep the same roads (or the roads for which they are substituted) in repair in summer, including the municipality when it is so bound; 18 V. c. 100, s. 44, par. 4.

Jurisdiction on rivers, &c., between two Municipalities. 5. For the purpose of making and maintaining winter roads on the frozen surface of rivers, lakes and other waters flowing or lying between two or more municipalities, the powers, duties and authority of the councils of the several municipalities lying on each shore and of their officers respectively, shall extend beyond the ordinary limits of such municipalities, as far as the centre of every such river, lake or other water; 18 V. c. 100, s. 44, par. 5.

By what Municipalities to be kept up. 6. Every such road shall be maintained by the local municipality through whose limits, as defined by this section, it passes, unless it has been substituted for a summer road, in which case, if parties other than the municipality were bound to keep the summer road in repair, the same parties shall maintain the winter road; 18 V. c. 100, c. 44, par. 6.

Joint expense in certain cases. 7. Every such road leading from one local municipality to another (when such local municipalities are not situate fronting on the river St. Lawrence) shall be traced out and maintained at the joint expense of both municipalities, and under the joint direction of the inspectors of both municipalities; 18 V. c. 100, s. 44, par. 7.

Roads across the St. Lawrence. 8. Every such road across the St. Lawrence shall be traced out and maintained at the joint expense of the two county municipalities immediately connected by such road, and under the joint direction of the Councils of both Counties; 18 V. c. 100, s. 44, par. 7.

When the road leads to a city, &c. But when either end of such road across the St. Lawrence terminates at an incorporated city or town, or within two miles of the limits thereof, such city or town municipality shall bear one half, and the county municipality on the opposite side shall bear the other half of the expense of making and maintaining such road;

And the county municipalities on the north shore of the St. Lawrence having roads leading to the island of Montreal,—with the exception of the corporation of the city of Montreal,—shall be exempt from contributing towards the tracing out or maintaining of any such road leading to the island of Montreal; but all such roads, except those terminating at, or within two miles of the city of Montreal, shall be traced out and maintained by the county municipalities respectively on the south shore of the said river from which they lead;—and the winter roads leading to the island of Montreal from the county of L'Assomption, shall be traced out and maintained by that county; 18 V. c. 100, s. 44, par. 8.

As to Municipalities on the north shore of the St. Lawrence having roads leading to the Island of Montreal.

9. The proper council may, by resolution, order that any winter road may be made double, having a row of *balises* in the middle, and a track on one side thereof for vehicles going in one direction; and on the other for those going in the opposite direction;—And the said council may, from time to time, make such other general or special orders concerning the mode of keeping the said roads as it may deem expedient, and such orders shall be binding on the road officers and on all parties concerned; 18 V. c. 100, s. 44, par. 9.

Double track may be ordered.

10. All winter roads shall be marked by *balises* of spruce, cedar, hemlock, pine or other wood, of at least eight feet in length, fixed at a distance of not more than thirty-six feet one from the other, on each side of the road, if the road be single, and in the middle of the road, if it be double. 18 V. c. 100, s. 44, par. 10.

*Balises*, how placed and what kind.

BY WHOM ROADS ARE TO BE MADE AND MAINTAINED IN THE ABSENCE OF ANY BY-LAW OR PROCÈS-VERBAL REGULATING THE MAKING AND MAINTAINING THEREOF.

39. If there be no valid *procès-verbal*, by-law or order, providing otherwise, then— 18 V. c. 100, s. 45.

By whom roads shall be made, &c.

1. The front road of each lot shall be made and kept in repair by the owner or occupant of such lot;—and if there be two or more owners or occupants, then by them jointly and severally, saving their recourse against each other;—but the owner or occupant of any lot shall not be bound to make or repair more than one front road on the breadth of such lot, unless such lot be more than thirty arpents in depth; and if there be more than one front road on any lot not exceeding that depth, and it be not regulated as aforesaid which of them shall be made and maintained by the owner or occupant thereof, then the inspector of roads for the division shall, on the application of such owner or occupant, declare which of such front roads shall be made and maintained by him, and the other or others shall be made and maintained as a by-road; 18 V. c. 100, s. 45, par. 1.

Front roads.

If more than one within a certain distance.

What shall be understood to be the front of a lot.

2. The front of any lot shall be that designated or intended as such in the original title,—or which appears to be such front by the roads laid down on the original plan, if the lot is in a township,—although the owner of the lot has placed his dwelling-house on some other part of the lot, and even although the concession line should form the boundary between two municipalities or parishes; 22 V. c. 101, s. 9.

Fords and public bridges.

3. Every ford and every public bridge shall be made and maintained by all the owners or occupants of lots in the parish or township, on the front road upon which such ford or bridge is situate; 18 V. c. 100, s. 45, par. 2.

By-roads.

4. Every by-road shall be made and maintained by the owners or occupants of the lots in the concession to which it leads from a front or older concession, in proportion to the frontage of the lots so occupied by them; 18 V. c. 100, s. 45, par. 3.

To mills, ferries, &c.

5. Every by-road leading to a mill, ferry or toll-bridge, shall be made and maintained by the occupant of such mill, ferry or toll-bridge; 18 V. c. 100, s. 45, par. 4.

Front roads on Crown Lands.

6. Front roads on ungranted lands of the crown shall be made and maintained as by-roads; 18 V. c. 100, s. 45, par. 5.

Work on By-roads, and public bridges how to be done.

7. Subject to the exception hereinafter made,—the work necessary for keeping in repair by-roads (or roads to be made as such) and public bridges, shall not be done by the labour of the parties bound to maintain the same, but by contribution in money;—And the inspector of roads for the division shall, after public notice, give out such work in the month of October for the ensuing winter, and in the month of March for the ensuing summer, to the lowest bidder, who shall give satisfactory security for the proper performance of the work;—and the sum required to pay for such work shall be paid by the persons liable therefor, in the proportion above mentioned, when they are not liable for the whole amount of the expenses; 18 V. c. 100, s. 45, par. 6.

Tender and contract.

Power of Road Inspector in absence of *procès-verbal*, &c.

8. Except that any road inspector in his division may, in the absence of any *procès-verbal*, by-law or valid order to the contrary, cause the necessary work for the maintenance of the by-roads, and of front roads to be made as by-roads, in such division, to be performed by the manual labor of the parties bound to keep them in repair, in the proportions indicated in the said section; 20 V. c. 41, s. 9.

Streets in towns, &c.

9. Streets in towns and villages shall be deemed roads, and made and maintained accordingly, unless the municipal authorities thereof provide for their being made and maintained in some other way; 18 V. c. 100, s. 45, par. 7.

10. The burden of proving that any road is not subject to the foregoing provisions, shall always be upon the party claiming exemption from them. 18 V. c. 100, s. 45, par. 8. Exemption claimed, by whom to be proved.

CERTAIN PROCES-VERBAUX AND BY-LAWS CONTINUED UNTIL REPEALED.

40. Every *procès-verbal*, by-law or order touching any road or bridge, in force on the first day of July, one thousand eight hundred and fifty-five, shall remain in full force until it be repealed or altered by competent authority: 18 V. c. 100, s. 46, par. 1. *Procès-verbaux* existing when 18 V. c. 100 passed, maintained.

2. Any apportionment of any work among the persons jointly bound to perform the same, legally made and in force on the day last mentioned, shall remain in force until the expiration of the time for which it was made, or until it be altered under this Act; 18 V. c. 100, s. 46, par. 2. Also existing apportionments.

3. Every such *procès-verbal*, by-law or order as aforesaid, may be annulled, repealed or altered by a *procès-verbal* or by-law made under the authority of this Act; 18 V. c. 100, s. 46, par. 3. But may be altered.

4. No *répartition* or apportionment of labor made under any *procès-verbal* or by-law, shall be set aside or declared void solely by reason of its having been made or calculated upon the superficial contents or the breadth of the lots to which it relates, although the law required it to be made according to the value of such lots;—but every such apportionment shall be considered legal, and shall have full force and effect until it be set aside or altered by some *procès-verbal* or by-law homologated or passed under this Act. 18 V. c. 100, s. 46, par. 5. Repartitions calculated on breadth of lots only to be valid.

NEW PROCÈS-VERBAUX.

41. 1. Every council may reject or homologate and amend any *procès-verbal* executed by any officer appointed by such council, and when any *procès-verbal* or report shall have been rejected, the council may order that the costs incurred be paid by the persons who applied for such *procès-verbal* or report, and may determine the amount of such costs: 20 V. c. 41, s. 8, par. 4. Councils may reject or homologate and amend.

2. Whenever a representation is made to any county or local council, by a petition addressed to it, by not less than five persons interested in the matter and qualified to vote for the election of local councillors within the county or in the local municipality represented by such council, or a resolution has been passed by any county or local council, to the effect that provision should be made for the opening, constructing, widening or maintaining of any road, or for any other public work Application by petition.

Suitable person to visit the spot. work within such county or local municipality, or partly within and partly beyond the limits thereof, it shall be the duty of such county or local council (according as such contemplated work is a county or a local work,) forthwith to appoint by resolution a *proper* person to visit the place or places where such work is to be done ; 18 V. c. 100, s. 47,—20 V. c. 41, s. 3.

Notice by Officer of his visit.

3. Before proceeding to make such visit, the officer so appointed shall give public notice to the inhabitants interested in such public work, of the day, hour and place at which he will meet such inhabitants, or such of them as may attend to be heard for or against the performance of such work, or with the view of communicating to him any information relating thereto ; 18 V. c. 100, s. 47, par. 2.

His report, and *procès-verbal*, if required.

4. After having made such visit and heard such of the said inhabitants as have required to be heard in relation to such work, the said officer, if he considers that the work in question should not be done, shall make a report thereon, stating the ground of his opinion ; but if he is of opinion that the work should be performed, he shall draw up a *procès-verbal* or report, shewing the nature of the work, the manner in which, the means by which, and the persons by whom, it is to be done ; 18 V. c. 100, s. 47, par. 3.

What the *procès-verbal* shall determine.

5. Every such *procès-verbal* shall determine—the position and description of the road, bridge or thing to which it relates,—the work to be done and (if requisite) the time within which it is to be completed,—the lands by the owners or occupants of which it is to be done, and if the owners or occupants of any of such lands are more interested than the owners or occupants of others of them, then the proportion of the work to be done by each,—distinguishing also what part of the contributions shall be in money and what part in work or materials, and to what officers, and where any such contribution in money must be paid or the materials delivered, and (in the last case) when they are to be paid or delivered,—and under the superintendence of what officers the work or any portion thereof is to be done,—and all other particulars necessary for indicating fully and clearly what is to be done, by whom, when and in what manner ; 18 V. c. 100, s. 47, par. 4.

How the share of money, materials, or work to be furnished by the several parties shall be determined.

6. In fixing the share of work, materials or money to be contributed by the owners or occupants of the several lots in any local division, regard shall be had to the value of such lots, and the buildings and improvements thereon, and not to their mere extent, such value being taken from the valuation roll, if any is in force when the *procès-verbal* is made, or if there is none, then according to the estimate of the said officer ; but the share so fixed shall not be affected by any subsequent valuation, unless the *procès-verbal* is altered ; 18 V. c. 100, s. 47, par. 5.

7. When the nature of the work allows it, the portion of the road which is to be made by the owner or occupant of each lot respectively, shall be defined and described in the *procès-verbal*, that it may be afterwards marked out on the ground, by the proper road officer;—and whenever it shall appear to the said officer that, by reason of the nature of the ground over which the front road of any lot passes, or by reason of the oblique direction in which it passes in crossing the breadth thereof, or from other circumstances, the quantity of work to be done by the owner or occupant of such lot would exceed by more than one half the average quantity of work on the front roads of other lots of like value in the same concession, the said officer may, by any such *procès-verbal* relieve the owner or occupant of such lot from making or maintaining a certain described portion of such front road, and may order that the same be made by joint labour and contribution, as in the case of a by-road or public bridge. 18 V. c. 100, s. 47, par. 6,—19, 20 V. c. 101, s. 19,—20 V. c. 41, s. 8.

Portion of road to be made by each party to be defined, when practicable.

Relief may be granted to persons whose share of work would otherwise be excessive.

42. It may be ordered by any such *procès-verbal*—

What *procès-verbal* may order.

1. That any public bridge be constructed of stone or brick, or other material, or partly of one and partly of another, and of certain dimensions, and according to plans and specifications attached to the *procès-verbal* and therein referred to, and which may be amended by the proper council or by a board of delegates, as forming part thereof; 18 V. c. 100, s. 48, par. 1.

Construction of bridges.

2. That proper fences, hand-rails, and other like defences, be placed at the side of any road where it passes near or borders upon any precipice, ravine or dangerous place; 18 V. c. 100, s. 48, par. 2.

Fences, hand-rails, &c.

3. That any part of a road through a swamp, or wet ground, be made with fascines of brushwood, or paved with square timber,—describing the mode of construction; 18 V. c. 100, s. 48, par. 3.

Paving, &c., roads through swamps.

4. That any road be or be not raised in the middle, and that any specified kinds of materials shall or shall not be used in making or repairing it; 18 V. c. 100, s. 48, par. 4.

Form and materials of road.

5. That the timber where the road passes through uncleared lands shall be cut down for the space of twenty feet on each side of it, except such trees as form part of a maple grove destined for the manufacture of sugar, or as may be reserved for ornament to the property; 18 V. c. 100, s. 48, par. 5.

Clearing timber from along side of road.

6. And generally, the mode of constructing and repairing the road and the work may be ordained by any such *procès-verbal*, due regard being had to the situation of the road, the travel over it, the more or less advanced state of the settlements

Generally as to mode of construction.

to and from which it leads, and the circumstances of the parties by whom it is to be made and maintained. 18 V. c. 100, s. 48, par. 6.

Deposit of *procès-verbal* for revision.

**43.** The said officer shall, after the expiration of thirty days after the time when he visited the place where the work is to be done as aforesaid, deposit his *procès-verbal* in the office of the council of the local municipality, the inhabitants or any portion of the inhabitants of which such work may concern, if the inhabitants of no more than one local municipality are interested therein,—or, in the office of the county council, if the inhabitants of more than one local municipality in such county are interested therein;—and the council in whose office such *procès-verbal* is deposited shall examine and revise the same: 18 V. c. 100, s. 49, par. 1, *as amended by* 19, 20 V. c. 101, s. 20, par. 2.

What Council shall revise it.

Notice of time and place of revision.

[Form A. A.]

2. But every such council, before proceeding to any such examination or revision, shall cause public notice to be given, through their secretary-treasurer, to the inhabitants of the municipality or municipalities interested in the work to which such *procès-verbal* relates, of the day, hour and place at which the council will proceed to the examination or revision of such *procès-verbal*; 18 V. c. 100, s. 49, par. 2.

Notice to delegates when the *P.-V.* concern inhabitants of more than one county.

3. And whenever the work to which any such *procès-verbal* relates concerns, or is to be made or maintained by the inhabitants of more than one county, the warden of the County in which the work was originally proposed, shall, within thirty days after the day appointed for such visit, give special notice to the delegates appointed under this Act, in each of the counties interested in such work, of the day, hour and place at which they shall meet, to examine and revise such *procès-verbal*;—and he shall also give public notice of such intended meeting to the inhabitants of the several local municipalities interested in such work; 18 V. c. 100, s. 49, par. 3,—20 V. c. 44, s. 8, par. 2.

And publication in locality.

Delegates to attend, &c.

4. The delegates so notified and the warden by whom such notice is given, shall attend at the time and place so appointed;—and the said delegates, when assembled, shall form, and be designated as the board of delegates from the several counties interested in the work to which such *procès-verbal* relates; 18 V. c. 100, s. 49, par. 4.

Quorum for such revision.

5. Any number above the one half of the delegates, so notified to attend any such meeting of delegates, shall form a *quorum*; and some disinterested person, from among such delegates previously appointed by the county council for that purpose, shall preside at the meeting; 18 V. c. 100, s. 49, par. 5,—22 V. c. 101, s. 10.

6. The secretary-treasurer of the county council of the county, in which the work was originally proposed, shall act as the clerk of such delegates during their meeting ; and it shall be the duty of such secretary-treasurer to make a minute of their proceedings and to deposit the same in the office of the council of which he is secretary-treasurer, to form part of the records thereof ; 18 V. c. 100, s. 49, par. 6.

Who shall act as clerk of the delegates.

He shall keep a minute of proceedings.

7. Every such local council, county council or board of delegates, before deciding upon the merits of any *procès-verbal* so submitted for their examination or revision, shall hear the persons interested in the work to which such *procès-verbal* relates, and any person who may be in attendance at the time and place appointed for such examination and revision, may require to be heard ; 18 V. c. 100, s. 49, par. 7.

Parties to be heard.

8. Every such council or board of delegates may homologate without alteration, or with such amendments as they may deem just and expedient, any *procès-verbal* so submitted to their examination or revision ; and every such *procès-verbal* shall remain in force as so homologated or amended from the day of the date of such homologation or amendment ; 18 V. c. 100, s. 49, par. 8.

*Procès-verbal* may be homologated with or without amendments.

When to be in force.

9. No *procès-verbal* shall be considered duly homologated unless it has been homologated with or without amendment by the council charged with the examination or revision thereof, or has remained deposited in the office of such council, without having been homologated or amended, during a period of ten days after the time when the first general meeting of such council should have been, by law, held, subsequently to the date of the deposit of such *procès-verbal* ; 19, 20 V. c. 101, s. 20, par. 1.

To be deemed homologated after remaining a certain time without amendment or homologation.

10. And if the delegates, whose duty it is to examine or revise any such *procès-verbal*, fail to meet at the time appointed for such meeting, or having met, close such meeting, either formally or by adjourning *sine die*, without having amended or homologated the same, such *procès-verbal* shall be deposited in the office of the county council of the county in which the work was originally proposed ; and shall be considered as having been duly homologated, and shall be in force from the day of the date of such deposit ; 18 V. c. 100, s. 49, par. 10.

Or if the delegates fail to meet or adjourn *sine die*.

11. The secretary-treasurer, having the custody of every *procès-verbal* homologated as aforesaid, and concerning more than one county, shall deliver a copy thereof duly certified by him, to the secretary-treasurer of every other county interested therein ; 18 V. c. 100, s. 49, par. 11.

A copy to be delivered for each county interested.

12. Every *procès-verbal*, made under the authority of this Act, shall be in duplicate ; one duplicate shall be deposited of

*Procès-verbaux* to be in duplicate.

How deposited  
of record.

of record in the office of the county council of the county in which the work was originally proposed, if the work to which such *procès-verbal* relates be a county work ; or in the office of the council of the local municipality which it concerns, if it be a local work ;—and the other duplicate shall be deposited of record in the office of the secretary-treasurer of the proper council, who shall make upon or annex to the last mentioned duplicate, a true copy or copies of all amendments made to such *procès-verbal* by any competent authority ; 18 V. c. 100, s. 49, par. 12.

They may be  
repealed, &c.,  
by others.

13. Any *procès-verbal* made under this Act, may be repealed, altered, amended or explained at any time by another subsequently made in like manner ; 18 V. c. 100, s. 49, par. 13,—19, 20 V. c. 101, s. 20,—20 V. c. 41, s. 8.

Register of *pro-  
cès-verbaux*.

Duty of Secre-  
tary-Treasurer.

14. Any local council may order, by resolution, that there be kept a register of all the *procès-verbaux* and by-laws relating to roads and bridges in the municipality ; And whenever any such resolution has been adopted, the secretary-treasurer shall, with all diligence, collect all the *procès-verbaux* and by-laws in force in the municipality,—shall copy them into a register to be kept by him for that purpose,—shall certify the correctness of the register,—shall deposit it in his office amongst the records of the council,—and shall give public notice of the deposit of the said register as soon as it shall be made ; 20 V. c. 41, s. 5, par. 5.

Insertions of  
new *procès-  
verbaux*.

15. All new *procès-verbaux* and by-laws relating to roads or bridges, made after the deposit of the register, shall also be inserted therein ; 20 V. c. 41, s. 5, par. 6.

To be open to  
rate-payers.

16. Any rate-payer in the municipality may have access to the said register and examine the same during office hours ; 20 V. c. 41, s. 5, par. 7.

Register to be  
sufficient no-  
tice.

17. And after the expiration of one month from the deposit of any such register, the publicity thereby given to the said *procès-verbaux* and by-laws shall be held to be sufficient notice to the persons bound to perform any work or to pay any money by virtue of such *procès-verbaux* and by-laws ; and it shall not be necessary to give any further notice to such persons in order to compel them to fulfil their said duties ; 20 V. c. 41, s. 5, par. 8.

Effect of regis-  
ter as evidence.

18. Every such register, certified by the secretary-treasurer, shall be authentic ;—any certified copy or extract from any such register shall also be authentic ;—and the tenor of any such *procès-verbal* or by-law, so registered, may be proved by production of the register by the secretary-treasurer, or a copy or extract therefrom duly certified by him ; 20 V. c. 41, s. 5, par. 9.

ROADS THROUGH INDIAN RESERVES.

19. Whenever the Council of a County, in which any Indian Reserve is situate in Lower Canada, or the Council of any Local Municipality, surrounding or contiguous to any such Reserve, declares by Resolution that it is necessary that any land, set apart for a public road by the original survey of such Indian Reserve, should be opened or kept open by such Municipality, such Council may, through their road officers, enter upon such road, and cause the same to be maintained ;

Such roads may be made under Resolution of the County or Local Council with the consent of the Superintendent of Indian Affairs.

20. And whenever it is declared, by a Resolution of any such Council, that it is expedient to take any part of an Indian Reserve for the purpose of opening a new road, such Council may, after consent obtained from the Superintendent General of Indian Affairs, enter upon the same in the manner prescribed by this Act, and the price at which any such land is valued shall be paid to the Superintendent General of Indian Affairs, for the use of the Tribe of Indians for which such land is held in trust ; 22 V. (1859,) c. 60, s. 1.

21. Any road in any Indian Reserve in Lower Canada, brought under the control of a Municipality by the preceding section, may be maintained by Statute Labour, to be performed by the Indians of such Reserve, according to a By-law or By-laws passed by any such Municipality, and approved by the Superintendent General of Indian Affairs. 22 V. (1859,) c. 60, s. 2.

Statute labour by Indians.

COUNCILS MAY RAISE MONEY FOR MAKING ROADS AND BRIDGES BY ASSESSMENT.

44. 1. The council of any municipality may raise, by assessment, any sum of money for making or maintaining the roads and bridges therein, or any of them, and may apply the sum so raised to that purpose in such manner as they think proper, notwithstanding any thing to the contrary in any *procès-verbal* contained ; 18 V. c. 100, s. 50.

Money may be raised by assessment for roads and bridges.

2. But no municipal council shall, for the purpose of raising any sum or sums of money for making and maintaining the roads and bridges therein, impose, in any one year, on any land in any township therein, any assessment or assessments exceeding in the whole the rate of two and a half per cent. on the actual value of such land according to the valuation thereof in the valuation-roll then in force in which the same is mentioned and described. 22 V. c. 101, s. 36.

No more than 2½ per cent. on the assessed value to be collected as taxes for any cause in any one year on townships lands.

45. The council of any local municipality may, by any by-law to come into force on the first day of January next after the expiration of three months from the time of its passing,—enact that the roads in such local municipality, or which the inhabitants of such local municipality, or any of them, are bound to make

Council of local municipality may order that roads, &c., be made not by the parties but by

assessment and statute labour.

Effect of By-law containing such order.

make and maintain, shall thereafter be made and maintained solely by moneys to be raised for that purpose by assessment and by statute labour ;—And from the time such by-law takes effect, and while it is in force, so much of any *procès-verbal*, as determined by the owners or occupants of what lands in such local municipality any road shall be made or maintained, shall cease to have effect, nor shall the owner or occupant of any land therein mentioned be bound to make or maintain the front road of such land ;—but that part of any *procès-verbal*, which describes the work to be done and its nature and quality, shall remain in full force, and be binding on the municipality ; nor shall any power of the county council, of any road officer, or any provision of this Act, be affected by such by-law, except only as by this section expressly provided : 18 V. c. 100, s. 51, par. 1.

Further effect.

During the time such by-law shall be in force—

Increase of statute labour.

2. The amount of statute labour, to which any party would otherwise be liable, shall be doubled by virtue of this Act, and may, in the discretion of the council, be further increased ; 18 V. c. 100, s. 51, par. 2.

Municipality bound to maintain roads, &c., thereafter.

3. The Municipality shall make and maintain all roads and bridges within the same, and also those beyond the limits thereof, which, without such by-law, any of the owners or occupants of lands within the Municipality would have been bound to make or maintain, and generally shall perform all road work for which any such owner or occupant would otherwise have been liable ;—And it shall be the duty of the road officers to see that the roads are made and maintained by the municipality in the manner required by law and by the *procès-verbal* regulating the same respectively, and to require the municipality so to make and maintain them, and to prosecute the municipality for any default so to do ; 18 V. c. 100, s. 51, par. 3.

Duty of road officers.

Liability of the municipality if the roads are not properly made and kept in repair.

4. The municipality shall also make or cause to be made, under the superintendence of the inspectors, *sous-voyers*, or any other officer they think proper to appoint, by any persons obliged by *procès-verbaux*, by-laws or otherwise, any other road in the municipality, whether it be a front road or a by-road or a street or other road, in conformity with the *procès-verbaux* or by-laws relating to such roads and with the law, and may be proceeded against by any person whatsoever of the age of twenty-one years, if the said roads are not made and kept in repair as aforesaid, for all damages and fines, as provided in the next following sub-section, as though the municipality had assumed by by-law the charge of all the roads therein, saving however the recourse of such municipality against its officers or any other person having charge of such roads, in case of negligence, for the reimbursement to them of all damages, fines and costs incurred ; 22 V. c. 101, s. 12.

Saving its recourse against its officers.

5. The municipality shall be liable for all damages arising to any party from the non-performance of any obligation imposed on it by this section; and shall be liable to the same penalty for neglect or refusal to perform such obligation, or to comply with any of the requirements of this Act, as any private person would be in the like case; 18 V. c. 100, s. 51, par. 4.

Municipality liable for damages arising from non-repair.

6. Any local council may make such by-laws and regulations as it deems necessary (not being inconsistent with any provision of this Act) for defining the manner in which the money raised for road purposes, and statute labour, shall be expended and applied for the purpose of making and maintaining the roads which are to be made and maintained by the local municipality, and may enter into all contracts which they think necessary touching any work to be done to or upon the same; 18 V. c. 100, s. 51, par. 5.

Local Council may regulate manner of applying money and labour.

7. While any such by-law shall be in force, the council or such of the inspectors of roads as shall be duly authorized by it, may divide the roads in the municipality, or which the inhabitants of any municipality are bound to make and maintain, into convenient portions, and may assign the amount of statute labour to be performed on every such portion, and the persons liable to such labour and by whom it is to be performed; 18 V. c. 100, s. 51, par. 6.

Roads may be divided into convenient portions as regards statute labour.

8. Any such by-law may be repealed by another to come into force on the first day of January next after the expiration of three months from its passing, and passed by a majority of two thirds of the members of the council; and thenceforth all the provisions of any *procès-verbal*, by-law or order, or of this Act, which were suspended while the repealed by-law was in force, shall again revive and have effect. 18 V. c. 100, s. 51, par. 7.

By-law containing such order may be repealed;—

Effect of such repeals.

#### COMPENSATION FOR LANDS TAKEN FOR ROADS AND OTHER PUBLIC WORKS.

46. Whenever any land is taken for a road or bridge, or for the site of any building required for municipal purposes or for any other public work, the owner thereof shall receive fair compensation for the same from the parties who by the *procès-verbal* or by-law are bound to pay the same, or from the municipality if such work has been or is to be performed at the expense of the municipality, unless it be decided that such owner is not entitled to compensation: 18 V. c. 100, s. 52, par. 1.

Compensation to be made.

Exception.

2. In estimating the compensation, or deciding whether the owner of the land taken for a road is entitled to any, the advantages which he derives from the road, or from the change in the

Mode of estimating amount of compensation.

the position thereof, or from his receiving any land no longer to be used as a road, as well as his liability to furnish land for road purposes or his exemption therefrom (as the fact is,) shall always be taken into consideration, and if they are equal to the damage sustained by the taking of the new land, then he shall be entitled to no compensation;—nor shall he be entitled to any *prix d'affection* or damage arising from his supposed affection for the land so taken;—but in no case shall he be called upon to pay compensation; 18 V. c. 100, s. 52, par. 2.

No *prix d'affection*.

No compensation for first front road; unless, &c.

3. No compensation shall be allowed for the land itself taken for the first front road made upon it, nor for any road unless the quantity so taken exceeds the allowance for roads, made in the original grant or concession of such land from the crown; 18 V. c. 100, s. 52, par. 3.

Valuators to ascertain compensation after notice to parties interested.

4. The valuers of the local municipality in which the land is situate, or any two of them, shall ascertain the compensation (if any) to be paid, after public notice has been previously given of the day and hour when they will attend upon the ground to hear the parties and estimate the compensation, which time shall be appointed by the proper council; 18 V. c. 100, s. 52, par. 4.

Two valuers may act.

Provision if any of them be disqualified.

5. Any two of the valuers may act in the absence of the third; and if any one or more of them be absent at the time appointed as aforesaid, or be disqualified by direct interest or by relationship to the party whose land is taken, or otherwise, or refuse or be unable to act, then the proper council shall appoint another person or other persons to act in his or their stead, and may for like cause and in like manner appoint a person to act instead of any person so appointed; 18 V. c. 100, s. 52, par. 5.

As to objection to valuers.

6. It shall not be an objection to any such valuator or person acting as aforesaid, that he is related to some one or more of the parties by whom the compensation is payable;—and every objection to the competence of any such valuator or person, must be made before the delivery of the certificate hereinafter mentioned, otherwise it shall not avail; 18 V. c. 100, s. 52, par. 6.

Certificate to be granted after hearing parties.

7. The valuers or persons acting in their stead, or any two of them, after examining the land and hearing the parties attending as aforesaid, shall, by one or more certificates under their hands, ascertain whether any compensation, and if any, then what compensation shall be paid for the land taken, and shall transmit such certificates to the secretary-treasurer of the proper council, and the award made by such certificate shall be final and conclusive; 18 V. c. 100, s. 52, par. 7.

Award to be final.

8. It shall suffice in any such certificate to mention the lot of which the land forms part, referring to the *procès-verbal* or by-law under which it is to be taken, and to state what compensation, if any, is to be paid for it;—but any lot may be described as being supposed to belong to, or as being in the possession of any person; 18 V. c. 100, s. 52, par. 8.

What descriptions shall suffice in such certificate.

9. On delivery of any such certificate to the secretary-treasurer, if no compensation be awarded thereby, or on the payment of the compensation, if any, into the hands of the secretary-treasurer of the local municipality in which the land is situate for the benefit of the person entitled thereto, the land in question shall be vested in such local municipality as part of the roads thereof, if taken for a road or bridge; or in the municipality by whom the work is to be performed as part of its property, if taken for any other purpose; and the said certificate and the secretary-treasurer's receipt for the compensation (if any) shall be a sufficient title thereto, and shall not require registration to preserve it; 18 V. c. 100, s. 52, par. 9.

Land vested in municipality on payment of compensation, if any.

Registration not required.

10. The compensation shall be paid by the secretary-treasurer, free of all deduction, to the person entitled to receive the same, at the expiration of three months from the time of its being paid to such secretary-treasurer, and the person in possession of the land as proprietor thereof at the time it was taken, shall be held to be entitled to receive the compensation from the secretary-treasurer, saving the recourse of any other person to recover the same from the person so receiving it; but if within the said three months there are contending claims, the secretary-treasurer shall keep the money in his hands, subject to the decision of the proper court; 18 V. c. 100, s. 52, par. 10.

Compensation to be paid clear of all deduction.

Proceedings if it be claimed by more than one party.

11. Nothing contained in this Act shall give authority to mark out any new road, or turn or widen an old one, in such manner as that the same shall pass through any garden, orchard or farm yard, enclosed with a wall, board or standing picket-fence or hedge,—or to demolish or injure any house, barn, mill or other building whatsoever,—or to prejudice any canal or mill dam, or to turn the course of the water thereof,—without the consent of the proprietor of the same. 18 V. c. 100, s. 52, par. 11.

New roads not to be made through certain property without consent.

POWERS AND DUTIES OF ROAD OFFICERS, &c.

17. All municipal works, of which a *procès-verbal* has been homologated as aforesaid, shall be executed, maintained and repaired under the direction of the *proper council*, or of the road inspector, or other municipal officers in the manner prescribed by this Act: 18 V. c. 100, s. 53, par. 1.

Certain works to be maintained and repaired under the direction of the proper Council.

2. The officer appointed for that purpose, by the proper council, or the inspector of roads, or overseer of roads, or any surveyor

Power to enter on lands to

make surveys,  
search for ma-  
terials, &c.

[Form B. B.]

Compensation  
for actual  
damage only.

Overseers may  
take materials  
off unoccupied  
lands.

Compensation  
and how set off,  
or paid.

Proviso if da-  
mages exceed  
\$20.

inspectors to  
examine roads  
in their divi-  
sions and call  
upon overseers  
to accompany  
them.

To prosecute  
offenders.

surveyor or person accompanying him, or authorized in writing by him, may enter, in the day time, upon the lands of any person, whether occupied or unoccupied, inclosed or uninclosed, for the purpose of making a survey for any road,—and may also enter upon any unoccupied land for the purpose of searching for timber, stone or other materials for making or repairing any road, or any bridge or work therewith connected, doing no wilful and unnecessary damage, and making compensation only for actual damage done; and such officer or person need not give any notice whatever before entering upon any land for any of the purposes above specified; 18 V. c. 100, s. 53, par. 2,—*as amended by* 19, 20 V. c. 101, s. 21.

3. The overseer of roads, superintending the making or repairing of any road or bridge or work therewith connected, may enter in the day time upon any unoccupied land to the distance of one arpent of such road, bridge or work, and take from off the same any stone, gravel, earth or materials requisite for making or repairing the road;—but such overseer shall, as soon thereafter as may be, declare on oath before some justice of the peace, what he believes to be the damage done to such land by the taking of such materials, and the overseer shall deliver such affidavit to the inspector of roads for his division;—And the amount so sworn to shall be set off against any road contribution, statute labour, or penalty due in respect of such land, or by the owner thereof, or if such amount exceeds the sum so due, the balance shall be paid to such owner by the inspector, out of any moneys in his hands for defraying the cost of making or repairing such road, bridge or work, and if he has not sufficient, the money shall be raised by assessment as other moneys required for such purpose;

Provided, that if the amount of such damages exceed twenty dollars, the same shall be assessed by the valuator of the municipality or any two of them, in like manner as the value of ground taken for a road or other public work, and their award, or the award of any two of such persons as may be appointed in their stead, as hereinbefore provided, shall be final. 18 V. c. 100, s. 53, par. 3.

48. It shall be the duty of each inspector of roads, at least once in every month, to pass over and examine every road in his division or over which he has any authority or superintendence, and to make notes of the state in which he finds each road or any work thereon, or therewith connected,—and to call upon the several Overseers of roads in his division to accompany him in the inspection of the roads in their respective sections, and to give to each of them such orders and instructions as may be necessary to ensure the faithful execution of this Act,—to note any case in which he finds any Overseer or other person to have neglected to perform any duty imposed on him by this Act, and to prosecute any such officer or person for such neglect: 18 V. c. 100, s. 55, par. 1.

2. The notes so made by the Inspector on such visit shall be signed by him and kept for the inspection of the council by which he was appointed; 18 V. c. 100, s. 55, par. 2. Inspectors to keep notes, &c.

3. Each Inspector of roads shall give verbal notice to every Overseer of roads in his division of the time when he intends to visit the section of such Overseer; 18 V. c. 100, s. 55, par. 3, *as amended by* 19, 20 V. c. 101, s. 27. To give notice of visits. [Form D. D.]

4. It shall be the duty of each Overseer of roads to accompany the Inspector during his visit to the roads in the section of such Overseer, to give him all proper information on the subject of the roads under the charge of such Overseer, and to note and obey his instructions and orders; 18 V. c. 100, s. 55, par. 4. Overseers to accompany them.

5. Each Inspector of roads shall once in every three months, or oftener if required by the proper council, make a report in writing to the proper council, containing the substance of the notes he has made, and all the information he has obtained since his last report. 18 V. c. 100, s. 55, par. 5, *as amended by* 19, 20 V. c. 101, s. 22. Inspectors to report to proper Council.

OBSTRUCTION OF PUBLIC ROADS.

49. Each Inspector of roads shall cause all obstructions or nuisances to be removed from off the roads under his superintendence respectively, and shall report all encroachments thereupon to the proper council, to the end that such council may compel their removal, if the person making any such encroachment does not, on being thereunto required by the Inspector, desist from such encroachment: 18 V. c. 100, s. 56, par. 1. Inspectors to cause obstructions to be removed.

2. It shall be deemed an obstruction to leave or place any thing upon the road or in any ditch or water-course therewith connected, or to make any trench or opening in the road, or to do any other act whereby, in either case, the free passage of vehicles or foot passengers over any part of the road, may be obstructed, impeded or rendered inconvenient, or the free passage of the water prevented, unless the act be done in the course of some duly authorized work upon the road, or by the command or with the permission of some road officer, under the authority of some by-law of the proper municipal council; 18 V. c. 100, s. 56, par. 2. What shall be deemed an obstruction.

3. Whosoever makes, causes or creates any such obstruction or nuisance shall thereby incur a penalty of not more than ten dollars nor less than two dollars, and an additional penalty of not more than two dollars for every day during which the same continues, with all costs including the expense of removing such obstruction or nuisance; and such penalty shall be recoverable Penalty for causing an obstruction.

recoverable by a suit or proceeding separate from the action hereinafter mentioned for recovering the land encroached upon, and may be sued for after such action is determined; 18 V. c. 100, s. 56, par. 3.

Justice of the Peace may order removal of obstruction.

4. Any justice of the peace resident in the county may hear and determine any complaint of such obstruction or nuisance, and order the removal thereof at the expense of the offender, by such person as he shall by his warrant authorize to remove the same, and may tax the costs of such removal and cause the same to be levied with the penalty and costs of prosecution and by the same process; 18 V. c. 100, s. 56, par. 4.

Encroachments defended to be tried by action.

5. If any road be encroached upon and the encroachment be denied, the local municipality may bring an action against the person so encroaching, for the recovery of the land taken from the road; 18 V. c. 100, s. 56, par. 5.

Where such action shall be brought.

6. Such action shall be brought in the circuit court in the circuit wherein the local municipality or any part thereof lies which shall have jurisdiction in all such cases, and with power, if the encroachment be proved, to adjudge that the land taken by such encroachment be restored to the municipality;— And if such judgement is not complied with within fifteen days after service of a copy thereof on the defendant, then any judge of the said court may, in term or out of term, on the application of the municipality, direct a writ of possession to any bailiff, commanding him to remove from the land in question all buildings or fences erected thereon, and give possession of such land to the said municipality, which such bailiff, taking with him sufficient assistance, shall accordingly do; 18 V. c. 100, s. 56, par. 6.

Enforcing execution of judgment.

Writ of possession.

Costs in such action.

7. The costs in every such action shall be those allowed in actions of the first class in the said court, and the costs on the writ of possession and proceedings thereupon shall be taxed by a judge of the said court at such sum as in his descretion he thinks right, until they be regulated by a tariff of the court, under which the clerk of the court shall thereafter tax such costs. 18 V. c. 100, s. 56, par. 7.

#### ROAD WORKS.

Duties of Inspectors of roads as to work to be done thereon.

50. It shall be the duty of each Inspector of roads, subject to the provisions of this Act, and to the orders of the council by which they were appointed, and by which they shall be furnished the necessary copies of, or extracts from, *procès-verbaux*, valuation-rolls, collection-rolls and other documents,— to direct the Overseers of roads in his division, as to the time when, and the manner in which, all road work is to be done,— to furnish them with statements in writing setting forth the names of all persons subject to statute labour, the share of joint labour

Statement in writing to be

labour and materials to be furnished by each person, or in respect of each lot of land in their sections respectively, and informing them upon what work or works the same is to be employed, and in what proportions,—to receive all sums paid for commutation of statute or joint labour, and to notify such commutation to the proper Overseer,—to instruct him to engage other labour in the place of that so commuted,—and to pay for such labour out of such commutation money, on the certificate of the Overseer that the same has been duly performed: 18 V. c. 100, s. 57, par. 1.

furnished to overseers.

Engaging other labour.

2. It shall be the duty of each overseer of roads, pursuant to the provisions of this Act, the order of the proper council, and the directions of the Inspectors of roads,—to give notice to the inhabitants of his section, respectively, of the time and place where and when any statute labour or joint labour is to be performed or materials to be furnished, and the amount of labour, quantity and description of materials to be then and there furnished by each,—which notice may be given verbally to each of such inhabitants in person or left in writing at his residence, and shall specify the tools and implements (being those ordinarily used by farmers) which each person is required to bring with him;

Duties of overseers of roads as to work to be done thereon.

[Form Y.]

Tools to be brought by persons bound to work.

And if the nature of the work requires it, the Overseer may command any person having the same and being bound to furnish at least three days' labour, and not having commuted the same, to bring with him or to send with a man to work them, a horse or horses, an ox or oxen, with proper harness and a cart, waggon or plough;—And every day's labour of a horse or ox, with such harness and vehicle or plough as aforesaid, shall be credited to the person furnishing the same as one day's work;

Horses or oxen.

Each Overseer shall also superintend and direct the performance of statute labour and joint labour on the roads, and give certificates of the due performance thereof,—he shall appoint the hour of commencing and leaving off, and the time to be taken for rest or meals, the day's work being ten clear hours of labour on the spot where the work is to be done,—he shall dismiss any man who shall not attend during the hours appointed for labour, or who is idle or refuses to obey the orders of the Overseer, or does not work faithfully, or hinders others from working;—and any man so dismissed shall, for the offence occasioning his dismissal, incur a penalty of two dollars;

Overseer to superintend and certify performance of work.

Penalty.

The Overseer shall also prosecute for all such penalties as last aforesaid, and for all penalties incurred for disobedience to his orders,—he shall report to the Inspector of roads for his division, the number of days' work performed and the quantity of materials furnished under his superintendence, with the names of the parties performing or furnishing the same, and the names

Prosecuting offenders.

names of those who have been fined. 18 V. c. 100, s. 57, par. 2.

Penalty on persons not obeying orders of overseers, as to labor on road.

51. Every person liable to perform labour on the roads and not having commuted the same, who being so required as aforesaid by any overseer to attend and perform the same, refuses or neglects so to attend, shall, for each day on which he shall so refuse or neglect, incur a penalty of two dollars, and he shall incur one half of such penalty if he was required to bring with him any tool or implement, and appears without the same ;—and if he was required to bring with him any plough, horse, ox, waggon, cart or other vehicle and harness, the penalty shall be doubled, that is, he shall incur a penalty of four dollars, if he wholly fails to attend, and of two dollars, if he attends without such horse, or waggon, cart, vehicle or harness : 18 V. c. 100, s. 58, par. 1.

Notice not required to compel any person to keep his front road in repair, &c.

2. No notice shall be required to compel any person to make or repair any front road which ought to be made or repaired by him alone ; but if it is not made or repaired in the manner required by the *procès-verbal* regulating it and by this Act, such person shall incur a penalty of twelve dollars ; and if he neglects to make or repair such road for a period of twenty-four hours after having been notified to make or repair the same, he shall incur a penalty of not more than four dollars nor less than one dollar, for each day on which it remains unmade or out of repair ; 18 V. c. 100, s. 58, par. 2.

Penalty for not repairing.

Penalties to whom payable and how applied.

3. Every such penalty shall be paid to the inspector for the division, and applied to the same purpose for which the labour for the due performance of which it was incurred would have been applicable ;—and the payment of the penalty shall be set off in favor of the offender against the road labour for which he is liable, at the rate of one day's labour for each dollar of the penalty paid ; 18 V. c. 100, s. 58, par. 3.

May be paid before suit.

4. The penalty may be paid to the inspector before any suit for it is commenced, and in that case it shall be payable without costs ; 18 V. c. 100, s. 58, par. 4.

Inspectors and overseers liable for damages occasioned by their neglect.

5. Every inspector of roads and every overseer of roads shall be liable for all damages occasioned by the non-performance of any work which ought to have been performed within his division or section, unless he can shew that he used all legal means in his power by notice, prosecution and otherwise to compel the performance of such work ; saving always the recourse of the inspector against the overseer, and of both against the person bound to perform such work. 18 V. c. 100, s. 58, par. 5.

Portions of road may be made as models.

52. The proper council may from time to time cause portions of roads to be made by the persons liable to statute labour

labour, to serve as models for the remainder of such roads or for roads in their neighbourhood ;—and in superintending the making of roads the road officers and others shall govern themselves by such models, as far as the foundation and position of such roads and other circumstances will permit. 18 V. c. 100, s. 59.

**53.** Whenever any road work which ought to be done or any materials which ought to be furnished upon, or for, any front road, by-road or bridge, in respect of any lot or by any person, remains unperformed or unfurnished after the owner or occupant of such lot or such person has been required as aforesaid to perform or furnish the same,—the overseer of roads may cause such work to be done or such materials to be furnished by some other person, and may recover the value of such work or materials from such owner or occupant or person in default, with twenty per cent in addition thereto and costs of suit, as a debt due to such overseer, and in any way in which debts of like amount are recoverable,—or such amount may be levied as arrears of taxes due to the municipality, in the manner hereinafter provided, and paid to such overseer by the secretary-treasurer : 18 V. 100, s. 60, par. 1.

Overseer may cause unperformed work to be done and recover the costs from the party with 20 per cent. additional.

**2.** Or, the overseer of roads may report to the inspector of roads of his division, that any such work remains unperformed or any such materials unfurnished, and that the person who ought to perform or furnish the same has been by him required so to do, or that such person has no residence in the division ;—And on such report the inspector may, if he thinks proper, authorize such overseer to cause the work to be done or the materials to be furnished by some person or persons to be employed by him for that purpose, and the sum expended shall be recoverable by the municipality from the person in default with twenty per cent in addition thereto, as a penalty for such default and costs ;—and the sum actually expended shall be paid by the secretary-treasurer of the municipality to the order of the inspector, out of any moneys in his hands applicable to road purposes, or to the general purposes of the municipality ; 18 V. c. 100, s. 60, par. 2.

Or the overseer may cause it to be done by the municipality, which shall recover the expenses and 20 per cent. additional.

**3.** The affidavit of the overseer sworn before a justice of the peace that the formalities of the law were complied with, and that the work was done or the materials furnished, that the sum charged is the true value thereof, and that the defendant is the person liable for the same by law, and the certificate of the inspector that to the best of his knowledge and belief the facts stated in such affidavit are true, shall be *prima facie* evidence of such facts, and if not controverted, shall be sufficient to maintain the claim and demand of the municipality or of such Overseer ; 18 V. c. 100, s. 60, par. 3.

What shall be proof of the necessary facts in the foregoing cases.

The 20 per cent. to be in lieu of penalty.

4. In either of the cases last above mentioned, the person in default shall not be liable to a penalty, but the twenty per cent above mentioned shall stand in stead thereof. 18 V. c. 100, s. 60, par. 4.

Occupant of land liable for road charges, and one year's arrears thereof.

54. The actual occupant of any lot shall always be liable for the work or contribution assigned to such lot, and for one year's arrears thereof, saving his recourse (if any) against any previous occupant, or against the owner of the lot, or any other party;—And if any lot be divided after the making of the *procès-verbal*, or there be from any other cause more than one occupant thereof, they shall be jointly and severally liable, saving to each his recourse against the others: 18 V. c. 100, s. 61, par. 1.

Liability for damages for non-performance of work.

2. Every person shall be liable for all damages arising from the non-performance of work he is bound to perform, and if any persons are jointly and severally so bound, they shall be jointly and severally liable. 18 V. c. 100, s. 61, par. 2.

Overseer to report arrears and Inspector to sue for the same.

55. Each overseer shall from time to time report to the inspector of his division, the arrears of labour and materials remaining unperformed, and undelivered in his section, and of penalties remaining unpaid, specifying the lands in respect of which the same are due, the owners or occupants of such lands, if known, and the value in money of such materials delivered at the place where they ought to have been delivered by the persons in default;—And it shall be the duty of the inspector to sue for and recover the same from the persons liable if they have any goods or chattels whereupon the same can be levied. 18 V. c. 100, s. 62.

Mile-posts and guide-posts may be set up; expenses how paid.

56. The county council may cause mile-posts or mile-stones to be set up on the main road in the county, shewing the distance from the principal towns to which such roads lead, and may cause guide-posts to be set up at the intersections of roads; and the expenses incurred for those purposes shall be paid by the secretary-treasurer of the local municipalities respectively, in which such mile-stones or mile-posts, or guide-posts shall be set up, out of any moneys in the hands of the secretary-treasurer applicable to road purposes or to the general purposes of the municipality: 18 V. c. 100, s. 63, par. 1.

Inspectors may be required to procure snow-plough, rollers and scrapers; how the same shall be used.

2. The proper council may, under the authority of a resolution, direct any inspector of roads to procure a snow plough, a roller and an iron or steel shod scraper, or either, to be used on the roads in his division, and to be carefully kept by such inspector, and by him handed over to his successor in office for the like purposes;—and when the same are so procured, the inspector shall command each overseer of roads in his division, to use and work such snow plough, roller or scraper at the expense of the municipality, and shall command every such

such overseer to require the persons bound to perform road work in his section to use and work such snow plough, roller or scraper (when necessary) as part of the work they are so bound to perform;—And the cost of such snow ploughs, rollers and scrapers, and of using and working the same, (when so used and worked at the expense of the municipality) and of all necessary repairs thereto, shall be paid by the secretary-treasurer of the municipality. 18 V. c. 100, s. 63, par. 2.

How the cost shall be paid.

57. Whenever two parishes jointly interested in the opening of a new road, the maintenance or improvement of an old road, or the making or maintenance of fences or ditches, cannot agree together as to the division of the work to be done, the matter shall be referred to the council of the county in which such two parishes are situate, which shall, by by-law, regulate all matters of difference relative to the opening or maintenance or improvement of such road, or the making or improvement of such fences and ditches, and shall order and prescribe the work to be done and the portion to be done by each parish;—and these powers shall belong to such county council, in addition to the other powers conferred by this Act. 22 V. c. 101, s. 11.

Provision in case of disagreement between parishes or townships.

EXECUTION OF COUNTY WORKS.

58. When the work to be performed is the construction or partial reconstruction of a bridge or the opening or widening of a road, concerning the inhabitants or any number of the inhabitants of more than one county municipality, or of more than one local municipality in one or more county municipalities, if the said work is to be undertaken by the job, by agreement or contract, for a price in money, or partly for money and partly by means of materials and days' labour, to be contributed by the assessable inhabitants, the council, who shall cause a *procès-verbal* of such work to be drawn up, shall submit such work to public competition: 18 V. c. 100, s. 64,—*as amended by* 19, 20 V. c. 101, s. 23.

Proceedings where the work is to be done by the job or contract.

Public competition.

2. For the purpose of obtaining tenders, the proper council shall cause public notice to be given, specifying clearly the work to be so given out, and the day on or until which tenders for the performance thereof will be received; and such notice shall be given in one or more newspapers published in the county or the district in which it is situate, or if there is no newspaper published therein, in an adjoining county or district; 18 V. c. 100, s. 64, par. 2.

Advertisement for tenders.

3. The contract for the said work shall be adjudged to the person tendering for the lowest price and on the most favorable terms, provided he fulfil the conditions and gives the security required for the execution thereof; 18 V. c. 100, s. 64, par. 3.

Work to be adjudged to the most favorable bidder giving security.

In whose name  
the contract  
shall be made.

4. Every contract or agreement, relative to any such work, shall be entered into, or considered as having been entered into with the said *proper Council in the name of the corporation of the County*; it may be accepted by the *proper officer* of such County or by the mayor, or by any road inspector of a local municipality interested in the said work, being thereunto specially authorized by the *proper Council* or the *proper officer thereof*; and every such contract or agreement shall be binding on each municipality interested; and every such municipality may sue in its own name, to enforce the performance thereof in any court of competent jurisdiction; but no such municipality shall be authorized to bring any such action until the expiration of fifteen days' notice given by the council thereof to the *County Council* or *proper officer thereof* requiring it or him to bring such action; 18 V. c. 100, s. 64, par. 4.

Enforcing the  
contract.

Good security  
to be given by  
contractor.

5. The person with whom any such contract for work is made shall furnish good and sufficient security, to the satisfaction of the council, for the performance of the said work, and the payment of all damages, costs and interest in the event of his not fulfilling his contract; 18 V. c. 100, s. 64, par. 5.

Inspectors to  
superintend  
performance of  
contract when  
required.

6. The *proper County Council* may require any inspector of roads in the local municipality in which the said work is to be executed to superintend the performance thereof; and every such inspector shall obey all orders of the said council or of their *proper officer* for that purpose; and for every refusal or neglect so to do, every such inspector shall incur a penalty of eight dollars; 18 V. c. 100, s. 64, par. 6.

Apportionment  
of the cost.

7. The *proper County Council* shall make an apportionment among the different local municipalities interested of the contributions required for the performance of the said work, establishing the proportion of the said contribution to be borne by each local municipality, or by such of the inhabitants thereof as are bound to bear the same, either in money, materials or days' labour; and a certified copy of such apportionment shall be deposited in the office of the municipal council of each county or local municipality interested. 18 V. c. 100, s. 64, par. 7.

#### VALUATORS AND VALUATION.

Valuation of  
property to be  
made by the  
valuators;

59. The valuator shall make the valuation of all the real and other assessable property in the local municipality for which they have been appointed, within two months after the date of their appointment, including in the said valuation the value of the houses and other buildings erected on such property:

Or a majority of  
them, and how.

A majority of the said valuator may make or complete the said valuation notwithstanding the absence of the other valuator; and such valuation may be made either at one time or at several

several times, the proceedings had at each meeting being signed or attested by the valuator who shall have assisted thereat ;

But when any lot occupied by a tenant or lessee is situated partly within the limits of any city corporation and partly within any village or parish municipality, the capital of the rent received by virtue of the said lease shall be deemed to be the value of the said lot during the existence of the said lease, and the amount of the assessment shall be paid to such city corporation and village or parish municipality in proportion to the extent of ground lying in their respective limits, notwithstanding any thing in this Act to the contrary ; 18 V. c. 100, s. 65.

As to lots being partly in one municipality and partly in another.

2. In making the valuation, the valuator may require the services of the secretary-treasurer of the council, or employ any clerk whom they may appoint ;—And every clerk so employed shall be entitled to receive for his services, on the certificate of two of the valutors, a sum not exceeding one dollar for every day during which he has been necessarily employed, and such remuneration shall be paid out of the general funds of the local municipality ; 18 V. c. 100, s. 65, par. 2.

They may require assistance of the Secretary-Treasurer of municipality or employ a Clerk.

3. A valuation-roll, setting forth such valuation, shall be drawn up and signed by the said valutors, or by such of them as have assisted in making the valuation, and shall be by them delivered to the mayor of the municipality within eight days from the making thereof ;—and every such valuation-roll shall remain of record in the office of the council of such municipality ;

Valuation-roll to be made ;

[Form E. E.]  
And recorded.

The valutors shall specify in the valuation-roll, not only the names and designation of all owners or occupants of real or other assessable property, but shall also designate the real property, the proprietors of which are unknown, by the number and concession, or by the limits and boundaries, in case such real property has no number generally known, and instead of the name of the proprietor shall insert the word “ unknown” ;

What it shall contain.

And they shall specify the names and designation of all persons, not being owners or occupants of real property, who are liable to statute labor under the provisions of this Act ;

Names.

And the said valuation shall, so soon as the valuation-roll is delivered to the mayor, be binding on all parties concerned, and be considered as the basis of any apportionment, assessment or collection which may from time to time be made, of any sum to be levied, or of the quantity and kind of materials to be furnished, or of the number of days’ work to be performed in the municipality, under this Act ; subject however to such amendments as may be made thereto in the manner hereinafter provided ; 18 V. c. 100, s. 65, par. 3,—as amended by 20 V. c. 41, s. 10, par. 1.

Its effect and use.

Subject to amendment.

Railway Companies to transmit annual statements of value of their real property to Secretary-Treasurer of municipality—amount at which they are to be assessed.

4. Every railway company shall annually transmit to the secretary-treasurer of every local municipality in which any part of the road or other real property of the company is situate, a statement describing the value of all the real property of the company other than the roadway, and also the actual value of the land occupied by the road in such local municipality, according to the average value of land in the locality; the secretary-treasurer shall communicate the same to the valuator, and the valuator shall enter the same in their valuation-roll; and the said secretary-treasurer shall, immediately after the deposit of the said valuation-roll, deliver at or transmit by post to any station or office of the company, a notice of the total amount at which the valuator have assessed the real property of the company in their municipality, distinguishing the value of the land occupied by the road, and the value of all other real property of the company within the municipality; 18 V. c. 100, s. 65, par. 4.

Duties of Railway Companies with respect to the statement furnished by them.

5. Such statement shall be transmitted by every railway company to the secretary-treasurer of the municipality, during the month of March in each year, and in default thereof the valuator shall make the valuation of the properties belonging to the company. 20 V. c. 41, s. 10, par. 2.

Governor to appoint valuator if valuation-roll be not made within a certain time.

60. If the valuator appointed by the council have not made the said valuation, and transmitted the valuation-roll to the mayor within two months from the date of their appointment, the secretary-treasurer of the local council shall inform the governor, by letter addressed to the provincial secretary, of the failure of the said valuator in that respect, and the governor shall thereupon appoint three other valutors: 18 V. c. 100, s. 66, par. 1,—*But see 22 V. c. 101, s. 14, par. 1, giving three months from 16th August, for the delivery of rolls then made.*

They shall proceed as the first valutors ought to have done.

2. The valutors so appointed by the governor shall make the said valuation in the same manner as the valutors who ought to have made the same in the first place, and shall exercise the same powers and authority, perform the same duties, and be subject to the same penalties in the event of any failure or neglect on their part; 18 V. c. 100, s. 66, par. 2.

Such valuation to be made at the cost of the valutors in default.

3. The valuation which the three last mentioned valutors, or the majority of them, shall make as aforesaid, shall be made at the expense of the former valutors who should have made the same; an allowance at the rate of three dollars shall accordingly be made to each of the said three last valutors, for each and every day during which he is employed in making the said valuation; the amount of the said allowance shall be determined and taxed by the mayor, whose certificate to that effect, stating the amount of the said allowance, shall be deemed an authentic document; 18 V. c. 100, s. 66, par. 3.

Taxing such costs.

4. Each valuator, so appointed by the governor, shall have a right of action in any court of competent jurisdiction against the valuator who failed to make the valuation and transmit the valuation-roll as aforesaid, jointly and severally, for the recovery of the amount of the allowance so determined and taxed as aforesaid. 18 V. c. 100, s. 66, par. 4.

Recovery of such cost.

61. The owners of assessable property mentioned or described in the valuation-roll, shall respectively pay such sum or furnish such quantity and kind of materials, or such number of days' work as they may be from time to time required to pay in proportion to the assessed value of such property, for their share of any apportionment or assessment authorized by this Act : 18 V. c. 100, s. 67.

Owners of assessed property to pay assessments in proportion to its value.

2. And whenever any such sum of money, quantity or kind of materials, or number of days' labour are so apportioned or assessed, the said sum of money, or the price of the said materials, or the value of the said number of days' labour, shall, from the day of their being so apportioned or assessed, be a special charge on the real property so assessed, which shall not require to be registered in any registry office established for the registering of privileges and hypothecs, and shall have, nevertheless, a preference over all other charges, excepting debts due to the Crown. 18 V. c. 100, s. 67, par. 2.

Assessments to be a special and preferable charge on the property not requiring registration.

62. The council of the local municipality, in respect of which such valuation-roll was made, may, at any time within thirty days next after the day on which it was delivered to the mayor, amend the valuation therein made in the cases hereinafter mentioned, and in the manner hereinafter provided ; and any such council may also in like manner amend the valuation-roll yearly, or in any year after that in which it was made : 18 V. c. 100, s. 68, par. 1, as amended by 22 V. c. 101, s. 15.

Council may revise and amend the valuation-roll.

2. If the council are of opinion that the valuation of any real property has been made under its true value so as to prejudice the owners of other property, or above its value so as to prejudice the owner thereof, then the said council may amend the valuation-roll by fixing such sum as they shall think just and reasonable, as the value of such property ;

How such amendments may be made.

3. All such amendments shall be entered upon the said valuation-roll or on a paper annexed thereto ; the date thereof shall be mentioned, and they shall be certified by the secretary-treasurer of the council ;—and every such valuation-roll so amended, shall continue to be binding to all intents and purposes, but only as amended, and as such, only from the date of the certificate of the said amendments ; 18 V. c. 100, s. 68, par. 2.

Entry thereof.

To be binding as amended.

4. Before any council proceeds to the examination or revision of any such valuation-roll, the secretary-treasurer of such council

Notice to be given before revision.

[Form F. F.] council shall give public notice to the inhabitants of the local municipality, of the day on which the council will commence such examination or revision ; 18 V. c. 100, s. 68, par. 3.

To be open to inspection. 5. The secretary-treasurer shall, at all reasonable hours of the day, allow any person interested to take communication of the said copy of the valuation-roll ; 18 V. c. 100, s. 68, par. 4.

Parties to be heard. 6. The council, in proceeding as aforesaid, to the examination or revision of the said valuation-roll, shall hear the parties interested therein, as well as the valutors who have made the valuation, if required so to do ; 18 V. c. 100, s. 68, par. 5.

Valuation-roll not amended within a certain period, to be binding. 7. If the period of thirty days, during which the said valuation-roll may be so amended, is allowed to elapse without the council amending the same, then the said valuation-roll shall remain in force as originally made by the valutors ; 18 V. c. 100, s. 68 par. 6.

Copy to be delivered to Warden. 8. It shall be the duty of the mayor to cause a true copy of such valuation roll, with such amendments as may have been made thereto by the council, to be delivered to the warden of the county, on or before the seventh day next after the expiration of the said thirty days. 18 V. c. 100, s. 68, par. 7.

Valuation-roll to remain in force 5 years, and until a new one is homologated. §3. Until the year 1860, every such valuation-roll shall remain in force during five years next after the date of the appointment of the valutors who made the same, and further after the expiration of the said five years until the day on which a new valuation-roll has been duly homologated : 18 V. c. 100, s. 69.

But a valuation-roll for every local municipality in Lower Canada shall be made in the year one thousand eight hundred and sixty, and thenceforward triennially, notwithstanding a valuation-roll may have been made in any local municipality within the period of three years immediately preceding the time so fixed for making such triennial valuation-roll. 19, 20 V. c. 101, s. 24.

ASSESSMENT OF BUSINESS OF MERCHANTS AND OTHER PERSONS,  
AND THE INCOMES OF PROFESSIONAL MEN.

Value of business of certain parties to be entered on the roll. How calculated. §4. Every merchant, manufacturer, trader and master artificer (*maitre ouvrier*), carrying on his trade, business or calling in a local municipality, whether resident therein or not, and whether he does or does not possess therein any real property, shall, by reason of such trade, business or calling, be liable for all the purposes of this Act, to assessment ;—and the value of his business shall be estimated by the valutors of the municipality as a distinct property, according to the average annual profits thereof, based upon the proceeds of the next two preceding years : 18 V. c. 100, s. 70, s. 1.

2. Every judge or other civil functionary, and every advocate, notary, physician, surgeon, civil engineer, or surveyor, residing in a local municipality, and performing the duties of his office, or practising his profession therein, shall be liable to assessment in like manner; the value of such office or practice shall also be estimated by the valutors, for the same purposes and in the same manner, as a distinct property; 18 V. c. 100, s. 70, par. 2.

The same of practice of professional men and office holders.

3. The power vested in the council of each local municipality to amend the valuation-roll thereof, shall extend to the revision and amendment of such valuation with reference to the assessment of the business of merchants and other persons and the incomes of professional men. 19, 20 V. c. 101, s. 11, par. 2.

Power to amend valuation-roll extended.

STATUTE LABOUR.

65. In addition to the road work and other contributions to which the proprietor or occupant of any lot of land or other property may be otherwise liable, he shall, in proportion to the value at which such property shall be assessed, be liable yearly to a certain number of days' statute labour on the roads, that is to say: if such property be assessed: 18 V. c. 100, s. 71, par. 1,—as amended by 20 V. c. 41, s. 11.

Owners of assessed property to be liable to statute labour.

1. At not over four hundred dollars, to one day's labour,—and to one additional day's labour for every four hundred dollars of additional value, reckoning any fraction of four hundred dollars as four hundred dollars; 18 V. c. 100, s. 71, par. 1.

And in what proportion.

2. Every male inhabitant between the age of eighteen and sixty years, and not otherwise liable to statute labour, shall be liable to one day's labour; 18 V. c. 100, s. 71, par. 2.

Persons not otherwise liable.

3. But no officer on full pay, nor any soldier on actual service, shall be liable to statute labour, except in respect of some land owned or occupied by him otherwise than for Her Majesty's service; 18 V. c. 100, s. 71, par. 3.

Exemption.

4. Labour performed under this section, shall be performed at such places as the proper municipal council may from time to time order,—or in default of such order, at such places in the division as the road inspector shall appoint by order in writing,—or in default of such order, then at such places in the division as the overseer shall think proper,—in aid of such persons as in the opinion of such council, inspector or overseer, have more than their proportionate share of work to perform in making and maintaining the front road on their lots, by reason of some difficulty arising out of the nature of the ground or other circumstances of such front road, or at such other places as such council or officer thinks proper, or as may be determined by any *procès-verbal*, by-law or order; 18 V. c. 100, s. 71, par. 4.

How and where such labor shall be performed, and under whose orders.

Commutation  
for statute  
labour.

5. The commutation money for statute or joint labour shall be eighty cents for each day; and any person may commute his statute labour at that rate instead of performing the same; but the commutation money must be paid before the person commuting has been notified by the overseer to perform such labour, otherwise the penalty shall be payable instead of the commutation money, if the labour is not performed according to the notice. 18 V. c. 100, s. 71, par. 5.

When to be  
paid.

PROPERTIES AND PERSONS EXEMPTED FROM ASSESSMENT.

Public property  
or property  
used for public  
purposes.

66. All public buildings intended for the use of the civil government, for military purposes, for the purposes of education or religious worship, all parsonage houses, burying grounds, charitable institutions, and hospitals duly incorporated and the lands upon which such buildings are erected, shall be exempt from all assessments or rates imposable under this Act: 18 V. c. 100, s. 72, par. 1.

Indigent persons.

2. All persons who, by reason of their poverty or the scantiness of their means, are in any year, by a by-law of the municipality in which they reside, declared exempt from the payment of the said assessments or rates imposed during and for the said year, shall be thereby exempted from the payment thereof. 18 V. c. 100, s. 72, par. 2.

COLLECTION OF ASSESSMENTS.—DUTIES OF SECRETARY-TREASURER AND OTHER OFFICERS IN RELATION THERETO.

Assessments to  
be payable  
either by owner  
or occupant.

67. All assessments imposed under this Act shall be due and payable not only by the owner of the property upon which they are imposed, but also by the possessor or occupant of the said property as owner, and by the tenant or lessee of such property;—but the payment in full of any such assessment by any such person shall discharge all others concerned: 18 V. c. 100, s. 73, par. 1.

Recovery of  
payment by  
occupant pay-  
ing against  
owner.

2. In the event of the payment or contribution of any assessment by the tenant or lessee of any such property, he shall have a right of personal action against the owner of the property assessed, or the lessor, holder or occupier of the same as owner, as aforesaid, for the recovery, with interest and costs, of the amount of such assessment, or of the price or value thereof, paid or contributed by him; 18 V. c. 100, s. 73, par. 2.

He shall be  
subrogated to  
municipality.

3. In such case, such tenant shall be fully subrogated, without any formality whatsoever, in the rights and privileges of the municipality upon the property in question; 18 V. c. 100, s. 73, par. 3.

As to assess-  
ments imposed  
in labour.

4. Nevertheless, when the said assessments are imposed in labour, no more than one year's arrears thereof shall be recoverable. 18 V. c. 100, s. 73, par. 4.

68. The secretary-treasurer of the local council shall be the collector of all the assessments imposed within the limits of each local municipality and of all penalties imposed under this Act, except in any case in which the said assessments or penalties are required to be collected by any other officer or in any other manner: 18 V. c. 100, s. 74.

Secretary-treasurers to be collectors in their localities of assessments and penalties.

2. Every such secretary-treasurer, as assessment collector, may be sued by the mayor, in the name of the local municipality, before any court of competent jurisdiction, to compel him to render an account of the assessments levied by him;

Treasurers, &c., may be sued for accounts, &c.

The said secretary-treasurer shall in every such suit be condemned to pay to the municipality interested, the amount of the assessments in money, and the price and value of the assessments in materials and days' labour then due, unless he shews, to the satisfaction of the court, proof of sufficient diligence having been used by him for recovering the said assessments;

Judgment in such cases.

And if he renders an account of such assessments, he shall be condemned to pay such sum as he acknowledges or as are declared to be in his hands, and such further sums as he ought to have received, or as the court thinks he ought to be held accountable for, for want of proof of sufficient diligence on his part for the recovery thereof;

If he renders an account.

Every judgment pronounced in any such action shall include interest at twelve per cent on the amount thereof, by way of damages, together with costs of suit; and in every such action a certified copy of the collection-roll of the division shall, to all intents and purposes, be *prima facie* evidence against the said secretary-treasurer; 18 V. c. 100, s. 74, par. 2.

Interest to be recovered at 12 per cent.

Evidence.

3. The secretary-treasurer of every local council shall, on or before the fifteenth day of May in each year, make out the general collection-roll for the municipality, and set down therein the name of each person assessed, whose name appears on the valuation-roll, the value of the real property of each such person, as specified in such valuation-roll, and the amount of personal property for which such person is assessable; and he shall also calculate and set down the various assessments payable by such person under any by-law or otherwise, and the total amount with which each person is chargeable;

Secretary-treasurer to make general collection-roll.

[Form —.]

It shall shew the amount payable by such person.

But in any year when a new valuation-roll is to be made, and such roll is not finally revised and homologated at least fifteen days before the said fifteenth day of May, the delay for completing the general collection-roll shall be extended to a period of fifteen days next after the date of such final revision or homologation, and any local council may by resolution, order the secretary-treasurer to make the general collection-roll at any convenient period other than that mentioned in this section; 18 V. c. 100, s. 74, par. 3,—20 V. c. 41, s. 12, par. 1.

As to year when a new valuation is made.

Special collection-rolls in certain cases.

4. Whenever any special rate is imposed in the same year after the said fifteenth day of May, or after the day appointed for making the general collection-roll, he shall make out a special collection-roll in the manner prescribed by the next preceding section ; 18 V. c. 100, s. 74, par. 4, and 20 V. c. 41, s. 12, par. 1.

The new provisions.

5. The secretary-treasurer upon completing his collection-roll, shall proceed to collect the assessments therein mentioned, and for that purpose shall, on the next following Sunday, give or cause to be given public notice that the collection-roll is completed and deposited in his office, and that all persons whose names appear therein as liable for the payment of any assessment, are required to pay the amount thereof to him at his office within twenty days of the publication of such notice ; 19, 20 V. c. 101, s. 25, par. 2.

Collection and general notice to rate-payers.

[Form No. 1.]

Special notice to rate-payers in default.

6. If at the expiration of the said twenty days any assessment remains unpaid, the secretary-treasurer shall leave at the usual place of residence or domicile of such person in arrear, or with him personally, a statement in detail of the various sums and the total amount of assessments due by such person, and shall at the same time, in and by a notice annexed to such statement, demand payment of the assessments therein mentioned, together with the costs of the service of such notice according to such tariff as the council has established ; 19, 20 V. c. 101, s. 25, par. 3.

[Form No. 2.]

Costs of such notice.

Preceding paragraph not to apply to certain cases.

7. The provisions of the next preceding paragraph shall not apply to persons residing without the limits of the municipality ; the said persons shall be bound to pay their assessments within thirty days after the public notice mentioned in the paragraph *five of this* section, without it being necessary that any demand should be made upon them either personally or at their domicile ; 20 V. c. 41, s. 12, *par.* 3.

In case of default for 15 days assessments to be levied by seizure and sale.

8. If any person, residing in the municipality, neglects to pay the amount of assessments imposed upon him, for the space of fifteen days after such demand made as aforesaid, the secretary-treasurer shall levy the same with costs, by warrant under the hand of the mayor of the municipality authorizing the seizure and sale of the goods and chattels of the person who ought to pay the same, or of any goods or chattels in his possession, wherever the same can be found with the local municipality ; and no claim of property, or privilege thereon or thereto shall be available to prevent the sale thereof for the payment of the assessments and costs out of the proceeds thereof ; 19, 20 V. c. 101, s. 25, par. 4,—20 V. c. 41, s. 12, par. 3.

Surplus of proceeds under

9. If the goods and chattels seized are sold for more than the whole amount of assessments levied for, and the costs attending

attending the seizure and sale, the surplus shall be returned to the person in whose possession such goods and chattels were when the seizure was made ;—but if any claim for such surplus is previously made by any other person, by reason of any alleged right of property or privilege upon such surplus, and such claim is admitted by the person for whose assessments the seizure was made, such surplus shall be paid to such claimant ;—and if such claim be contested, the surplus money shall be retained by the secretary-treasurer, until the respective rights of the parties be determined by a competent tribunal ; 18 V. c. 100, s. 74, par. 7.

distress to be returned to owner.

As to claim the same by contesting parties.

10. The secretary-treasurer shall give public notice of the day and place of sale, and of the name of the person whose goods and chattels are to be sold ; 18 V. c. 100, s. 74, par. 8.

Notice of sale.

[Form I. I.]

11. In every case in which any sum is to be levied for county purposes, the county council shall, by by-law, direct what portions of such sum shall be levied in each local municipality ;—and it shall be the duty of the secretary-treasurer of the county council, before the first day of May in each and every year, or at such other time as may be fixed by a resolution of the said council to that effect, to certify to the secretary-treasurer of each local municipality, the total amount which has been so directed to be levied therein in the then current year for county purposes ;—And for the guidance of such county council, the secretary-treasurer of every local municipality therein, shall, immediately after the final revision of the valuation-roll for the same, transmit to the secretary-treasurer of the county council, a statement of the aggregate yearly value of all real property and of all assessable personal property appearing on such rolls as finally revised ; 18 V. c. 100, s. 74, par. 9, as amended by 22 V. c. 101, s. 13.

When sums are to be raised for county purposes, Council to fix the sum to be raised in each locality.

[Form J. J.]

To be guided by collection-rolls.

[Form K. K.]

12. On or before the fifteenth day of November in each year, the secretary-treasurer of each local municipality shall prepare a statement of all the assessments remaining due on the collection-rolls for the twelve preceding months, and of all the arrears due to the municipality, with the particulars thereof, including the amount of, or balance due, on all judgments pronounced against any of the inhabitants or owners of land, and other persons within the municipality, for contributions or penalties due or incurred under this Act, and in such statement he shall shew opposite to each separate debt, the reasons why he could not collect the same, by inserting the words “ non resident ” or “ no personal property to seize, ” as the fact is, and a designation of the lots or parcels of land in respect of which such assessments or other debts are due, and he shall transmit a copy of such statement, duly certified, to the secretary-treasurer of the county ; 18 V. c. 100, s. 74, par. 10.

Return of doings on collection-rolls to secretary-treasurer of county : paying over moneys to him.

Certain particulars to be shewn in each return.

13. The secretary-treasurer shall insert in the statement annually prepared by him, all the other assessments, taxes and debts

School rates, &c., may be inserted in

Secretary-treasurer's statement, and collected as taxes.

debts claimed either by the school commissioners, or by the Inspectors of water-courses, fences and ditches, or by any other person who has lawfully expended moneys for the payment of any such assessment, taxes or debts, or who has lawfully caused work to be performed for others on any lot described in the said statement ; 20 V. c. 41, s. 12, par. 4.

Secretary-treasurer of county to prepare list of lands on which taxes &c., are not paid.

[Form L. L.]

Notice to be published containing certain particulars.

14. And on or before the first day of December in each year, the secretary-treasurer of the county council shall prepare a list of all lands in the county municipality upon which any assessments or other dues remain unpaid, stating opposite the lots or parcels of land respectively, the amounts due,—and shall cause to be inserted at least three times during the said month of December, in the *Canada Gazette*, and in at least one newspaper published within the district, or in the adjoining district, if there be none published therein, a notice in the English and French languages, containing a list of all lots or parcels of land respectively, on which any such assessments or other dues remain unpaid, shewing opposite or after the number or description thereof, the amount to be raised for the discharge of such assessments or other dues, including all costs and expenses, and announcing that all such lots or parcels of land (or the right of cutting timber thereon as hereinafter mentioned) will be sold on the first Monday of the month of February then next ensuing, at the place where the sittings of the county council are then held, for the payment of such assessments and other dues ; and he shall also give public notice of every such sale in the manner provided by this Act ; 18 V. c. 100, s. 74, par. 11, and 20 V. c. 41, s. 12, par. 2.

Further notice of sale.

Right of cutting timber may be sold.

15. The secretary-treasurer may give notice of and cause to be sold the right of cutting timber for one or more years, on any lot of land whatever, instead of the land itself ; 20 V. c. 41, s. 12, par. 2.

Sale : unless the taxes are paid, with costs, and penalty.

16. Every such sale may take place before or after suit for the recovery of the payment of the said assessments ; but it shall not take place if, at any time before the two days next preceding such sale, the person liable pays to the secretary-treasurer of the local council the full amount due by him for such assessments, as well as for any contributions or penalties imposed upon him, together with his just proportion of the costs and expenses incurred for effecting the said sale, which said share shall be fixed by the secretary-treasurer of the local council, whose duty it shall be to inform the secretary-treasurer of the county council of every payment so made after the transmission to the latter of the statement hereinbefore mentioned ; 18 V. c. 100, s. 74, par. 12.

Return to Secretary-Treasurer of county.

Notice to specify place and time of sale, description of land, &c.

17. Every such notice shall specify the place, day and hour at which such sale will commence ; each lot or parcel of land, if the same be situate in a township, shall be designated therein

therein by its range and number, and if it be within the limits of a fief or seignior, by its metes and boundaries; 18 V. c. 100, s. 74, par. 13.

18. All the lots thus for sale in the municipality may be included in the same statement and in the same notice; 18 V. c. 100, s. 74, par. 14. One notice may include all lots.

19. Every secretary-treasurer of a local council may, under the authority of such council, and at the expense of the municipality, employ one or more persons to assist him as collector of assessments and of other debts due to the municipality, but he shall be responsible for the acts and omissions of all persons so employed. 18 V. c. 100, c. 74, par. 15. Secretary-treasurer of locality may employ assistants.

**SPECIAL PROVISIONS AS TO ASSESSMENTS FOR COUNTY PURPOSES.**

69. In any county municipality in which land has been offered for the building of a county court house, and accepted by the governor as the site thereof, and in which the council has by by-law ordered and directed the building of such court house on the said site, and has apportioned the sum payable by each local municipality for such purpose, such by-law shall be definitive, and the assessment so imposed shall be obligatory upon such local municipality, and thenceforward the sum therein mentioned shall be a debt of such local municipality: 22 V. (1859), c. 56, s. 1. County By-law apportioning the sum to be paid by any local municipality, for a Court House, &c., to be binding.

2. The secretary-treasurer of the county municipality, shall, immediately after the passing of any such by-law by such county municipality, transmit a copy thereof to the secretary-treasurer of each local municipality affected thereby, and the secretary-treasurer of such local municipality shall, within two months after the day on which he receives the same, prepare a special collection-roll or assessment-roll, as the case may be, based upon the valuation-roll for such local municipality, and he shall, in the usual manner, calculate and insert the several assessments payable by each contributor, and the total amount due by each person in such local municipality, and if he fails to do so within the said delay, the said secretary-treasurer of such local municipality shall be liable to a fine of not less than one hundred or more than two hundred dollars, recoverable at the suit of the county municipality, before one or more justices of the peace, under an ordinary writ of summons; 22 V. (1859), c. 56, s. 2. Duty of the secretary-treasurer of the county and local municipality, respectively.

3: The secretary-treasurer of any Local Municipality affected by such by-law of a county municipality, after he has prepared the said collection-roll in the manner aforesaid, shall be the collector of the same, and it shall be his duty to raise the amount of the assessment so imposed, in the manner provided by the *sixty-eighth* section of this Act; and such secretary-treasurer Local secretary-treasurer to collect the sums so apportioned.

And account for them to the county.

secretary-treasurer shall render an account to the county municipality of the collection of such moneys in the manner and under the penalties and suits provided by the said section ; 22 V. (1859,) c. 56, s. 3.

Section to apply to all assessments for county works.

4. The provisions of this section shall apply to all assessments imposed by county municipalities upon any local municipality, in matters relating to county interests, or for the purpose of making provision for any county works. 22 V. (1859,) c. 56, s. 4.

#### SALES OF PROPERTY.

Sales to be by public auction.

No duty, &c.

70. All lands, goods and chattels, to be sold under the authority of this Act for the payment of taxes or other dues, shall be offered to public competition ; but such lands, goods or chattels so publicly sold, shall be exempt from auction duty, and need not be sold by a licensed auctioneer : 18 V. c. 100, s. 75, par. 1.

Mode of sale.

In sales of real property so much only to be sold as will pay taxes and costs.

2. At the place, day and hour appointed for the sale of lands, the secretary-treasurer of the county council shall make known the amount of the sum to be raised as aforesaid upon each such property, to which amount he shall add the just proportion of the costs and expenses to be borne by each such property ; the person who then and there offers to pay to the secretary-treasurer the amount of the said sum thus to be raised, with costs and expenses, for the smallest part, quantity or portion of the said property, shall be considered the purchaser, and such said part, quantity or portion of the said property shall be adjudged to him by the secretary-treasurer, who shall sell such portion of the property as appears to him best for the interest of the proprietor thereof ; 18 V. c. 100, s. 75, par. 2.

What part shall be sold first.

If the purchaser fails to pay, another sale to be had in 8 days.

3. If any purchaser fails to pay on the day of sale the amount of his purchase, the secretary-treasurer shall adjourn the sale to any day not more than eight days distant, by giving all persons present notice of such adjourned sale, in an audible and intelligible voice, in both the English and French languages ;—and on the day of such adjourned sale the secretary-treasurer shall again put up the said property for sale, and shall sell the same, or any portion thereof, unless the first purchaser has in the meantime paid the full amount of assessments and charges due thereon ; 18 V. c. 100, s. 75, par. 3.

Certificate to purchaser.

4. On payment by the purchaser of the amount of his purchase money, the secretary-treasurer shall give a certificate under his signature to such purchaser, specifying the particulars of such sale, and the purchaser may forthwith enter upon and take possession of such lot or parcel of land ; 18 V. c. 100, s. 75, par. 4.

5. If, within twelve calendar months from the time of such sale, the original proprietor of the lot, or any one on his behalf, pays to the secretary-treasurer the amount levied, together with twenty per cent. in addition to the same, then he shall be entitled to recover possession of the lot or parcel of land so sold, and the secretary-treasurer shall on demand pay to the purchaser thereof, his heirs, assigns or representatives, the amount so received by him, after deducting therefrom two and a half per cent. as his own fees; and thereupon (subject to the condition in the next following paragraph) the right acquired by the purchaser in the land shall thenceforth wholly cease and determine; 18 V. c. 100, s. 75, par. 5.

Owner may redeem within the year, paying price and 20 per cent. more.

6. No such purchaser of any lot of land shall carry away any timber therefrom during the first year he is in possession thereof; and it shall be the duty of the former proprietor, before he can recover possession of his lot of land so sold, in addition to what he is bound to pay, to repay to the said purchaser all the taxes and the value of all public or vicinal work which he has paid or performed during the time the land was in his possession; 20 V. c. 41, s. 13, par. 1.

Powers of purchaser restrained during the year for redemption.

7. If, at the expiration of twelve calendar months from the time of such adjudication, the land so adjudged is not redeemed as aforesaid, then the secretary-treasurer, on demand by the purchaser, his heirs, assigns or representatives, and upon payment of the arrears of any other assessments which, in the meantime, have become due thereon, shall execute a deed of sale in due form, conveying, in the name of the county municipality, the property so adjudged to such purchaser, his heirs, assigns or legal representatives;

If the land be not redeemed, deed of sale to be given to purchaser: its effect.

Such deed of sale shall be a legal conveyance of the said land, and shall not only transfer to the purchaser all rights of property which the original holder had therein, but shall also purge and disencumber such land from all privileges and hypothecs due thereon;

Deed of sale to be a legal conveyance.

But whenever any lot of land situate in any Township is sold before the issuing of Letters Patent from the Crown granting the same, such sale shall in no wise affect the rights of Her Majesty in such land, but shall solely have the effect of transferring to the purchaser such rights of pre-emption or other claims, as the holder of such land or any other person had acquired in respect of the same; 18 V. c. 100, s. 75, par. 6.

As to lands sold before issue of patent for them.

8. Any such deed of sale of land held in free and common soccage, may be made, sealed and delivered before two witnesses, or made and executed before one notary and two witnesses, or before two notaries, and may be in the following form, or in any other form or words to the same effect, that is to say:

Form of deed of soccage lands sold by a municipality.

Province of Canada, }  
 County of . }

These are to witness, that in consideration of the sum of \_\_\_\_\_, paid to the secretary-treasurer of the municipal council of the county of \_\_\_\_\_, by \_\_\_\_\_, being the purchaser at public auction of the parcel or tract of land hereinafter mentioned, sold by such secretary-treasurer to pay assessments, on the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord, one thousand eight hundred and \_\_\_\_\_, according to the law in that behalf, the said corporation of the county of \_\_\_\_\_, doth grant, bargain and sell, confirm and convey unto the said \_\_\_\_\_, his heirs and assigns for ever, all and singular that parcel or tract of land situate in the \_\_\_\_\_ of \_\_\_\_\_, in the said county of \_\_\_\_\_, (*insert here a description of the property*); To have and to hold the premises hereby sold and conveyed, with their and every of their appurtenances, unto and to the use of the said \_\_\_\_\_, his heirs and assigns for ever.

In witness whereof, I, \_\_\_\_\_, secretary-treasurer of the municipal council of the said county of \_\_\_\_\_, have hereunto set my hand and affixed the seal of the said corporation, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord, one thousand eight hundred and \_\_\_\_\_.

Signed, sealed and delivered }  
 in the presence of }  
 A. B. }  
 C. D. }

22 V. c. 101, s. 35.

Secretary-Treasurer.

Case where lands have been sold, and the locality in which they lie is detached from the county before deed.

9. Every deed of sale to a lot or parcel of land sold under the provisions of this Act, or of the municipal laws in force prior to one thousand eight hundred and fifty-five, which, during the interval between the sale thereof and the execution of such deed, has been detached from one county and attached to another, shall be executed by the secretary-treasurer of the council of the county in which such lot or parcel of land lies at the time when the purchaser becomes entitled to receive such deed, and exhibits to such secretary-treasurer the certificate specifying the particulars of his purchase. 20 V. c. 41. s. 13, par. 2.

PENALTIES.

Penalty on persons elected or appointed to office and not accepting.

71. Every person who, being elected or appointed to any of the offices mentioned in the following list, refuses or neglects to accept such office, or to perform the duties of such office during any portion of the period for which he was selected or appointed, shall incur the penalty mentioned in such list.

list opposite the name or designation of such office, that is to say :

The office of Warden of a county, forty dollars ;

The office of Mayor of a local municipality, thirty dollars ;

The office of councillor of any municipal council, twenty dollars ; 18 V. c. 100, s. 76.

2. Whenever the valuator of a local municipality neglect to make the valuation which they are required to make under this Act,—or neglect to draw up, sign and deliver the valuation-roll containing such valuation to the secretary-treasurer of the local council, within *two months* from the date of their appointment,—every such valuator shall incur a penalty of two dollars, for each day which elapses between the expiration of the said period of two months, and the day upon which such valuator's roll is so delivered, or upon which their successors in office are appointed ; 18 V. c. 100, s. 76, par. 2.

On valuator failing to perform certain duties.

3. Every member of any municipal council, every officer appointed by such council, every justice of the peace, and every other person, who refuses or neglects to do any act, or perform any duty required of, or imposed upon him by this Act, shall incur a penalty not exceeding twenty dollars and not less than four dollars ; 18 V. c. 100, s. 76, par. 3.

On members of any Council, Justices of the Peace, &c., failing to perform any duty.

4. Any person appointed by the warden of a county, under the *twenty-fifth* section of this Act, to preside at a public meeting of the inhabitants of any local municipality, who refuses or neglects to be present at such meeting, or to preside thereat, or to do any act or thing required by law to be done by him in consequence of such appointment, or who is guilty of any misfeasance, malfeasance or nonfeasance, in the official capacity conferred on him by such appointment, shall incur a penalty of eighty dollars ; 22 V. c. 101, s. 4.

Penalties in case of failure on the part of the Warden in performance of certain duties under sect. 25 of this Act.

5. Any warden of a county who refuses or neglects to give the notice of the public meeting of the inhabitants of any local municipality in such county, required to be given by him under the said *twenty-fifth* section, shall incur a penalty of eighty dollars ; 22 V. c. 101, s. 5.

Penalty on a Warden of a county failing to notify a meeting under sect. 25 of this Act.

6. Every person who votes at any election of municipal councillors without having, at the time of giving his vote at such election, the qualification by law required to entitle him to vote at such election, shall thereby incur a penalty of twenty dollars ; 18 V. c. 100, s. 76, par. 4.

Unqualified persons voting.

7. Every Inspector of roads who refuses or neglects to perform any duty assigned to him by this Act, or to obey any lawful

On Inspectors of roads failing

to perform their duty.

lawful order of any municipal council, or of the *proper officer thereof*, shall, for each day on which such offence is committed or continues, incur a penalty of four dollars, unless some other and heavier penalty is by law imposed on him for such offence; 18 V. c. 100, s. 76, par. 5.

On overseers of roads failing to perform any duty.

8. Every Overseer of roads who refuses or neglects to perform any duty assigned to him by this Act, or to obey any lawful order of the *proper Officer appointed by the Council*, or of the Inspector of roads for his division, shall, for each day on which such offence is committed or continues, incur a penalty of four dollars, unless some other and heavier penalty be by law imposed on him for such offence; 18 V. c. 100, s. 76, par. 6.

On persons hindering the execution of this Act.

9. Every person who hinders or prevents or attempts to hinder or prevent any municipal officer in the exercise of any of the powers or in the performance of any of the duties conferred or imposed upon him by this Act, shall incur a penalty of twenty dollars for every such offence, over and above any damages for which he is liable; 18 V. c. 100, s. 76, par. 7.

On persons wilfully taking down notices, &c.

10. Every person who wilfully tears down, injures or defaces any advertisement, notice, or other document, required by this Act to be posted up at any public place for the information of persons interested, shall incur a penalty of eight dollars for every such offence; 18 V. c. 100, s. 76, par. 8.

Punishment of persons resisting officers of a Municipal Council, &c.

11. Every person who refuses permission to enter his house to any officer authorized by the council of any municipality to seize and sell the goods and chattels of such person, is guilty of *rebellion à justice*, and shall be punished therefor by the mayor or justice of the peace who signed the warrant, by imprisonment for any period not exceeding one calendar month, and such mayor or justice of the peace may moreover give an order to cause the doors to be opened, entrance through which has been refused, and the officer charged with such order may by virtue thereof cause any such doors to be opened in the presence of one or more witnesses, and may for that purpose avail himself of the assistance of such workmen or others as he deems advisable, at the cost of the parties who have refused such entrance, which said costs, the said officer shall levy by virtue of the same warrant. 22 V. c. 101, s. 18.

#### RECOVERY OF PENALTIES, TAXES, &C.

How penalties shall be recoverable.

72. All penalties, imposed by this Act or by any by-law lawfully made under it, shall be recoverable before the circuit court *in the circuit* in which the local municipality or the major part thereof is situated, or before any justice of the peace sitting in the municipality;—All the fines and penalties incurred by any one person may be included in the same suit;—and the costs

costs in any such suit before a justice of the peace shall be taxed according to the tariff of the court of commissioners for the trial of small causes: 19, 20 V. c. 101, s. 27, par. 2, and 20 V. c. 41, s. 14, par. 1.

2. Every judgment rendered in any such suit shall be so rendered with costs, and execution may issue thereon at the expiration of eight days from the date of the judgment; 18 V. c. 100, s. 77, par. 2. Costs and execution.

3. The secretary-treasurer of the local municipality, in which such suit is brought, shall *ex officio* be clerk to the justice of the peace, in such suit, unless the justice appoints another clerk under the next following paragraph, and shall keep, in a faithful and correct manner, a separate register in which he shall enter the judgments of the justices of the peace in all such suits;—and the summons and every other proceeding relating to such suit shall remain of record in his office; 18 V. c. 100, s. 77, par. 3. Secretary-treasurer of local municipality to be Clerk of such Justice.

4. Any justice of the peace may appoint his own clerk in any such suit, but every clerk so appointed shall, within three days after the date of the judgment rendered in any such suit, transmit to the secretary-treasurer of the local municipality, a duly certified copy of the proceedings therein;—and every such clerk shall be deemed to be a municipal officer in so far as relates to the duties imposed upon him by this Act; 20 V. c. 41, s. 14, par. 3. Justice of the Peace may appoint his own Clerk.

5. On the day of the return of the summons, and at every other stage of the proceedings thereon, the justice of the peace who signed the summons shall have the right to sit in the case, in preference to, and to the exclusion of, any other justice of the peace present; 18 V. c. 100, s. 77, par. 4. Right of Justice issuing the summons to sit in preference to others.

6. There shall be an interval of at least three clear days between the day of the service of the summons and the day of the return thereof; 18 V. c. 100, s. 77, par. 5. Delay between service and summons.

7. Every such suit shall be decided upon the oath of any municipal councillor, or of any inspector or other municipal officer, or of any other credible witness; 18 V. c. 100, s. 77, par. 6. Evidence.

8. Every suit brought for the recovery of penalties under this Act must be commenced within six months of the date on which such penalty was incurred; and all penalties, paid either before or after such suit as aforesaid, shall belong, one half to the municipality with reference to which, or to the infraction of the by-laws of which, such suit is brought, and the other half to the prosecutor, unless such suit is instituted by the order of any municipal council or by any of its officers, Limitation of suit for penalties.  
Application of penalties.  
in

in which case the whole of the penalty shall belong to such municipality. 18 V. c. 100, s. 77, par. 8.

#### SUITS UNDER THIS ACT.

**73.** And in order to remove all doubts with regard to what persons may sue and be sued by virtue of this Act, Be it declared and enacted as follows : 20 V. c. 41, s. 14, par. 4.

Who may prosecute under this Act.

1. Every person of the age of twenty-one years has and shall have a right to prosecute any municipal officer or other person, in virtue of the provisions of this Act ; 20 V. c. 41, s. 14, par. 5.

Right of party doing any public work to recover the cost.

2. Any person who, on the requisition or with the sanction of any municipal authority, road officer or court of justice, has performed or caused to be performed or paid for the performance of any work performed for the advantage of a municipality, or a portion of the inhabitants of the same, shall have a right to sue the parties interested or the municipality, before any court having competent jurisdiction, for the recovery of his claim, even though the said work was not preceded or followed by the formalities required by law ; 20 V. c. 41, s. 14, par. 6.

Municipality may sue in the Circuit Court.

3. Any municipality may sue for the recovery of any debt to them due before the circuit court of the *circuit* in which the said municipality is situate ; 20 V. c. 41, s. 14, par. 7.

Electors may be witnesses.

4. In any case in which the rights of any municipal corporation are involved, no witness shall be inadmissible from the fact of his being an elector entitled to vote in such municipal corporation. 12 V. c. 41, s. 15.

#### APPEALS

##### FROM LOCAL TO COUNTY COUNCILS.

Power to county council, to revise, &c.. By-laws of local councils, appealed against.

**74.** Every county council may revise, amend or annul all by-laws, reports or *procès-verbaux*, made, passed, approved or homologated by any local council within the county,—except those made by town or village councils,—whenever the same are appealed from in the manner hereinafter provided : 19, 20 V. c. 101, s. 9, par. 1.

Special session of county council to revise By-law, &c., appealed from.

2. Whenever a majority of the persons interested, if they be less than ten in number, and whenever any number not less than five, of the assessable inhabitants of a local municipality, do, within fifteen days after the homologation of any valuation-roll or *procès-verbal*,—or after the expiration of the period within which such valuation-roll or *procès-verbal* is allowed to be revised and homologated by a local council,—or within fifteen days after the first publication of any by-law passed by the

the council of such local municipality, file in the office of any county council, a petition in appeal, praying for the revision or amendment of such valuation-roll or *procès-verbal*, or for the amendment or disallowance of such by-law, and setting forth the grounds or reasons for which such revision, amendment or disallowance is prayed for, the warden of the county shall convene a special session of the county council, and give public notice of such special session; and every such special session shall be held within twenty days from the date of the filing of such petition; 19, 20 V. c. 101, s. 9, par. 2.

3. The county council at any such special session shall, after hearing the petitioners and the mayor, councillors or clerk of the local council, or any of such parties who require to be heard,—homologate without amendment, or amend and homologate as so amended, such *procès-verbal* or valuation-roll,—and shall confirm, amend or disallow such by-law as they deem expedient; And every *procès-verbal*, valuation-roll or by-law so amended, shall come into force as so amended from the day of the date of such amendment, and every by-law so disallowed shall become null and void to all intents and purposes, as if the same had never been passed; 19, 20 V. c. 101, s. 9, par. 3.

Decision of county council, and its effect.

4. But whenever any such county council closes such special session, or adjourns the same *sine die*, or for any period beyond ten days from the first day thereof without having decided upon the merits of the petition in appeal, the *procès-verbal*, valuation-roll or by-law, to which such petition relates, shall be considered as having been homologated by such council; 19, 20 V. c. 101, s. 9, par. 4.

Adjournment *sine die* without decision to operate confirmation.

5. Every by-law of a local council, when amended by the county council, shall be published as so amended in the manner *hereinbefore* provided, and every judgment of a county council disallowing any by-law passed by a local council shall be published in like manner; 19, 20 V. c. 101, s. 9, par. 5.

Publication of decision.

6. No county council shall disallow or amend any by-law passed by the council of a town or village municipality;—nor shall the mayor of any town or village municipality vote or take any part in the proceedings before a county council on appeals from other local councils; 19, 20 V. c. 101, s. 9, par. 6.

County council not to disallow or amend a By-law of a town or village.

7. No mayor of a local municipality shall sit or vote at any special session of the county council for hearing or deciding upon any petition of appeal praying for the revision or amendment of any valuation-roll or *procès-verbal*, or for the amendment or disallowance of any by-law in the matter of which he has any direct personal interest;—and the county council shall decide whether such Mayor has or has not such direct personal interest;

Mayors not to sit in a county council in appeals in which they are personally interested.

interest; but such mayor shall not have a right to vote on the question of his having or not having such interest; 22 V. c. 101, s. 21.

County council to equalize valuations throughout the county.

8. Every county council shall, at a special session to be holden for that purpose, at some period not later than the first day of June, in every year during which new valuation-rolls are made, examine the valuation-rolls of the different local municipalities in the county, and ascertain whether the valuation made in each bears a just relation to the valuation made in the others;—And thereupon the county council may increase or decrease the valuations of all assessable property in any one or more of such local municipalities by adding or deducting such sums upon the hundred as are in their opinion necessary to produce a just relation between all the valuations in the county;—but no such council shall reduce the aggregate amount of the valuations made by the valutors in the whole county. 19, 20 V. c. 101, s. 9, par. 7.

Principle of such equalization.

#### APPEALS TO THE CIRCUIT COURT.

How appeal may be made.

75. 1. Any person who deems himself aggrieved by any judgment rendered by virtue of this Act, (unless such judgment has been rendered in the first instance by the circuit *or superior* court), may appeal therefrom to the circuit court sitting at one of the places adjacent to that at which such judgment was rendered, and such appeal shall be made in the following manner: 22 V. c. 101, s. 20, par. 1.

Security in appeal.

2. Within ten juridical days after the judgment is rendered, the appellant shall give good and sufficient security, (by a surety who shall justify his sufficiency to the satisfaction of the clerk of the circuit court at the place at which the appeal is to be heard,) that the appellant will effectively prosecute the said appeal and will satisfy the judgment and pay the damages and costs which may be adjudged by the circuit court, if the judgment appealed from be confirmed;—And the said clerk may administer to any person presenting himself as surety, the oaths required in similar cases, and put such questions as may be necessary to satisfy himself of his sufficiency; and the said surety shall justify his sufficiency to the amount of at least one hundred dollars; 22 V. c. 101, s. 20, par. 2.

Clerk may administer oath to surety.

Surety to justify.

Copies of security bond.

3. The said clerk shall deliver to any person applying therefor a copy of the said security, and such copy, certified by the clerk to be a true copy, shall be deemed authentic; 22 V. c. 101, s. 20, par. 3.

Suspension of execution.

4. If such security is furnished as above mentioned within the delay prescribed, execution of the judgment shall be suspended until the appeal has been decided; in default thereof the judgment rendered shall be carried into effect; 22 V. c. 101, s. 20, par. 4.

5. The appeal shall be commenced by a petition in which it shall not be necessary to set out all the facts and proceedings in the cause, but it shall be sufficient, after stating the title of the cause, the date of the judgment, and that the security required by law has been duly furnished, to state in a summary manner, as though the proceedings in the cause had already been before the court in which the appeal is to be heard, and in the ordinary form of pleadings or complaints in appeal, the motives or reasons of the appeal, with conclusions analagous thereto, and to pray that the judgment appealed from be set aside, and that such judgment be rendered as the court or judge below ought to have rendered ; 22 V. c. 101, s. 20, par. 5.

How appeal shall be commenced.

6. A copy of the said petition certified by the appellant or his attorney, and a copy of the security in appeal certified by the clerk who shall have received the same, shall be served upon the respondent or his attorney within twenty juridical days after the rendering of the judgment, together with a notice of the day on which the said petition will be presented to the circuit court, and the said petition shall be presented to the circuit court (in term) on the first juridical day of the said court immediately following the expiration of the twenty juridical days after the judgment has been rendered ; 22 V. c. 101, s. 20, par. 6.

Copies of petition and security to be served on the respondent.

7. The appellant shall file with his petition a certified copy of the security given by him, and also the notice of appeal, together with the return of a bailiff, setting forth the necessary services, and thereupon the appeal shall be heard, and decided in a summary manner ; 22 V. c. 101, s. 20, par. 7.

Papers to be filed by appellant.

8. After a copy of the security so given has been served upon the judge, or one of the judges, or upon the clerk to the judge or judges, or of the court, who rendered or pronounced the judgment or conviction, the said judge or judges, before the day fixed for the presenting of the petition in appeal, shall transmit the record to the clerk of the circuit court, with a certificate signed and sealed certifying that the documents transmitted are all the papers, documents and evidence relating to the cause ; The above service must be made within fifteen days after the day on which the judgment was rendered ; 22 V. c. 101, s. 20, par. 8.

Transmission of record from Court below.

9. In any such appeal, no new evidence shall be adduced, and no judgment shall be set aside by reason of any trifling variance or informality, but only when any real injustice has been committed ;—and when objections are raised which do not affect the merits of the cause, the circuit court may, if necessary, order the clerk of the court to make any amendment to the procedure, which, as amended, shall be executed as though it had been regular in the first instance ; 22 V. c. 101, s. 20, par. 9.

Variance or informality not grounds for setting aside judgment.

Costs of appeal,  
how awarded  
and levied.

10. The circuit court may adjudge the costs on such appeal, and if the judgment appealed from is fully confirmed, it may order that the record be transmitted to the judge or judges, or court who pronounced the judgment or conviction, and such transmission shall be effected by the clerk of the circuit court who shall annex to the record a copy of the judgment of the said court and a certificate of the costs allowed on the said appeal, and the said costs shall be levied by the same means, and in the same manner in which the judgment of the judge or judges below, or of the court below, is carried into effect according to law ;

Provision if the  
judgment be  
modified or set  
aside.

But if, on the other hand, the said judgment be modified or set aside, in whole or in part, the record and procedure on the judgment appealed from, and any procedure upon the appeal, shall remain to form part of the records of the circuit court, by which and under the authority of which, whatever shall have been adjudged, ordered, confirmed, modified or amended by the judgment of the said court shall be carried into effect, and this by the same means and in the same manner as the judgment appealed from would itself have been carried into effect ; 22 V. c. 101, s. 20, par. 10.

Provision in  
case of failure  
to prosecute  
appeal.

11. Any appellant who neglects to cause a copy of the said petition to be served as aforesaid, or who, having caused it to be served, fails effectually to prosecute the said appeal, shall be deemed to have abandoned the said appeal,—and upon application of the respondent, the circuit court shall declare forfeited all the rights and claims founded on the said appeal, and shall allow costs to the respondent, and shall order that the record, (if it has been transmitted,) be sent back to the court or judge below ;—and if the record has not been transmitted, then, upon production of the copy of the petition served upon the respondent, the said respondent shall obtain such costs as the court may adjudge ; 22 V. c. 101, s. 20, par. 11.

Recourse  
against sureties.

12. The execution of the judgment against the party condemned shall not deprive the party who has succeeded, of his recourse against the sureties for the whole or any part of the costs of the appeal remaining unpaid, to the payment of which every surety shall be bound, under the penalty of seizure and execution, in the same manner and to the same degree as the principal party ; 22 V. c. 101, s. 20, par. 12.

No *certiorari*  
to be issued in  
cases appealable  
under this  
Act.

13. No judgment rendered in virtue of this Act, shall be set aside by any other means than the appeal above prescribed, and no writ of *certiorari* shall be issued and no judgment set aside upon a writ of *certiorari*. 22 V. c. 101, s. 20, par. 16.

OATHS.

76. Any oath required by this Act may be made before any warden or mayor, or justice of the peace : 18 V. c. 100, s. 78, par. 1. By whom to be administered.

2. Any person before whom any oath may be made under this Act, is empowered and required to administer such oath, without payment, whenever called upon to do so, and to deliver to the person taking the same a certificate thereof ;— and the person taking such oath shall, without delay, deliver such certificate to the secretary-treasurer of the council in relation to the affairs of which such oath was made. 18 V. c. 100, s. 78, par. 2. Persons administering it to give certificate of its having been taken.

LANGUAGE OF PUBLICATION.

77. The governor may, by order in council, declare that the publication to be made under this Act of any notice, by-law or resolution, shall be made in one language only, in any municipality the council whereof have shewn that such publication may be so made without detriment to any of the inhabitants thereof ; The provincial Secretary shall cause a copy of every such order in council to be inserted in *The Canada Gazette*, and from the date of such insertion the publication of all such notices, by-laws and resolutions may be legally made in the municipality referred to in such order in council, in that language only which is thereby prescribed. 18 V. c. 100, s. 79. Governor in Council may allow publication in one language only in certain cases.  
Publication of such order.

FORMS.

78. The forms given in the schedule to this Act shall suffice for the purposes for which they are given ; but any other form to the like effect shall be sufficient, and any form shall be sufficient for such purposes or any other under this Act, if according to the ordinary construction of the language, the purport and intent thereof can be *bonâ fide* understood from the words used ;—and no unnecessary or irrelevant allegations or expressions, in any such form, shall affect the validity thereof, if by passing them over as mere surplusage the remainder can be made to bear the sense required ;—the rules of construction embodied in the Interpretation Act, and in this Act, shall apply as well to the forms here given and to any other such form as aforesaid, as to the allegations, statements, orders or directions therein contained ; and no objections of mere form or founded on the omission of any formality shall be allowed to prevail in any action, suit or proceeding under this Act, unless substantial injustice would be done by not allowing such objection. 18 V. c. 100, s. 80. Forms in Schedule to be sufficient.  
Interpretation of forms and proceedings under this Act.  
Merely formal objections not to prevail, if the substance be not affected.

## SCHEDULE OF FORMS.

(Those not otherwise marked being from the Schedule to 18 V.  
c. 100.)

( No. 1. )

**PUBLIC NOTICE TO BE GIVEN BY A SECRETARY-TREASURER OF  
THE COMPLETION OF HIS COLLECTION-ROLL.**

Public notice is hereby given that the collection-roll of the municipality of the (*parish, township*) of (*name*) is completed and is now deposited in the office of the undersigned. All persons whose names appear therein, as liable for the payment of any assessment, are hereby required to pay the amount thereof to the undersigned at his said office, within twenty days from this day, without further notice.

A. B.

Secretary-Treasurer of the Municipality of

(*Place.*)

(*Date.*)

18

( No. 2. )

SECRETARY-TREASURER'S NOTICE FOR THE PAYMENT OF ASSESSMENT.

MUNICIPALITY OF THE (parish, township, &c.)  
TOWNSHIP, &c.)

Mr.

MUNICIPALITY OF THE (parish, township, &c.)  
(Date of delivery,)

Mr. , Dr.

To the Corporation of the (parish, township, &c.)

(Copy of Account.)

	\$	cis.
Assessment on your (here mention the property, as house, land, &c.) valued at \$ , at (1/4ct.) in the \$....		
(Here add the various other items of taxation).....		
Total.....		

\$

Notice served.  
(here insert date of notice.)

Sir,—Take notice that, having failed to pay the above mentioned sum within the time prescribed by public notice, you are hereby required, within fifteen days from the date hereof, to pay the same to me at my office, together with the costs of this notice and service thereof as below, in default whereof, execution will issue against your goods and chattels.

A. B.  
Secretary-Treasurer.

Costs.  
Notice.....\$

(A) Costs  
Notice.....\$

19, 20 V. c. 101, Schedule. See Section 68, pars. 5, 6 of this Act.

( A )

## NOTICE OF PUBLIC MEETING FOR THE ELECTION OF LOCAL COUNCILLORS.

To the municipal electors of the (township, parish, &c., *here insert name of municipality.*)

Public notice is hereby given that a public meeting of the inhabitants of the local municipality of the (parish, township, &c., *here insert name of municipality*) qualified to vote for municipal councillors, will be held at *(here describe the place, public room, house, &c.,)* in the said municipality, on \_\_\_\_\_ day, the \_\_\_\_\_ day of \_\_\_\_\_ instant, at \_\_\_\_\_ of the clock in the \_\_\_\_\_ noon, for the purpose of then and there electing seven councillors for the said municipality, pursuant to the provisions of "The Consolidated Lower Canada Municipal and Road Act."

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_

A. B.

Registrar, deputy registrar (*or* warden) of the county of \_\_\_\_\_, *or* of the registration division number \_\_\_\_\_ of the county of \_\_\_\_\_, *as the case may be.*)

( A 2 )

## NOTICE OF PUBLIC MEETING FOR THE ELECTION OF COUNCILLORS, IN PLACE OF THOSE WHOSE ELECTION HAS BEEN DECLARED NULL AND VOID.

To the municipal electors of the (township, parish, &c., *here insert name of municipality.*)

Public notice is hereby given that a public meeting of the inhabitants of the local municipality of the (parish, township, &c., *here insert name of municipality*) qualified to vote for municipal councillors, will be held at *(here describe the place, public room, house, &c.,)* in the said municipality, on \_\_\_\_\_ day, the \_\_\_\_\_ day of \_\_\_\_\_ instant (*or* next), at \_\_\_\_\_ of the clock in the \_\_\_\_\_ noon, for the purpose of then and there electing \_\_\_\_\_ councillor for the said municipality, in stead of (A. B. and C. D. *as the case may be*) whose election has been declared null and void, pursuant to the provisions of "The Consolidated Lower Canada Municipal and Road Act."

Dated

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_

A. B.

Registrar, (deputy registrar or warden) of the county of \_\_\_\_\_, or of the registration division number \_\_\_\_\_ of the county of \_\_\_\_\_, as the case may be.)

( B )

CERTIFICATE OF THE PUBLICATION OF A PUBLIC NOTICE, TO BE ANNEXED TO OR ENDORSED ON THE ORIGINAL NOTICE.

I, A. B., residing at the (township, parish or place, *here insert residence*,) being duly sworn on the Holy Evangelists, do hereby certify and return that I did publish the within original notice, by posting a true copy thereof on the front door of \_\_\_\_\_ (*here describe the churches or chapels on the door of which and the other public place where the notice was so posted*) on \_\_\_\_\_ day, the \_\_\_\_\_ day of \_\_\_\_\_ instant, (or last) between the hours of \_\_\_\_\_ in the \_\_\_\_\_ noon and \_\_\_\_\_ in the \_\_\_\_\_ noon, (*if it be within a seigniority or fief, add*) and by reading the same at the door of the said church, at the close of divine service in the forenoon, on the \_\_\_\_\_ day of \_\_\_\_\_ last (or the \_\_\_\_\_ instant,) being the Sunday next following the day on which the same was published by posting a copy thereof as aforesaid.)

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ one thousand eight hundred and \_\_\_\_\_

Sworn before the undersigned, warden of the municipal council of the county of (*here insert name of county*), or mayor of the municipal council of the (parish, &c., *here insert name of municipality*), or one of her Majesty's justices of the peace for the district of (*here insert name of district, as the case may be.*)

B. C.

C. D.

( C )

( C )

SPECIAL NOTICE TO THE PERSON APPOINTED TO PRESIDE AT A  
PUBLIC MEETING FOR THE GENERAL ELECTION OF LOCAL  
MUNICIPAL COUNCILLORS.

Office of the municipal council of the county of \_\_\_\_\_,  
(or registry office of the county of \_\_\_\_\_, as the  
case may be.)

(Place.) (Date.) 18 .

Sir,

Hereby take notice, that pursuant to the provisions of  
"The Consolidated Lower Canada Municipal and Road Act,"  
in that behalf made, I have this day appointed you to  
preside at a public meeting of the inhabitants of the local muni-  
cipality of the (parish, township, &c., *here insert name of muni-  
cipality*.) to be held at \_\_\_\_\_ in the said municipality, on  
day, the \_\_\_\_\_ day of \_\_\_\_\_ instant, at \_\_\_\_\_ of  
the clock in the \_\_\_\_\_ noon, for the election of municipal  
councillors for the same; And that I do hereby fix (*here describe  
the house and place*.) as the place at which, and \_\_\_\_\_ day,  
the \_\_\_\_\_ day of \_\_\_\_\_ (instant or next,) as the  
day and hour on and at which the first session of the council  
of the said municipality of \_\_\_\_\_ shall be held.  
And I do hereby require you to make known the said place  
and time of such session, to each of the persons who shall be  
elected councillors as aforesaid.

D. E.

Warden (or registrar or deputy registrar)  
of the county of \_\_\_\_\_, or of the  
registration division number \_\_\_\_\_  
of the county of \_\_\_\_\_, as the  
case may be.)

( D )

\* CERTIFICATE TO BE ANNEXED TO OR ENDORSED ON EVERY  
SPECIAL NOTICE.

I, A. B., residing at the (parish, township or place, *here in-  
sert residence*), being duly sworn on the Holy Evangelists, do  
hereby certify and return, that on \_\_\_\_\_ day, the  
\_\_\_\_\_ day of \_\_\_\_\_, in the year of  
Our Lord, one thousand eight hundred and \_\_\_\_\_  
at the hour of \_\_\_\_\_ of the clock in the \_\_\_\_\_ noon, in the  
parish, township or place), in the county of \_\_\_\_\_, I did  
serve the within original special notice on the person (s) therein  
named to be notified, at his (or each of their, *as the case may  
be*) domicile (s), by leaving a true copy thereof with (*here  
mention the manner in which the service is made, either adding  
the said \_\_\_\_\_ personally, or, a reasonable  
person*)

person of his family,) and then and there exhibiting to him (or her) the said original special notice.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_

Sworn before the undersigned, Warden of the municipal council of the county of *(here insert name of county,)* or Mayor of the municipal council of the *(parish, &c., here insert name of municipality,)* or one of Her Majesty's justices of the peace for the district of *(here insert name of district, as the case may be).*

E. F.

F. G.

( E )

SPECIAL NOTICE TO MUNICIPAL COUNCILLOR INFORMING HIM OF HIS ELECTION AND OF THE DAY OF THE FIRST SESSION.

(Place.) (Date.) 18 .

Sir,

I hereby notify you that at a public meeting of the electors of the municipality of *(here insert name of municipality,)* convened and held in conformity to the provisions of "The Consolidated Lower Canada Municipal and Road Act," at the said *(parish &c.,)* on the \_\_\_\_\_ day of \_\_\_\_\_ *(instant or last past,)* you were then and there duly elected a municipal councillor for the said municipality of *(here insert name of municipality,)* and you are hereby required to attend the first session of the said council which will be held at *(here describe place of first meeting,)* on \_\_\_\_\_ day, the \_\_\_\_\_ day of \_\_\_\_\_ *(instant or next,)* at the hour of \_\_\_\_\_ of the clock in the \_\_\_\_\_ noon

G. H.

President of election.

To H. I.

Municipal councillor.

( F )

NOTICE FROM PRESIDENT OF ELECTION TO WARDEN OR REGISTRAR, WHEN AN ELECTION HAS TAKEN PLACE.

(Place.) (Date.) 18 .

Sir,

I hereby inform you that at the public meeting of the inhabitants of the municipality of the *(parish, township, &c.,)* of *(here*

(here insert name of municipality,) held at \_\_\_\_\_ on  
 day, the \_\_\_\_\_ day of \_\_\_\_\_ (instant  
 or last past) :

NAME.	RESIDENCE.	OCCUPATION.
A. E.	Quebec,	Carpenter,
C. D.	do.	do.
E. F.	do.	do.
G. H.	do.	do.
J. K.	do.	do.

were elected councillors for the said municipality, (by acclamation, they being the only candidates, *if such be the case,*) or they having the largest number of votes, as appears by the poll-books, duly certified by me and herewith transmitted.

I. J.  
 President of election.

To J. K., Esquire,  
 Warden or Registrar of  
 the county of \_\_\_\_\_

BY-LAWS AND RESOLUTIONS.

( I )

COUNTY COUNCIL BY-LAW.

Corporation of the }  
 County of \_\_\_\_\_ }

At a general quarterly session of the municipal council of the county of (here insert the name of county)\* held at \_\_\_\_\_, in the said county, on \_\_\_\_\_ day, the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord, one thousand eight hundred and \_\_\_\_\_, in conformity to the provisions of "The Consolidated Lower Canada Municipal and Road Act,"† at which meeting are present, A. B., mayor of the corporation of the (parish, &c.,) C. D., mayor of the corporation of (parish, &c.,) E. F., mayor of the corporation of (parish, &c.,) the said (three mayor, or more, as the case may be,) forming a quorum of the said council, the said A. B. presiding (as warden of the said council, *if such be the case,*) ‡ the said council doth hereby ordain and make the following by-law, to wit :

A BY-LAW.

(Here give a heading to by-law concisely indicating the purport of such by-law.)

I. That, &c., &c.

(Seal)

A. B.

Warden (or chairman, as the case may be.)

Attested, C. D.,

Secretary-treasurer of said Council.

\* (If it be a special meeting of the council, the following head should be substituted) :

At a special session of the municipal council of the county of (here insert the name of county), duly convened by special notice given to all the members of the said council by (the warden of the said council, or by A. B. and C. D., two members of the said council, as the case may be,) and, &c.

( J )

LOCAL COUNCIL BY-LAW.

Corporation of the }  
(Parish, Town- }  
ship, &c.,) of }

At a general monthly session of the municipal council of the (parish, &c.,) here insert the name of municipality \* held in the said (parish, &c.,) on day, the day of , in the year of our Lord, one thousand eight hundred and , in conformity to the provisions of " The Consolidated Lower Canada Municipal and Road Act," † at which meeting are present A. B., C. D., E. F., &c., (here insert the names of the councillors present) members of the said council, and forming a quorum thereof, the said A. B. presiding (as mayor, if such be the case,) ‡ the said council doth hereby ordain and make the following by-law, to wit :

A BY-LAW.

(Here give a heading to by-law concisely indicating the purport of such by-law.)

I. That, &c., &c.

(Seal)

A. B.

Mayor (or chairman, as the case may be.)

Attested, C. D.,

Secretary-treasurer of said council.

\* (If it be a special meeting of the council, the following head should be substituted) :

At

At a special session of the municipal council of the (parish &c.) of (*here insert the name of parish, &c.*) duly convened by special notice given to all the members of the said council by (the mayor of the said council, *or* by A. B. and C. D., two members of the said council, *as the case may be,*) and, &c.

† (*If the meeting of any council be continued by adjournment, add*):

And adjourned from the said day to            day, the  
day of            in the (said) year, (*if further adjourned*  
and thence unto, &c.

( K )

## PUBLICATION OF A RESOLUTION OF A MUNICIPAL COUNCIL.

(*When by any part of this Act a resolution of a municipal council is ordered to be published, the above heading of by-laws may be used in the public notice as far as ‡, after which, add, It was resolved, and for the words "are present" substitute "were present."*)

( L )

## NOTICE FOR SPECIAL MEETING OF A MUNICIPAL COUNCIL.

Office of the municipal council of the (county, parish, &c.)  
(Place.) (Date.) 18 .

Sir,

Hereby take notice that a special session of the municipal council of the (county, parish, &c., *as the case may be,*) will be held on            day, the            day of  
instant (*or* next), at the hour of            of the clock, in  
the            noon, at the usual place of meeting.

P. Q.

Warden, *or* mayor, *or* members of the  
municipal council of the (county,  
parish, &c.)

To Q. R.,

( M )

NOTICE FOR AN ADJOURNED MEETING OF A MUNICIPAL COUNCIL  
TO BE SERVED ON MEMBERS ABSENT AT THE TIME OF  
ADJOURNMENT.

Office of the municipal council of the (county, parish, &c.)  
(Place.) (Date.) 18 .

Sir,

You are hereby notified that the session of the municipal council of the (county, parish, &c.,) stands adjourned from  
day, the            day of            instant, to  
day,  
day,

day, the day of instant  
(or next), on which latter day the said council will meet at the  
usual place and at the hour of of the clock, in the  
noon.

R. S.

Secretary-Treasurer of the municipal council of the  
(county, parish, &c.)

To Q. R.

( N )

OATH OF OFFICE.

I, A. B., having been elected or appointed (as the case may  
be) councillor, mayor, or warden of the municipal council of  
the (county, parish, &c.) do sincerely and solemnly swear, that  
I will faithfully fulfil the duties of the said office, according to  
the best of my judgment and ability.

Sworn before the undersigned, warden of  
the municipal council of the county  
of (here insert name of county), mayor  
of the municipal council of the  
(Parish, &c., here insert name of mu-  
nicipality,) or one of Her Majesty's  
Justices of the Peace of the district  
of (here insert name of district, as the  
case may be).

S. T.

T. U.

( O )

SECRETARY-TREASURER'S SURETY BOND, WHEN GIVEN UNDER  
PRIVATE SEAL.

PROVINCE OF }  
CANADA. }

Know all men by these presents, that We, A. B., (here insert  
name of secretary-treasurer,) of the (parish, &c.,) of  
in the district of , and (here insert names, residences  
and occupations of two sureties,) are jointly and severally  
held and firmly bound to the corporation of the (county, parish,  
&c., as the case may be,) in the sum of dollars, of  
good and lawful money of this province, to be paid to and for  
the use of the said corporation, for which payment well and  
truly to be made, we jointly and severally (solidairement) bind  
ourselves and our respective heirs, executors and administra-  
tors, firmly by these presents, and do hereby especially hypo-  
thecate the properties hereinafter mentioned, to wit : the said  
A. B. (here insert name of secretary-treasurer, if he has real  
property) a certain (description of property hypothecated) and  
the said (here insert separately the name of each surety, together  
with

with description of the property hypothecated,) signed in duplicate by our respective hands, sealed with our respective seals, and dated at \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord, one thousand eight hundred and \_\_\_\_\_, in presence of (*here insert names of witnesses,*) the subscribing witnesses.

WHEREAS the said bounden (*here insert the name of secretary-treasurer elect*) hath been elected (*or appointed*) secretary-treasurer of the municipal council of the (county, parish, township, &c.); and whereas in accordance with the provisions of "The Consolidated Lower Canada Municipal and Road Act," the said bounden (*here insert names of sureties*) have been approved by a resolution of the said council as sureties for the payment of all sums of money for which he the said (*insert name of secretary-treasurer*) so elected (*or appointed*) secretary-treasurer, may as such secretary-treasurer at any time be accountable to the said corporation, including principal, interests and costs, as well as all penalties and damages to which he the said (*insert name of secretary-treasurer*) as such secretary-treasurer shall become liable in the exercise of his office.

Now the condition of the above written obligation and recognizance is such, that if the above named (*insert name of secretary-treasurer*) do faithfully discharge the duties of the office of secretary-treasurer as aforesaid, to which he has been elected (*or appointed*) so as aforesaid, and do well and truly account for and pay over to the said corporation, or to such person or persons as under the said Act shall be authorized to demand and receive the same, all sums of money for which he the said (*insert name of secretary-treasurer*) as such secretary-treasurer shall be accountable to the said corporation, including principal, interest and costs, as well as all penalties and damages to which the said (*insert name of secretary-treasurer*) as such secretary-treasurer shall become liable in the exercise of his office, for and during the time the said (*insert name of secretary-treasurer*) shall continue to hold the said office of secretary-treasurer, then this obligation to be void and of none effect, otherwise to be and remain in full force and virtue.

A. B., Signature of secretary-treasurer. (Seal.)  
 C. D., } Signatures of (Seal.)  
 E. F., } Sureties. (Seal.)

Witnesses, (*names of witnesses*) { G. H.  
 { J. H.

( P )

## SPECIAL NOTICE OF APPOINTMENT OF A MUNICIPAL OFFICER.

Office of the municipal council of the (county, parish, &c.,)  
of

(Place.) (Date.)

Sir,

You are hereby notified, that at a session of the municipal council of the (county, parish, &c., *as the case may be*), of held on the day of instant (*or last past*), you were, by a resolution of the said council, duly appointed to the office of (*here insert name of office*).

U. V.

Secretary-treasurer of the municipal council of the  
(county, parish, &c.,) of

To V. W.

(Address.)

( Q )

## NOTIFICATION OF ELECTION OR APPOINTMENT OF MAYOR.

Office of the municipal council of the (parish, township, &c.,)  
(Place.) (Date.)

Sir,

You are hereby notified that (A. B., *here insert name of councillor*) was on the day of instant (*or last*), duly elected (*or appointed, as the case may be*), Mayor of the municipality of the said (parish, township, &c.)

W. X.

Secretary-treasurer of the said council.

To X. Y.

Registrar of the county  
of *or* secretary-  
treasurer of the council  
of the county of

( R )

## PETITION FOR ERECTION OF A VILLAGE.

To the municipal council of the county of

The petition of the undersigned Inhabitants of the (parish, township, &c.,) of qualified to vote at the election of local councillors—

Respectfully sheweth :

That they are desirous that the hereinafter described tract of land be erected into a separate town (*or village*) municipality, under

under such name as may be given thereto by His Excellency the Governor General, under the provision of "The Consolidated Lower Canada Municipal and Road Act."

That the said tract of land lies within the limits of the municipality of the said county of \_\_\_\_\_ and is bounded as follows, to wit : (*here give boundaries and description of said tract*), and contains at least sixty inhabited houses within the space of thirty superficial arpents.

Wherefore the said Petitioners, resident within the said tract, pray that the municipal council of the said county of \_\_\_\_\_ will order on their said petition as in and by the said Act prescribed.

(Place.) (Date.)

(Signatures.)  
(*not less than forty.*)

( S )

**PUBLIC NOTICE TO BE GIVEN IN RELATION TO THE ERECTION OF A TOWN OR VILLAGE.**

(Place.) (Date.)

Public Notice is hereby given, that in pursuance of an order to me given by the municipal council of the county of \_\_\_\_\_, I shall, on \_\_\_\_\_ day, the \_\_\_\_\_ day of \_\_\_\_\_ instant (*or next*), at the hour of \_\_\_\_\_ of the clock in the \_\_\_\_\_ noon, visit the tract of land mentioned and described in the petition of certain inhabitants of the municipality of the (parish, township, &c.,) of \_\_\_\_\_ presented to the municipal council of the county of \_\_\_\_\_, on the \_\_\_\_\_ of \_\_\_\_\_ instant (*or last past*), praying for the erection of the said tract of land into a town (*or village*) municipality; and all parties interested who may be desirous of being heard in relation to that petition are hereby notified to present themselves then and there before me for that purpose.

Y. Z.

( T )

**PUBLIC NOTICE TO BE GIVEN BY A COUNTY COUNCIL BEFORE THE HOMOLOGATION OF A REPORT IN RELATION TO THE ERECTION OF A TOWN OR VILLAGE.**

Office of the municipal council of the county of \_\_\_\_\_

Public Notice is hereby given, that on \_\_\_\_\_ (*Date.*)  
day, the \_\_\_\_\_ day of \_\_\_\_\_ instant, (*or next*) at the hour of \_\_\_\_\_ of \_\_\_\_\_

of the clock in the \_\_\_\_\_ noon, the municipal council of the county of \_\_\_\_\_ after having heard the parties interested, will proceed to the examination of the report on the petition of certain Inhabitants of the municipality of the (parish, township, &c.) of \_\_\_\_\_ praying for the erection into a separate town (or village) municipality of a certain tract of land therein mentioned.

V. U.  
Secretary-treasurer of the municipal council of the county of \_\_\_\_\_

( U )

OATH TO BE ADMINISTERED TO SPECIAL CONSTABLES.

I, A. B., do swear that I will well and truly serve Our Sovereign Lady the Queen in the office of special constable for the \_\_\_\_\_ of \_\_\_\_\_, without favor or affection, malice, or ill will; and that I will, to the best of my power, cause the peace to be kept and preserved, and will prevent all offences against the persons and properties of Her Majesty's subjects; and that while I continue to hold the said office, I will, to the best of my skill and knowledge, discharge all the duties thereof faithfully according to law: So help me God.

( V )

WARRANT OF COMMITMENT ON VIEW.

PROVINCE OF CANADA, }  
Municipality of the (parish, }  
township &c.) of }

To all or any of the constables and peace officers in the district of \_\_\_\_\_ and to the keeper of the (house of correction, lock-up house, &c.) at \_\_\_\_\_, in the said district of \_\_\_\_\_

WHEREAS A. B. [(here describe the person) hath this day, during the election for the municipal councillors for the municipality of the (parish, township, &c.) of \_\_\_\_\_ broken and disturbed the public peace and tranquillity (here describe the manner), in the presence and within view of the undersigned duly appointed to preside and presiding at the said election; and whereas I have adjudged the said A. B. for the said offence to be imprisoned in the (house of correction, lock-up house, &c.) for the time and space of \_\_\_\_\_ days.

These are therefore to command you the said constables or peace officers, or any one of you, in Her Majesty's name, forthwith to convey the said A. B. to the (house of correction, lock-up

lock-up house, &c.) at \_\_\_\_\_, and there deliver him into the custody of the keeper thereof, together with this precept; And I hereby require you, the said keeper, to receive the said A. B. into your custody in the said (house of correction, lock-up house, &c.) and there safely keep him until the expiration of the said period of imprisonment.

Given under my hand and seal, }  
 this \_\_\_\_\_ day of \_\_\_\_\_, one }  
 thousand eight hundred and \_\_\_\_\_, } Z. Y.  
 at \_\_\_\_\_ in the municipality }  
 aforesaid. }

( W )

DISTRESS WARRANT in virtue of any by-law made under  
*section XX, par. 7.*

PROVINCE OF }  
 CANADA. }

The corporation of the (parish, township, &c., *as the case may be,*) to wit :

To all or any constables and peace officers in the district  
 of \_\_\_\_\_

WHEREAS in and by a certain by-law made and passed by the municipal council of the (parish, township, &c., *as the case may be,*) at a (general monthly) session of the said council of the (parish, township, &c., *as the case may be,*) held at \_\_\_\_\_, on \_\_\_\_\_ day, the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord, one thousand eight hundred and \_\_\_\_\_, in conformity to the provisions of "The Consolidated Municipal and Road Act of Lower Canada," it was provided (*here insert part of by-law made in virtue of the seventh paragraph of the twentieth section of this Act.*)

And whereas \_\_\_\_\_ certain person \_\_\_\_\_ did lately, to wit : on the \_\_\_\_\_ day of \_\_\_\_\_ (instant or now last past,) hold (*here state the nature of performance or exhibition,*) and whereas A. B. being (the proprietor, &c., *as the case may be,*) (*here insert the connection such person may have with the performance or exhibition,*) hath been required by the secretary-treasurer of the said municipal council, to pay into his hands for and on behalf of the said municipal council, the sum of \_\_\_\_\_, being the amount of duty imposed on every such (performance or exhibition) under and in virtue of the said law and of the said by-law; And whereas the said A. B. hath neglected and refused to pay unto the said secretary-treasurer, on his said demand, the said sum of \_\_\_\_\_, so as aforesaid, lawfully imposed on the said (performance or exhibition).

These

These are therefore to command you forthwith to make distress of the goods and chattels of the said A. B., and of all and every the goods and chattels appertaining to the said (performance *or* exhibition,) or of all or any of the persons connected with such (performance *or* exhibition); and if within the space of \_\_\_\_\_ days after the making of such distress, the said mentioned sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you detained, and do pay the money arising from such sale unto the secretary-treasurer of the said municipal council, that he may apply the same as by law directed, and may render the overplus, if any, on demand, to the said A. B., or others whom it may concern, and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein, as to law doth appertain.

Given under my hand and the seal of the said corporation, this day of _____, in the year of Our Lord _____, at _____, in the district aforesaid.	}	Y. X. Mayor of the said Corporation.
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( X )

SPECIAL NOTICE TO BE GIVEN TO ANY PERSON APPOINTED BY THE GOVERNOR GENERAL, AND TO THE SECRETARY-TREASURER OF THE MUNICIPALITY IN WHICH SUCH PERSON HAS BEEN APPOINTED.

Office of the registrar *or* of the municipal council of the county of

(Place.) (Date.)

SIR,—You are hereby notified that (you have) *or* (A. B. of \_\_\_\_\_, in, &c., has) been appointed by the Governor General to the office of \_\_\_\_\_, in the municipality of the (county, parish *or* township, &c.,) of \_\_\_\_\_ (if it be addressed to a councillor, add) \_\_\_\_\_ and that the first (*or* next) session of the municipal council of the said (county, parish, township, &c.,) will be held at (*here describe place*) on \_\_\_\_\_ day, the \_\_\_\_\_ day of \_\_\_\_\_ instant (*or* next) at the hour of \_\_\_\_\_ of the clock of the \_\_\_\_\_ noon.

W. U.  
 Registrar *or* warden  
 of the County of \_\_\_\_\_.

To A. B., warden, *or*

D. H. secretary-treasurer of the municipal council of

( Y )

## NOTICE TO PERFORM STATUTE LABOUR.

(Date.)

To Mr.

You are required to attend (*here insert place*) on the (*insert days of month*) days of (*instant or next*) at of the clock in the noon, bringing with you an axe and a hoe, (*or a horse, ox, waggon, car or other vehicle and harness,*) for the purpose of performing statute labour on the (*here describe road, bridge, &c.*)

K. L.

Inspector *or* overseer of roads,  
as the case may be.

( AA )

## PUBLIC NOTICE OF THE EXAMINATION OF ANY PROCES-VERBAL.

Office of the municipal council of the (county, parish, township, &c.) of

(Place.)

(Date.)

Public notice is hereby given to all parties interested, that pursuant to the provisions of "The Consolidated Lower Canada Municipal and Road Act," on day, the day of instant (*or next,*) at the hour of of the clock in the noon, at (*here describe the place*) the municipal council of the (county, parish, township, &c.) of will proceed to the examination or revision of the (*proper Officer's*) *procès-verbal* relative to the (*here give the nature of the work, &c.*)

B. F.

Secretary-treasurer of the municipal  
council of the (*county, &c.*) of

( BB )

## SPECIAL NOTICE BEFORE ENTERING ON OCCUPIED LAND FOR THE PURPOSE OF SURVEY.

SIR,—Hereby take notice that on day, the day of instant (*or next,*) I shall enter on the land occupied by you, situate in (*here describe the land*) for the purpose of then and there making a survey for a certain road, viz: (*here describe road by its direction, &c.*)

C. F. (*the proper officer.*)  
(CC)

(CC)

## PUBLIC NOTICE OF INTENTION TO EXAMINE ROADS IN LOCAL MUNICIPALITY.

(Place.) (Date.)

Public notice is hereby given that on \_\_\_\_\_ day, the  
 day of \_\_\_\_\_ (January or June, as the case  
*may be*), I shall visit the (parish or township, *here insert name  
 of local municipality*), for the purpose of then and there exam-  
 ining the roads within the said municipality.

G. H. (*the proper officer.*)

(DD)

SPECIAL NOTICE OF THE INTENTION OF INSPECTOR OF ROADS  
TO VISIT AN OVERSEER'S SECTION.

(Place.) (Date.)

SIR,—Hereby take notice that on \_\_\_\_\_ day next, the  
 day of \_\_\_\_\_ instant (*or next*) I shall visit  
 the roads in that portion of my division of the municipality of  
 the (*name of local municipality*) embraced within the section  
 thereof for which you are overseer; and you are hereby required  
 to meet me at the hour of \_\_\_\_\_ of the \_\_\_\_\_ noon of that  
 day at (*place of meeting*) and to accompany me in my visit of  
 that section, conformably to the provisions of "The Lower  
 Canada Municipal and Road Act, 1855."

E. F.  
Inspector of Roads.To S. T.  
Overseer.*(But see 19, 20 V. c. 101, dispensing with written notice.)*

(EE)



(FF)

## PUBLIC NOTICE OF THE REVISION OF A VALUATION-ROLL.

Office of the municipal council of the (parish, township,  
&c.,) of

(Place.) (Date.)

Public notice is hereby given to the inhabitants of the municipality of the (parish, township, &c.,) of that on day, the day of instant, (or next) at the hour of of the clock in the noon, the municipal council of the said (parish, township, &c.,) will proceed to the examination or revision of the valuation-roll for the said municipality.

F. G.

Secretary-treasurer of the said council.

(GG)



( HH )

DISTRESS WARRANT FOR ASSESSMENTS DUE.

PROVINCE OF }  
CANADA. }

The corporation of the (parish, township, &c., as the case may be,) to wit :

To all or any of the constables and peace officers in the district of

WHEREAS A. B., (*name and designation of debtor*,) hath been required by the secretary-treasurer of the municipal council of the (*name of municipality*,) to pay into his hands for and on behalf of the said municipal council, the sum of being the amount due by him to the said municipality, as appears by the collection-roll of the said municipality for the year 18 ; And whereas the said A. B., hath neglected and refused to pay unto the said secretary-treasurer, within the period prescribed by law, the said sum of ; these are therefore to command you forthwith to make distress of the goods and chattels of the said A. B. ; and if within the space of eight days after the making of such distress, the said mentioned sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do on such day as shall be indicated to you by the said secretary-treasurer, sell the said goods and chattels so by you detained, and do pay the money arising from such sale unto the secretary-treasurer of the said municipal council, that he may apply the same as by law directed, and may render the over-plus, if any, on demand, to the said A. B., or others whom it may concern, and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein, as to law doth appertain.

Given under my hand and the seal }  
of the said corporation, this }  
day of , in the year of our }  
Lord , at in }  
the district aforesaid. }

Y. X.  
Mayor of the said  
corporation.

( II )

NOTICE OF THE DAY AND PLACE OF SALE OF GOODS AND CHATTELS SEIZED FOR TAXES.

PUBLIC NOTICE is hereby given that on day, the day of instant (*or next*) at the hour of of the clock in the noon, at (*here describe the place*), the goods and chattels of A. B. (*name of person*) now under seizure for non-payment

non-payment of municipal assessments (or other dues, as the case may be), will be sold by public auction at (here name place) on \_\_\_\_\_ day, the \_\_\_\_\_ day of \_\_\_\_\_ instant (or next.)

(Place.) (Date.)

D. B.  
Secretary-Treasurer of the municipal  
council of the

( JJ )

CERTIFICATE OF A SECRETARY-TREASURER OF COUNTY COUNCIL  
OF AMOUNT REQUIRED FROM A LOCAL MUNICIPALITY.

Office of the municipal council of the county of

(Place.) (Date.)

SIR,—I hereby certify to you that under and by virtue of a by-law passed by the municipal council of the county of (here insert name of county), on the \_\_\_\_\_ day of \_\_\_\_\_ instant (or last past), intituled, A by-law (insert title of by-law) the sum of (insert sum) is therein directed to be levied in the municipality of the (parish, township, &c., insert name of local municipality) for the county purposes mentioned in the said by-law.

G. F.  
Secretary-Treasurer of the municipal council  
of the county of

( KK )

STATEMENT OF VALUE OF ASSESSABLE PROPERTY.

Office of the municipal council of the (township, parish, &c.)  
of

(Place.) (Date.)

SIR,—In conformity to the provisions of "The Consolidated Lower Canada Municipal and Road Act," I transmit you the following statement of the value of the assessable property  
in

in the municipality of the (township, parish, &c.,) according to the last assessment-roll as finally revised :

NATURE OF PROPERTY.	VALUE (OR ANNUAL VALUE.
Real Property.....	\$100,888 00
Personal Property.....	\$80,424 00

K. M.  
Secretary-treasurer of municipal  
council of

To Z. H.  
Secretary-treasurer of the council  
of the county of

( LL )

STATEMENT OF LANDS TO BE SOLD FOR TAXES, AND NOTICE  
OF SALE.

Office of the municipal council of the county of

I do hereby give Public Notice, that the lands hereinafter mentioned will be sold by Public Auction, at the (*here insert name of place*), on Monday, the \_\_\_\_\_ day of February next, at \_\_\_\_\_ of the clock in the \_\_\_\_\_ noon, for the assessments and charges due to the municipalities hereinafter mentioned upon the several lots hereinafter described, unless the same be paid with costs at least two days before the above day.

DESCRIPTION OF LAND.					AMOUNT DUE
Name of Municipality.	Concession.	Range.	Lot.	Extent.	ON EACH LOT.
	1	2	7	100 acres.	\$3 75
	3	1	6	175 do.	3 50
	5	3	8	200 do.	4 25
	6	4	11	200 do.	4 30

*If in a Seigniorly, give Boundaries.)*

P. Q.  
Secretary-treasurer of municipality of  
the county of

( MM )

(MM)

## FORM OF DEBENTURE.

Municipality of the (*as the case may be.*)

No.	£	Cy. or Stg.
-----	---	-------------

This debenture witnesseth, that the municipality of the (*name of municipality*), under the authority of a by-law passed by the council of the said municipality in conformity to the provisions of "The Consolidated Lower Canada Municipal and Road Act," intituled: A by-law, &c., (*insert title of by-law.*) have received from (*name*) of (*domicile, profession, or occupation,*) the sum of (*insert sum at full length*), as a loan, to bear interest from the date hereof at the rate of \_\_\_\_\_ per centum per annum, payable half yearly on the \_\_\_\_\_ day of \_\_\_\_\_ and \_\_\_\_\_, at \_\_\_\_\_, which sum of (*insert sum at full length*) the said municipality, as a municipal corporation, hereby binds and obliges itself to pay on the day of \_\_\_\_\_, at \_\_\_\_\_, to the said \_\_\_\_\_, or to the bearer hereof, and to pay the interest thereon half yearly, as aforesaid, according to the *coupons* or interest warrants hereto attached.

In testimony whereof I, \_\_\_\_\_, Mayor of the said municipality, being hereunto duly authorized, have signed these presents, and have hereunto affixed the common seal of the said municipality, at \_\_\_\_\_, in the county of \_\_\_\_\_, on this \_\_\_\_\_ day of \_\_\_\_\_, in the year of Our Lord, one thousand eight hundred and \_\_\_\_\_.

*(Signature of Mayor.)*

Countersigned by  
(*Secretary-treasurer.*)

[Seal.]

C A P . X X V .

An Act respecting Municipalities taking Stock in Railways and other Works.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. The council of any county or local municipality in Lower Canada, may, by by-law passed at any meeting by them regularly held, authorize the warden, mayor or chief officer, or any other person whom they may specially appoint for that purpose, to take and subscribe for shares in the capital stock of any company duly formed and incorporated for the construction of any railroad passing through or in the vicinity of their municipality, or of any company incorporated under and in pursuance of the Act passed in the twelfth year of Her Majesty's Reign, Cap. 56, for the construction of any road, bridge, pier, wharf or slide, either wholly or partly within the limits of their municipality, or in the vicinity thereof, to an amount not exceeding four hundred thousand dollars, for each municipality :

Municipal councils may authorize Warden, &c., to take stock in companies for constructing railways, bridges, roads, piers, &c., in or near municipalities.

2. Such council may authorize the necessary funds for the payment of the said stock, to be borrowed upon the credit of their municipality, and may provide for and impose a special rate and assessment over and above any rate and assessment which such council is otherwise by law authorized to make, upon the rateable property within such municipality, for all sums of money necessary to meet the interest annually upon any money which they borrow for the payment of the said shares in such capital stock, and also to establish a sinking fund to provide for the liquidation of the capital of the money so borrowed by their municipality. 16 V. c. 138, s. 1 and 16 V. c. 213, s. 1.

Special rate may be imposed to meet interest on money borrowed.

2. But no by-law shall be passed by any one of the said councils authorizing any such subscription as aforesaid, until after it has been approved by a majority of the qualified municipal electors of the municipality :

By-law to be submitted before passing for the approval of the electors.

2. For the purpose of ascertaining whether the majority of the municipal electors approve or disapprove such by-law, the council shall appoint some qualified municipal elector in each Parish, Township, or Ward in the municipality, to take the votes of the electors as to such approval or disapproval, on a day (not being a Sunday or statutory holiday) and at an hour and place in the Parish, Township or Ward, to be appointed by the council, with full power to such person to appoint a deputy to act for him if need be, and with full power also to him or his deputy to prolong the taking of the said votes during the next following

Proceedings for obtaining approval or disapproval.

following day, not being a Sunday or statutory holiday, if need be; and the day appointed by the council shall be sufficiently distant to allow the notice hereinafter mentioned to be given;

Notice to be given of proposed By-law and of the day for voting thereon.

3. The council shall then cause a copy of the proposed by-law or of every material provision thereof, to be published in English in some newspaper printed in that language, *in the district, or if there be none there, in an adjoining district*, and appearing not less than three times each week, and in French in some newspaper printed in the *District, or if there be none there, in an adjoining district*, in that language, appearing as aforesaid;—and such copy shall be inserted in each of such papers on every day of the publication thereof during at least two weeks, with a notice at the foot thereof, signed by the Warden, Mayor or clerk of the municipality, that such by-law will be submitted for the approval or disapproval of the municipal electors of the municipality, on the day, and at the hour and places appointed as aforesaid;

Copy of by-law to be posted at the church door.

4. A copy of the by-law and notice, as inserted in each language, shall be posted up at the church door (or if there be no church, then at some public place) in each Parish, Township or Ward in the municipality, during two weeks, and shall be read at such church door on two consecutive Sundays in such two weeks, after divine service (if any there be) in the forenoon;

How votes shall be taken.

5. On the day and at the hour appointed by the council for the purpose, the person appointed to take the votes of the municipal electors in each parish or township, or ward, or his deputy, shall read to the electors then and there present the copy of the proposed by-law in both languages, and put the question whether they approve or disapprove the same, and shall then take the votes of the electors who appear and wish to vote, in the same manner as they are appointed by law to be taken at elections of municipal councillors, each elector voting "yes" if he approves the proposed by-law, and "no" if he disapproves the same;—and the poll shall be kept open until six in the evening, and then adjourned until the morning of the next day, not being a Sunday or statutory holiday, when it shall be continued in like manner until five in the evening, when it shall be finally closed;

Powers of persons taking the votes.

6. Every person appointed to take the votes of the municipal electors in any place, shall have all the powers vested by law in persons presiding at elections of municipal councillors;

Closing of poll.

7. If at any time during the first or second day, one hour elapses without a vote being offered, the person presiding shall finally close the poll; and when the poll has been finally closed, the person presiding shall count the votes, and shall

shall certify and return to the municipal council the number of votes for the approval and the number of votes for the disapproval of the by-law, together with the poll list taken by him, and the council shall ascertain from the said certificates, (correcting them by the poll lists if necessary,) whether the majority of the votes of the duly qualified municipal electors voting were given for the approval or for the disapproval of the proposed by-law, and if such majority be for the approval thereof, it shall be presumed that a majority of the whole municipal electors approve the by-law, and the council shall pass it, and it shall have full force and effect, otherwise they shall proceed no further with it ;

In case the By-law is approved.

8. Such by-law, if passed, shall, in the preamble thereof, contain a recital that all the requirements of this Act have been complied with before the passing thereof, and the correctness of such recital shall not be traversed or called in question thereafter, so as to affect the validity of such by-law, but this shall not affect the responsibility of any person or persons who have knowingly concurred in any false recital therein ;

What the preamble shall contain.

9. The council may, out of any moneys to be raised under this Act, pay a reasonable compensation to the persons employed in taking the votes of the municipal electors as aforesaid, and all expenses fairly incurred in carrying this Act into effect. 16 V. c. 138, s. 2, and 16 V. c. 213, s. 1.

Expenses of taking the votes.

3. No municipal council shall adopt any of the proceedings hereinbefore mentioned unless there has been made within the then next preceding five years, by the assessors or other proper persons, a valuation of the rateable immoveable property of the inhabitants of the municipality, and such valuation shall be considered as the basis of any special rate or assessment to be levied in the municipality under the provisions of this Act. 16 V. c. 138, s. 3.

No such By-law may be passed unless a valuation has been made within 5 years.

4. So soon as a by-law has been passed by the council of any municipality, as mentioned in the foregoing sections, the warden, mayor or other person thereby authorized may, on behalf of such municipality, subscribe for such number of the shares in the capital stock of company determined upon in such by-law ; and the funds required to pay for the said capital stock may be borrowed on the credit of the municipality either in this Province or elsewhere, and bonds or debentures of the municipality bearing interest, and payable to the bearer or to order, either in this Province or elsewhere, and in currency or sterling, signed by the warden, mayor or other person specially appointed for that purpose, countersigned by the secretary-treasurer, and sealed with the seal of the municipality, may be issued for the amount of the shares of the said capital stock so subscribed for, and may be delivered to the company or sold to realize funds for the payment of the said stock :

If By-law be passed, money may be raised thereon and how.

Amount of such debentures restricted.

2. But the said bonds or debentures shall not be granted for less than four hundred dollars each, and may be in the form A, annexed to this Act, or in any form determined upon by the council of the municipality by which they are issued. 16 V. c. 138, s. 4.

Certificate to be made by the secretary-treasurer if his funds are insufficient to meet claims under this Act.

5. If at any time it happens that the moneys in the hands of the secretary-treasurer of any municipality, and applicable to the payment of the interest or of the principal of the debentures issued by such municipality, or any part of the same, are insufficient to pay any such interest or principal then due, the said secretary-treasurer shall calculate what rate in the dollar upon the assessed annual value of the property liable to assessment in the municipality, will, in his opinion, (after making fair allowances for expenses, losses and deficiencies in the collection of such rate,) be required to produce a sum sufficient with the moneys in his hands applicable to the purpose, to pay the sum due for such principal and interest or either, as the case may be, and shall certify such rate under his hand to the council for the information thereof, in the following form, or to the like effect :

Form of certificate.

“ Gentlemen,—I hereby certify, for the information of the council of the municipality of the county, (township, parish, city, town or village) of \_\_\_\_\_, that a rate of \_\_\_\_\_ in the dollar, on the assessed yearly value of the property liable to assessment in the said municipality, is, in my opinion, (after making a fair allowance for losses and deficiencies in the collection of such rate,) required to produce a net amount equal to that now due for interest, (and principal *if any be due*,) forming part of the loan contracted in virtue of the Act, &c.,—(*title of this Act*)” ;

Effect thereof.

2. And such certificate shall have the like effect as a by-law of the council of such municipality lawfully imposing the rate therein mentioned, and shall be obeyed and acted upon by all officers of the municipality and by all others, and the rate therein mentioned shall be forthwith levied and paid accordingly, and in addition to any other rates lawfully imposed by any by-law of the council thereof, notwithstanding any Act or provision of law to the contrary, limiting the amount of rates to be imposed in any one year, or as to the time of the year at which rates may be imposed, levied or collected ;

How proceeds of rates shall be applied.

3. And the proceeds of such rate shall be applied, first, to the payment of the principal or interest, or both, as the case may be, for the payment whereof the rate was imposed, and if there be any surplus of the said proceeds, such surplus shall make part of the sinking fund for the extinction of the said loan, or if there be no part of the said loan for which a sinking fund is required under this Act, then such surplus shall be applied

applied to the general purposes of the municipality. 16 V. c. 138, s. 5.

6. A special rate and assessment shall, under the authority of every by-law to be passed as aforesaid, be raised, levied and collected annually in the same manner as other rates and assessments which municipalities are by law authorized to raise, levy and collect, and with the same hypothec, mortgage and priority and recourse for securing and recovering such special rate and assessment :

Special rate to be raised annually under the said By-law.

2. The said special rate and assessment shall be raised, levied and collected upon and from all rateable property in the municipality in which such by-law is passed, and shall be in amount sufficient to pay the interest annually of the bonds or debentures issued by the Municipality under this Act, and at least two per cent. additional on the entire amount of the capital of the said bonds or debentures in each year, after deduction of all charges and expenses, for the purpose of establishing a sinking fund to redeem the capital of the said bonds or debentures, which additional two per cent. or upwards, as the case may be, together with all other moneys which may be specially appropriated for that purpose by the council of such municipality, shall be invested in provincial government debentures, or in the stock of any chartered bank in this province, or otherwise in any manner in which municipalities are by law authorized to invest moneys. 16 V. c. 138, s. 6.

Amount thereof.

Sinking Fund.

7. If at any time any sheriff or bailiff receives a writ of execution, commanding him to levy any sum of money due by any municipality for the principal or interest of any bond or debenture issued under the authority of this Act, the plaintiff may require, and the court whence such execution issues may order it to be levied by rate :

How the principal and interest due and unpaid on debentures issued under this Act shall be levied under execution.

2. If such order be made, the sheriff or bailiff shall cause a copy of such writ to be served upon the secretary-treasurer of such municipality, and if the money therein mentioned, with all the lawful interest and costs which the said sheriff or bailiff is commanded to levy, is not paid within one month from the time of such service, the said sheriff or bailiff shall himself calculate what rate in the dollar, upon the assessed value of all the rateable property lying or situate within the limits of the municipality, will, in his opinion, after making fair allowance for the expenses, losses and deficiencies in the collection of such rate, be required to produce the debt, interest and costs which he is commanded to levy, and a sum of ten per centum in addition ;

Sheriff, in certain case, to calculate the rate required.

3. The said sheriff or bailiff may command the council of the municipality, and all officers whom it may concern, to cause the rate so calculated to be levied and collected, and the proceed

Duty of secretary-treasurer, assessors and other officers.

to be paid over to him ; and the secretary-treasurer, assessors, collectors and all other officers of the municipality, shall produce to the said sheriff or bailiff, on his demand, all assessment books, papers and documents, having reference to the assessment of the property in the municipality, and shall give him such information as he requires in order to fix the said rate ;

Penalty on failing to obey the sheriff.

4. All such officers of the municipality shall obey the said sheriff or bailiff as well in respect of such information as in the levying and collection of the said special rate, and for neglecting or refusing such obedience, shall be liable to imprisonment (*contrainte par corps*) to be decreed against them by the court in which the judgment has been rendered and ought to be levied ; and the said sheriff or bailiff shall, for the purpose of imposing, levying and collecting the said special rate, have all the powers of the said municipal council and of its officers, and may proceed to the sale of lands and immoveable property in the same manner, and take such other proceedings and recourses as they could do for the non-payment of any rate or assessment ;

Special powers of sheriff.

How amount levied shall be disposed of.

5. The said sheriff or bailiff shall pay to the plaintiff his debt, interest and costs out of the amount levied, and if there is any surplus, it shall be paid back to the secretary-treasurer of the municipality, but if there is a deficiency, a new levy may be made ;

Proceedings for redress.

6. No rate so imposed, nor any levy or collection by such sheriff or bailiff, shall be liable to be opposed for inequality or injustice, but any party injured may petition the council of the municipality for redress out of their other funds. 16 V. c. 138, s. 7.

Parishes or townships specially interested may authorize subscription of stock in railways to be held by the county in their behalf.

8. If the inhabitants of any one or more townships or parishes in any county, are more especially interested in any such *railway* than the other townships and parishes therein, then the county council may pass a by-law or by-laws to authorize the Warden of such county, or other person whom they may appoint, to subscribe for stock of the company incorporated for the construction of such *railway*, to be held by the county for and on behalf of such township or townships, parish or parishes :

How money may be raised.

2. In such case the sums necessary for paying for such stock or the instalments thereon, and the principal and interest of any debentures issued for raising money to pay for such stock or instalments, shall be raised by assessment on the assessable property in such township or townships, parish or parishes only, and not on the property in the remainder of the county ; and such stock shall be held by the county for the benefit of such township or townships, parish or parishes, and any surplus profits or dividends thereon, after paying all charges incurred

incurred in respect of such stock or such debentures as aforesaid, shall be credited to such township or townships, parish or parishes, and shall go in deduction of any taxes which would otherwise be payable by them for county purposes; and the form of any debenture to be issued for the purpose of raising money to pay for such stock, shall be varied so as to shew that the money thereby secured is payable only out of moneys to be raised by assessment on the assessable property in such township or townships, parish or parishes;

3. But in so far as will not be inconsistent with the foregoing provisions of this section, the foregoing provisions of this Act shall apply to the case mentioned in this section, and the sheriff or bailiff having any writ of execution issued under a judgment against the county municipality for any moneys due on any such debentures, shall have the same powers for levying the same on the assessable property in such township or townships, parish or parishes, as under this Act he would have for levying the same on the assessable property in the whole county, if the stock had been subscribed for and the debentures issued on account of the county;

Powers of sheriff as regards the levying of moneys in such parishes, &c.

4. No by-law shall be passed under this section, unless the councillors, representing each township or parish on account of which stock is to be taken in any railway company as aforesaid, vote for the passing of such by-law, nor unless the fact of their so voting shall be recited in the preamble thereof, and such fact being so recited shall not be controvertible as against the company to whose stock the subscription is made, or any person claiming under any debenture issued under such by-law, saving always the recourse of any person injured by any mis-statement in such recital against all parties concerned in making the same;

By-laws not to be valid unless voted for by councillors for parishes, &c., interested.

5. It shall not be necessary that any by-law, passed under this section, with the consent of the councillors representing the township or townships, parish or parishes affected thereby, should be submitted to the approval of the qualified municipal electors therefor, or that it should be approved by a majority of such electors; any thing in the foregoing sections of this Act to the contrary notwithstanding. 16 V. c. 213, s. 2. *But see* 22 V. c. 101, s. 24.

By-laws need not be submitted for approval of electors.

9. No such by-law, as is mentioned in the first or in the eighth sections of this Act, shall be repealed until the debt contracted under it and all interest thereon have been entirely paid, cancelled and discharged, and any proceeding for the repeal of any such by-law until the complete payment of such debt has been made, shall be absolutely null and void. 16 V. c. 138, s. 8.

By-law not to be repealed till the whole debt is paid.

Certain rights and liabilities of municipalities not affected by this Act.

10. Nothing in this Act shall be construed to diminish or affect any of the rights or liabilities of any municipality under the seventy-fifth, seventy-sixth, seventy-seventh, seventy-eighth and seventy-ninth sections of the *Act respecting Railways*, Chapter sixty-six of the Consolidated Statutes of Canada, or under the provisions of any act or law in force in Lower Canada in relation to the establishment of municipal authorities therein. 16 V. c. 138, s. 9.

SCHEDULE A

REFERRED TO IN THE FOREGOING ACT.

Municipality of the county, (parish, township, city, town or Village, *as the case may be.*)

No. £ Cy. or Stg.

This debenture witnesseth, that the municipality of the county (*or as the case may be.*) under the authority of Chapter of the Consolidated Statutes for Lower Canada. intituled: *An Act, &c., (title of this Act.)* have received from (*name*) of (*domicile, profession or occupation.*) the sum of £ (*cy.*) or (*stg.*) as a loan, to bear interest from the date hereof at the rate of per centum per annum, payable half-yearly on the day of and , at , which sum of £ the said municipality, as a municipal corporation, hereby binds and obliges itself to pay---(*if the debenture is issued under section eight, add, out of moneys to be raised by assessment on the assessable property in the townships (or parishes) as the case may be, of only*---on the day of , at , to the said , or to the bearer hereof, and to pay the interest thereon half-yearly, as aforesaid, according to the *coupons* or interest warrants hereto attached.

In testimony whereof I, , Warden (*or Mayor*) of the said municipality, being hereunto duly authorized, have hereunto affixed the common seal of the municipality, at , in the said county (township, parish, city, town or village) of on this day of , in the year of Our Lord, one thousand eight hundred and .

*Signature of Warden or Mayor.*

Countersigned by  
*Secretary-Treasurer.*

[Seal.]

C A P . X X V I .

An Act respecting Abuses prejudicial to Agriculture.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. This Act shall not affect the powers and duties of the Municipal Councils, whether local or County, excepting in so far only as herein expressly provided. Powers and duties of municipal councils, not affected.

DAMAGES BY TRESPASS ON THE PROPERTY OF OTHERS.

2. Except in the discharge of any duty imposed by law, no person shall enter upon or pass over the land of another without permission of the owner or his representative, on pain of incurring a fine of not less than one, nor more than six dollars : Penalty on trespassing.

2. It shall be lawful, nevertheless, to make use of any navigable river or water-course, and the banks thereof, for the conveyance of all kinds of lumber, and for the passage of all boats, ferries and canoes, subject to the charge of repairing, as soon as possible, all damages resulting from the exercise of such right, and all fences, drains or ditches so damaged ; Navigable water-courses and the banks thereof to be thoroughfares.

3. The proprietor, or his representative or servant, may arrest without warrant any person in the act of contravening this section, and bring him forthwith before a Justice of the Peace. 20 V. c. 40, s. 2. Arrest of offenders.

3. Any person who during the day, upon the property of any other person, leaves any gate open, takes down, cuts, breaks, removes or damages any fence, cuts or destroys any hedge, cuts, shatters, breaks down, removes or damages, any tree, shrub, or plant, removes any canoe, landing-place, ferry or boat from the bank of any river or other place, or burns or removes from such property, any wood, shall incur a penalty of not less than one nor more than six dollars ; if such offence be committed during the night, the penalty shall be doubled ; and whether the offence be committed by day or by night, the offender may be condemned to the payment of damages : Penalty on persons damaging property, &c.  
If by night.

2. Any person who has pulled down or removed any part of a fence, or who is found upon any land, highway or road, having in his possession any part of the materials of any fence, may be arrested without any warrant, either by the owner or one of his servants, or by any person cognizant of the offence, and brought before any Justice of the Peace, who may imprison him with a view to further examination, for any period not exceeding twenty-four hours, or admit him to bail if he can furnish it to the satisfaction of the Justice of the Peace ; Pulling down, or carrying away fences.

Offender may arrange with complainant.

3. The person so arrested may, however, arrange with the proprietor or complainant, and may be discharged upon payment of all costs, damages and penalties theretofore incurred. *ibid*, s. 3.

In case offender be a stranger without means.

4. If the person contravening the provisions of this Act is a stranger, or has no real property in the Parish or Township, and has no means of paying the fine, damages and costs of conviction, the Justice of the Peace may order that the defendant be confined in a place of security until the return of the Writ of seizure, or until he shall produce sufficient security, as provided by section sixty of chapter one hundred and three of the Consolidated Statutes of Canada. *ibid*, s. 4.

DAMAGES CAUSED BY ANIMALS.

Animals not to be allowed to stray.

5. No person shall permit any horse, mule, horned cattle, sheep, goat, pig, fowl, or other animal belonging to him to stray upon the property of another, without the permission of the owner or tenant thereof nor on the bank of any stream, nor on any public road or place, under the following penalties :

Fines.

For each Stallion nor under two years of age,	\$	cts.
not less than \$5, nor more than...	10	00
“ “ Bull, boar, or ram nor less than \$1		
nor more than.....	4	00
“ “ Gelding, mare, ox, cow, or hog....	00	25
“ “ Colt, filly, calf, or goat.....	00	20
“ “ Sheep .....	00	10
“ “ Goose, duck, turkey, or other poultry.	00	5

To be doubled for subsequent offences.

And such penalties shall be doubled for the second or any subsequent offence, whether any arrangement has come to between the parties, or judgment has been rendered with regard to any prior offence. *ibid*, s. 5.

Pigs to be ringed.

6. Any person who allows a pig to stray, without having ringed it, shall pay a fine of not less than one, nor more than two dollars. *ibid*, s. 6.

Animals at pasture.

7. The owner or tenant of any land shall be responsible for damages caused by any animal he receives to pasture, as though such animal were his own property :

How complaint of damage by animals shall be made.

2. If the animal causes damage, the complainant may give verbal notice of his complaint by speaking to any reasonable person in any house built upon the land on which the animal is at pasture,—or at the domicile of the person who has received the animal to pasture, by speaking to him personally or to any reasonable member of his family. *ibid*, s. 7.

8. Any person who has suffered damage by any horse, mule, cattle, poultry or other domestic animal, may make complaint thereof, before any Justice of the Peace, either for the damages only or for the penalty and the damages together, and if the Justice of the Peace shall be convinced that no damage has been caused (if the action is only brought for damages) he shall dismiss the complaint and condemn the complainant to pay costs: Proceedings.  
Complaint dismissed.

2. But if the action is brought for both penalty and damages, he shall condemn the offender to costs, if any part of such complaint be well founded;—but if the complaint is unfounded, except in so far as it relates to the penalty, and costs have been incurred to ascertain the damages, he shall only condemn the offender to the costs of the complaint and the penalty, and the complainant to the costs incurred to ascertain the damages; If complaint be maintained.

3. If the Justice has reason to believe that damages have been done, he shall forthwith order the parties contesting, unless they forthwith arrange the matter in dispute between them in his presence, each to name an *expert*, and the Justice himself shall appoint a third, and the two others also, if the parties refuse to name them; The *experts*, if so named, shall proceed as soon as possible to ascertain the damages in the presence of the parties, or in their absence after having given them notice, and they shall report in writing to the Justice of the Peace the conclusions arrived at by them in the matter; Experts in certain cases.  
Their duties.

4. The Justice of the Peace after notifying the parties, and having heard them, if present, in favor of or against the report, shall award to the complainant the amount of damages set forth in the report, with the costs of report and prosecution, taxed by such Justice, and shall cause the amount to be raised in the manner hereinafter prescribed; Justice to make final award.

5. If, however, before making complaint to a Justice of the Peace, the party, who has suffered the damages and the party against whom complaint is laid voluntarily, consent to abide by the decision of *experts* to be named by themselves, the decision of such *experts* shall be binding upon both parties; But if the two *experts*, in case of their being of contrary opinions, are unable to agree as to the selection of a third, any Justice of the Peace, upon the application of one of the parties, may appoint a third *expert*; Amicable reference to experts.  
Third expert.

6. If the party condemned neglects or refuses to pay the sum fixed by the *experts*, such party may be sued by the person to whom such sum is payable or by his representative, before any Justice of the Peace. *ibid*, s. 8. In case of failure to pay award.

9. Any owner or occupier of land, or his servant or representative, and any Inspector may seize and impound where Animals straying may be impounded.

a public pound exists, or take and retain at his own place of abode, any animal he finds wandering on his property or on a public road or place, or on the bank of any stream, until the owner of such animal has paid the fine, damages and costs imposed by this Act, as the case may be :

Party impounding an animal must feed it.

Penalty.

2. The person who has confined such animal shall provide it with proper food, in sufficient quantity, and give it water and take proper care of it under a penalty of forty cents for each day during which he neglects to do so, besides the damages occasioned by such neglect ;--The said penalty, and damages, if any, shall belong to the owner of such animal, and may be recovered by him before a justice of the peace if the person who has confined the animal does not pay them after being required so to do ;

In case owner be unknown.

3. If the owner of such animal is unknown to the person who has taken it in possession, such person shall give public notice on two consecutive Sundays at the door of the church, in the parish or township, and if there are more churches than one, then at the door of the church which is nearest to the locality in which the animal was seized, that such animal will be sold at such a time, hour and place, unless the owner do, before that time, claim back his property ;

Time for reclaiming animal.

4. If the owner does not reclaim his property before the Monday following the day on which the last notice is given, and pay the fine, costs and damages, the animal shall be sold on the said Monday by one of the inspectors, who has been notified to that effect by the party seizing ;

Costs.

5. But if the owner reclaims his animal at any time between the date of the seizure and the Monday after the day on which the last notice has been given, he shall, in such case, be bound to pay the costs and damages as well as the fine ;

Proceeds of sale how dealt with.

6. The inspector shall receive the proceeds of the sale and thereout shall pay the fine, the costs of all kinds as estimated by a justice of the peace, and the damages, and shall remit the balance to the secretary-treasurer of the parish, *township* or village municipality in which the offence was committed, as the case may be ;--the municipality shall pay over such balance to the owner of the animal, if such owner becomes known to such municipality within one year, but if not, shall retain the amount for the improvement of bridges, roads and works under its control ;

Inspector to render an account.

7. The inspector shall render an account of the due application of the moneys arising out of the sale of the said animal to the secretary of the *parish*, township or village municipality in which the offence was committed, within thirty days after such sale, on pain of the fine imposed by this Act ;

8. But if the person so seizing any animal knows the owner thereof, he shall give him notice of the seizure, as speedily as possible, and if such owner does not reclaim his animal and pay the fine, damages and costs, as the case may be, within twenty-four hours, the case shall be dealt with as provided by the second, third, fourth and fifth paragraphs of this section ; but if the sale of such animal do not realize sufficient to pay the penalty, damages and costs, as the case may be, the offender shall nevertheless be bound to pay any balance remaining due ;

If owner be known.

To be liable for any deficiency.

9. In any case it shall not be necessary to seize and confine any fowl or other species of domestic poultry, in order to be entitled to claim damages, but only to prove by one credible witness, other than the complainant, that they have really caused the damage complained of ; nevertheless whoever chooses to seize them may do so. *ibid*, s. 9.

Damage by poultry.

10. The inspector may, at the sale of any animal, refuse the offer or bid of any person who is unknown or insolvent, or a stranger in the parish or township in which the sale is made, unless he gives security to the satisfaction of the inspector of his ability to pay :

Inspector may refuse bids.

2. If after the sale of any animal the purchaser does not immediately pay the price, the inspector may forthwith re-sell the animal, and so continue to do until the price is paid, and shall only give up possession after such payment ;

Re-sale.

3. Within one month from the day of sale the owner of any animal sold may reclaim it from the purchaser, provided he pay him at once ten per cent. upon the purchase money, over and above all his disbursements, for purchase, keep, and other charges ;

Former owner may reclaim on certain conditions.

4. But to entitle the owner to avail himself of the next preceding paragraph, he must be a stranger in the parish in which the animal is sold ;

But he must be a stranger.

5. If there be no bidder on the day fixed for the sale, the inspector shall adjourn it to another day, and shall give public notice thereof. *ibid*, s. 10.

If there be no bidders.

11. The owner (or his representative) of any animal confined by the keeper of any public pound, or by any person whomsoever, may demand delivery thereof between five o'clock in the morning and nine o'clock in the evening, upon payment, or legal tender to the keeper, of the fine, damages and costs ; and the keeper shall incur a penalty not exceeding two dollars for every day he shall afterwards unjustly detain such animal, in addition to the damages thereby occasioned :

Owner may demand release from pound on payment of fine and costs.

Persons unlawfully taking away animals impounded.

2. Any person who takes and conveys away any animal so impounded or detained for damages it may have caused, or respecting which a complaint has been made, shall be liable to a penalty equal to the whole amount of the damages and penalty for which the proprietor of the animal was liable, and to a further fine of two dollars, or to be imprisoned for eight days, or both. 20 V. c. 40, s. 11.

#### DOGS.

Vicious or dangerous must be confined or killed.

12. Any justice of the peace,--upon a complaint made to him that a dog is vicious or supposed to be attacked by hydrophobia, that it is in the habit of attacking persons, or animals at large or in harness, without the limits of its master's property,--may, after hearing the parties in a summary manner, and if he is convinced that the complaint is well founded, condemn the proprietor or possessor of such dog to cause it to be confined for a period of forty days, or may order that such dog be killed,--with costs against such owner or possessor :

Penalty.

2. If the owner or possessor of such dog permits it to go at large, or fails to kill it, in contravention of the order of the Justice, such owner or possessor shall incur a penalty of not more than one dollar *per diem* ;

In case the dog has bitten any one.

3. But if it is proved that the dog has bitten any person outside the limits of its master's property, and that the dog is vicious, the Justice of the Peace shall condemn the owner or possessor to kill it ;

Dogs pursuing and killing sheep.

4. It shall nevertheless be lawful to kill any dog which, without the limits of its master's property pursues or is known to pursue and strangle sheep,--or to make a complaint to a Justice of the Peace, who shall condemn the owner to kill such dog and to pay the costs, upon the testimony of one credible person, without prejudice to any claim for damages caused by the loss of the sheep. *ibid*, s. 12.

#### OBSTRUCTIONS UPON LANDS.

Timber thrown on lands or beaches to be hauled up after 1st June.

13. If any description of timber or wood of any kind be carried in any manner whatever upon the beach of any lake or floatable or navigable stream or upon the land adjoining, and remains there until the first day of June, the owner or occupier of such land or beach may then cause such timber to be hauled up and deposited in a place of safety :

Subsequent proceedings.

2. Such owner or occupier shall then give public notice, that such timber (describing the same and any marks thereon) has been found upon his land or beach, that it is in such a place, and that if the expenses incurred for the publication of the notice and in hauling the timber to such place, and the damages, if any,

any, are not paid before such a day and before the sale, such timber will be publicly sold by an Inspector to the highest bidder ;

3. The proceeds of the sale shall be applied to the payment of all expenses and damages occasioned by such timber, and if there be any surplus, it shall be handed over to the Secretary-Treasurer of the local municipality in which the timber was found, and if there is no such municipality, then to the Secretary-Treasurer of the county municipality, to form part of the funds in his hands, if, within the period of one year from the sale of such timber, the surplus arising from such sale is not claimed by the owner of the timber or his representative. *ibid*, s. 13. Application of proceeds of sale.

RIVERS AND STREAMS.

14. Whoever throws into any river, rivulet, or water-course in Lower Canada, any slabs, bark, waste stuff, or other refuse of any saw-mill, (except saw-dust) or any stumps, roots, or waste timber, and allows the same to remain in and to obstruct such river, rivulet, or water course, shall thereby incur a penalty not exceeding two dollars, and not less than one dollar, for every day during which such obstruction remains therein after he is required by the party interested to remove the same, over and above all damages arising therefrom. 6 V c. 17, s. 1. Penalties on persons causing obstructions in rivers, streams, &c.

FILTH.

15. Any person who deposits or causes to be deposited any filth or dead animal in any river, stream or water-course, or upon any public highway, or upon the property of another, shall incur a penalty of four dollars, (without prejudice to any other damages, recoverable upon the oath of the prosecutor and one credible witness, and such person shall be bound to remove such filth or dead animal, under a penalty of one dollar for every day he neglects to do so, without prejudice to any further damage caused by such neglect : Penalty for throwing filth into streams.

2. If such person be unknown or cannot be discovered, the Inspector shall cause the animal to be buried, and shall cause all filth to be removed from the river, stream or water-course, public road or private property, within twenty-four hours after he has been notified so to do ; and such burial or removal shall be effected at the cost of the local municipality, if any exist, if not, at the cost of the county municipality ; In case offenders be unknown.

3. Any person may compel any one retaining on his own property any dead animal or filth, to bury the same, under a penalty of one dollar for each day he neglects so to do. 20 V. c. 40, s. 14. Dead animals, &c., to be buried.

## NOXIOUS WEEDS.

Noxious weeds,  
&c., to be  
destroyed.

16. Any person may, by special notice require any owner, occupier or holder of any land or common not actually under seed, or any person bound to keep in order any public or private road or by-road, to cut and destroy between the twentieth of June and the first of August, the daisies, thistles, wild endive, chicory, celadine and all other noxious weeds or plants considered as such, growing on the said land or common or public or private road or by-road :

In case of re-  
fusal.

2. In case of refusal or neglect, any Justice of the Peace may, eight days after notice has been given, condemn the delinquent, upon complaint supported by the oath of one credible witness other than the complainant, or upon the confession of the party prosecuted, to a penalty of forty cents for every day he so refuses or neglects, over and above the costs and charges incurred in obtaining such judgment, and such judgment shall be rendered in a summary manner ;

Penalty for  
scattering seed  
of weeds.

3. Any person who scatters, or causes to be scattered, the seeds of weeds, to the prejudice of another person, shall incur a penalty of not less than one nor more than eight dollars ;

Wild mustard.

4. Any person may, after special notice, compel his neighbour to pull up wild mustard, even in a sown field, so soon as it flowers, under the penalty mentioned in the preceding paragraph. 20 V. c. 40, s. 15.

## DÉCOUVERTS.

Découvert may  
be demanded.

17. Any owner or occupant of any cultivated land may, by the intervention of an Inspector, compel his neighbour, whether he be owner, possessor or occupant, to grant him *découvert* :

Extent thereof.

2. Such *découvert* shall be forty-five feet in breadth adjacent to the line of separation, and of the length of the cultivated land ;

When and how  
to be made.

3. The Inspector, before ordering the making of such *découvert*, shall visit the locality, after having given special notice of his visit to the parties interested, and upon his order the *découvert* shall be made within a period not exceeding one month ;

In case of re-  
fusal or neglect.

4. Whoever refuses or neglects to obey the order of the Inspector shall pay for each arpent in length of such *découvert* a fine of forty cents for the first year, and double that amount for any subsequent year ;

5. The *découvert* shall not extend to fruit trees, nor to hard and soft maple trees, nor to trees retained for the embellishment of the property, but to all other trees and shrubs whatsoever ;

Certain trees exempted.

6. Any person availing himself of the two next preceding paragraphs shall, nevertheless, be bound to pay the damages as ascertained by *experts* to be chosen, one by each neighbour, and the third, if required, by any Justice of the Peace, unless the two *experts* already appointed themselves agree in the choice of a third ;

Damages to be ascertained by *experts*.

7. If one of the neighbours refuse to name his *experts*, any Justice of the Peace may name him on the requisition of any person interested in the carrying out of such *expertise*. 20 V. c. 40, s. 16.

*Experts* how named.

18. The Inspector shall not order that the *découvert* be made unless the complainant proves that he has given special notice to the person from whom he demands such *découvert*, or to his representative, before the first day of December next preceding his complaint :

Complainant must prove notice.

2. If the complaint is brought against a person who does not reside in the district or who has no known agent, the complainant must prove that the notice has been posted up at the door of the Church of the place in which the property is situate, and upon the property itself, for four consecutive Sundays, at any time whatsoever within the year preceding the first day of December then last ;

In case defendant be non-resident.

3. After the order given by the Inspector, the complainant alone shall be entitled to prosecute, if necessary, for the execution of the works, and this in conformity with the provisions of this Act. 20 V. c. 40, s. 17.

Complainant only to sue.

WATER-COURSES.

19. On or before the fifteenth day of July in each year, all water-courses shall be thoroughly opened, cleansed and rendered fit for the passage of all water flowing into the same, and any person failing to do the said work shall incur a penalty of forty cents for each and every day after he has been notified by one or more of the parties interested to do the said work. 20 V. c. 40, s. 18.

Water-courses to be opened and cleansed.

20. Any proprietor or occupant of land may call upon the Inspector to visit and examine any water-course common to several lands, the labour relating to which has been regulated by a *procès-verbal*, or by an agreement made by the parties interested, or by Municipal authority, to the end that he may order that the said water-course be made, repaired and kept in order

Inspector to be called upon to visit them.

Who may act as. order in the manner stated in the *procès-verbal* or agreement, or by Municipal authority ;--and in any cases relating only to repairing and keeping a water-course in order, it shall, for that purpose, be lawful to take an Inspector of the said Parish or Township, whether he be an interested party or not, the provisions of the twentieth and twenty-first sections of this Act to the contrary notwithstanding :

Penalty for refusal. 2. Any person who fails to obey the decision of the Inspector shall incur a penalty of forty cents for each day the work shall remain undone after the delay fixed by the Inspector ;

Complainant, in certain cases, may do the work and recover the costs. 3. The Inspector upon the expiration of the specified delay, shall, if required so to do, authorise the complainant to do or cause to be done the work which the Inspector has ordered, and the complainant shall be entitled to recover the cost of the said work and all his just expenses ;

Lands may be sold for expenses. 4. If the person condemned to do the work shall fail to pay the amount, the lands for which the said expenses are incurred, may be sold in the manner hereinafter prescribed in the thirty-third section of this Act. 20 V. c. 40, s. 19.

How the work shall be divided. 21. Whenever it becomes necessary to open, deepen, enlarge or divide a water-course common to several lands, the work connected with have not been appointed and regulated by any *procès-verbal* or agreement, or by municipal authority, the matter in dispute shall, on the requisition of one of the parties interested be adjusted by two disinterested Inspector in the Parish or Township in which such work is to be done ; or

What Inspector may act. 2. If there be no desinterested Inspector in the said Parish or Township, then by two disinterested Inspectors in a neighboring Parish or Township, and so whenever the services of Inspectors are required according to the provisions of this Act. 20 V. c. 40, s. 20.

Water-course in more than one parish, &c. 22. Any person interested in the opening of a water-course or the widening thereof or its division into several branches, may, if it crosses two or more Townships or Parishes, call upon disinterested Inspector from each of the said Townships or Parishes to regulate and determine as to the making of the said water-course or the widening thereof :

In case of difference among Inspectors. 2. If the Inspectors are equally divided upon the matter in dispute, they may call in another disinterested Inspector, and if they are unable to agree as to the choice of such other disinterested Inspector, any Justice of the Peace shall appoint him upon the requisition of an interested party or of an Inspector, and the decision of the majority shall be final ;

3. The proceedings shall be carried on in the manner and form prescribed for the establishment of a water-course in which but one Parish or Township is interested ; and the same rule shall apply to the homologation of the *procès-verbal*. 20 V. c. 40, s. 21. Form of proceedings.

23. The Inspectors, upon the day and hour fixed upon, shall repair to the premises, accompanied by the parties interested if they think proper to be there, and having ascertained the most suitable place for the water-course, shall give their decision and prepare a *procès-verbal* of their proceedings, setting forth the work to be done, in what manner and by whom it is to be done and maintained, with any other details they deem it advisable to insert in the said *procès-verbal* : Duties of Inspectors.

2. The Inspectors shall enter in the *procès-verbal* a statement of the expenses incurred in the examination of the premises, the advertisements, and the drawing up of the *procès-verbal* ; Expenses.

3. The said *procès-verbal* must be an authentic and notarial deed, or before two witnesses, if the Inspectors are unable to sign their names ; but if they are able to sign their names it may be either a notarial deed, or drawn by the Inspectors themselves ; How *procès-verbaux* shall be prepared.

4. An authentic copy of the said *procès-verbal*, if it is executed before notaries, or a duplicate thereof, when it is executed under the hands of the Inspectors, shall be deposited, on the day following that of the first notice, in the following places : Copies of *procès-verbal* to be deposited with.

5. With the Secretary Treasurer of the Parish or Township Municipality in which the said *procès-verbal* is to be presented for homologation ; The secretary of the municipality.

6. If there be no such Parish or Township Municipality, then with the School Secretary of the said Parish or Township ; and in either the one or the other place, the parties interested shall have access gratuitously to the said *procès-verbal* ; Or School Secretary.

7. It shall be the duty of the Secretary in whose office the said *procès-verbal* is deposited, to register the same and the apportionment of all the work relative to water-courses in the Parish or Township in which he resides, and to keep an index of these registers for the facilitating of searches ; Secretary to register it and keep an index.

8. If there is neither a local nor a School Municipality in any Parish or Township, then the deposit of *procès-verbaux* or apportionments shall be made with the Secretary-Treasurer of the County Council. 20 V. c. 40, s. 22. If there be no local or school municipality.

24. The Inspectors, after having prepared their *procès-verbal*, shall give public notice to the parties interested, of the name of the Notice of presentation for homologation.

the Justice of the Peace before whom the said *procès-verbal* is to be presented for homologation, so that they may be enabled to be present at the place and hour and upon the day fixed in the notice, to urge their objections thereto (if any) before the said Justice of the Peace :

Access to *procès-verbal*.

2. The Inspectors may have the said *procès-verbal* from the person with whom it is deposited in order to be homologated, provided they return it immediately afterwards ;

Delay before homologation.

3. In any case the *procès-verbal* shall not be homologated until the tenth day after the day upon which the first notice was given ;

Copy to Inspectors.

4. As soon as the said *procès-verbal* is homologated, a certified copy thereof shall be given by the person charged with the registration thereof under this Act, to the senior in age of the inspectors who prepared it, that he may cause the work therein mentioned to be performed ;

If it relates to several parishes.

5. If, however, the *procès-verbal* relates to several parishes or townships, a copy thereof shall be given to the inspector of each parish or township, because in that case the work will be conducted by each inspector in his own parish ;

Secretary-Treasurer of parish to register Inspector's copy.

6. Each of the inspectors shall cause his copy of the *procès-verbal* as well as the apportionment of the work on the water-course in question, to be registered by the Secretary-Treasurer of the parish or township in which he resides, and this at the cost of the parties interested in such water-course ;

Communication *gratis*.

7. The said inspector shall grant communication of the said *procès-verbal* to all persons interested therein, *gratis*, whenever they shall require it ;

Inspectors retiring.

8. Inspectors retiring from office shall hand over to their successors the *procès-verbaux*, apportionments, and all other documents they have in their possession ;

Amendment of *procès-verbal*.

9. Any Justice of the Peace, with the unanimous consent of the parties present in court, may, at the time of the homologation of the *procès-verbal*, make amendments thereto, and the said amendments shall be entered in the Act of homologation. *ibid.* s. 23.

Parties aggrieved how to proceed.

25. If any one or more of the parties interested in any such *procès-verbal* deem themselves aggrieved thereby, he or they may complain thereof to the Justice of the Peace to whom the *procès-verbal* is to be presented for homologation :

Complaint when to be brought.

2. The said complaint must be brought within eight days after the first day upon which the notice of homologation was given ;

3. The Justice of the Peace before whom the said complaint has been laid, prior to the expiration of the ten days mentioned in paragraph three of the preceding section, shall give communication of the complaint in question to any person desiring the same ;

Notice thereof to be given to the Inspector.

4. The Justice of the Peace shall not decide the question in dispute, without the assistance of another Justice of the Peace, and they shall both hear the witnesses and the parties ;

Two Justices required.

5. If, upon the day of hearing, the Justice of the Peace do not agree, or it be necessary to have additional witnesses and the presence of a third Justice of the Peace, they may adjourn to some subsequent day for that purpose ;

Third Justice required.

6. The parties interested and their witnesses shall appear upon such day before the Justices of the Peace ;

Appearance.

7. The Justices of the Peace after having maturely considered the allegations on both sides, shall deliver their judgment in presence of the parties, if they are present in Court ;

Judgment.

8. If they see that the formalities have been observed, that there has been neither partiality, injustice or negligence, in the conduct of the inspector, they shall homologate the *procès-verbal*, to be executed according to its form and tenor ;

Homologation of *procès-verbal*.

9. If, on the contrary, it appears to them that there has been partiality, want of correctness or negligence in the examination of the premises, or that the labor has not been equitably apportioned, they shall submit the question to three *experts*, to be appointed as follows : one by the Justices of the Peace, one by the plaintiff and one by the defendant ;

When it shall be submitted to *experts*.

10. If one or both parties refuse to appoint their *experts*, the Justices of the Peace may appoint them ;

In case of refusal to appoint *experts*.

11. The *experts*, after having been sworn by a Justice of the Peace who is thereunto authorized by this Act, and after having given public notice thereof to the inspector and the parties interested, at least eight days previously, shall visit in their presence, if they think proper to be present, those places only of which the *procès-verbal* makes mention, and shall hear the allegations on both sides ;

Duties of *experts*.

12. After such visit the *experts* shall report their decision to one of the Justices of the Peace who has already heard the case ; the said decision shall be final and conclusive to all intents and purposes whatsoever ;

To report their decision.

13. If by their decision, the majority of the *experts* affirm that of the inspectors, the *procès-verbal* of the latter shall be homologated by the Justices of the Peace and put into execution ;

In case of affirmation.

In contrary case a new *procès-verbal* to be prepared.

14. If, on the contrary, the majority of the *experts* reverse the decision of the Inspectors, such majority shall prepare a new *procès-verbal*; But such new *procès-verbal* shall not affect any other property than that affected by the *procès-verbal* of the Inspectors;

*Procès-verbal* may be annulled purely and simply.

15. If, however, the *experts* cannot prepare a new *procès-verbal* because they might deem it to be their duty to change the direction of the water-course, to apportion differently the work to be done, or make any other change which might affect property which was not affected by the *procès-verbal* of the Inspectors, they shall purely and simply annul the said *procès-verbal*, and matters shall be in the same position as they were before the *procès-verbal* was made;

In case of appeal against *procès-verbal*.

16. In all cases, however, in which there is an appeal from a *procès-verbal*, the Inspectors who prepared it may compel the parties at whose request they prepared it, to appear and defend it and to pay the costs and expenses thereof, if, through any fault of such parties, it be found defective;

In what case Inspector is liable for costs.

17. If, however, the *procès-verbal* is defective, through any negligence or partiality on the part of the Inspectors, then the Inspectors shall pay the costs and expenses thereof. *ibid*, s. 24.

Inspector to fix sites for bridges.

26. The Inspector shall determine the bridges required upon any public road to pass over the water-courses, and the sites upon which they are to be built, and shall point out the lands of the proprietors liable to complete and keep them in repair. *ibid*, s. 25.

Owners of higher lands not bound to assist in draining the lower.

27. The owner of any land higher than that of his neighbour shall not in any case be required by an Inspector to make or assist in making a water-course through his land of any greater depth than is necessary for draining his own land:

But must allow drains through his lands.

2. The possessor or owner of any low or swampy land may make a water-course through the high land of his neighbour to drain his own, and may make use of any one already made, may deepen the same if it is not deep enough, and repair and keep the same in order,---at his own expense. *ibid*, s. 26.

Penalty for obstructing a water-course.

28. Whoever obstructs any water-course or allows it to be obstructed, shall incur a penalty not exceeding one dollar for every day such obstruction remains after the expiration of two days from the time upon which he receives notice to remove the same:

Proceedings in case of obstruction.

2. Any person interested in the water-course in which the obstruction shall be found, shall give notice to the person in default, and may recover the penalty with costs against such person. *ibid*. s. 27.

29. Any person interested in a water-course may require the Inspector to call a public meeting of the parties interested in the said water-course, to decide whether the work appertaining thereto shall be performed by joint labour (*corvées*), by separate shares, or by contract:

Public meeting.

2. The Inspector shall call the said meeting by giving public notice thereof to the parties interested;

How called.

3. The majority of the interested parties present shall decide what is to be done with respect to the apportionment of the work on such water-course, or part thereof, as the case may be, and may require the Inspector to make or cause to be made an apportionment, in which shall be shewn the portion which each of the parties interested will have to pay in money or perform in work;

Majority of those interested to decide.

4. The said apportionment, before it goes into operation, shall be ratified before a Justice of the Peace and amended if there be occasion therefore, and the formalities for the homologation of the said apportionment shall be the same as those prescribed for the homologation of the *procès-verbal* for a water-course. *ibid*, s. 28.

Apportionment homologated.

30. The Inspector shall give public notice of the day which he shall appoint for each person interested to perform his share of the work according to the tenor of the *procès-verbal*, whether such work is to be done in common or according to the apportionment made for that purpose:

Inspector to give notice of day fixed for performing work.

2. Whosoever refuses or neglects to repair to the spot on the day appointed, and to perform his share of the work, shall incur a penalty of forty cents, for each day during which he refuses or neglects to execute the orders of the Inspector;

Penalty for refusing to attend.

3. The Inspector, after the expiration of eight days from the time appointed for beginning the work, may cause the work of any of the person who has neglected to perform it, to be done, and may recover the expenses with costs from the party or parties in default;

Work of parties not attending to be done at their costs.

4. Upon the requisition of one or more of the parties interested in a water-course, the Local Municipality, whenever required so to do, shall appoint a Trustee from among the parties interested, in such water-course regulated by any *procès-verbal* or act of agreement or by Municipal authority, to see to the execution of the work relating to such water-course; such trustee shall have all the powers and fulfil all the duties of the inspector, with respect to the water-course in which he is interested, and shall be subject to the penalties imposed by this Act for any neglect to perform his duties, he shall not be bound to serve more than two years, and shall act gratuitously; the trustee shall

Trustees to be appointed in certain cases.

shall have precedence over the inspector, and when he is compelled to prosecute, and in that case only, shall be entitled to ten cents per hour. *ibid*, s. 29.

#### LINE DITCHES.

- Inspector to order the necessary work.
- 3.1. The inspector, upon the application of any owner or occupant of any land through which it is proposed to make a line ditch (*fossé de ligne*), shall visit the place, command the performance of the necessary work, and determine how and by whom it shall be executed :
- Duty of inspector or with respect to ditches.
2. The inspector, when required so to do by the proprietor or occupant of any land, shall inspect the ditch which separates the land of the party complaining from that of any other person, and determine whether the said ditch is sufficient for his use ;
- Inspector may order ditch to be enlarged.
3. If the inspector declares the said ditch to be insufficient, he may order the person of whom complaint is made, to deepen, cleanse and repair the same within a delay which shall not exceed the time strictly necessary to perform the said work ;
- Complainant must have his own ditch in good order.
4. If the inspector finds that the line ditch of the party complaining is equally insufficient, and if he is required so to do by the person of whom complaint is made, he shall immediately condemn the party complaining to deepen, cleanse or repair his line ditch within a delay which shall not exceed the time strictly necessary ;
- Penalty for disobedience.
5. For each day upon which the said person fails to comply with the order of the inspector, he shall incur a penalty of forty cents for each arpent in length of such ditch, (any fraction being reckoned as a whole arpent) ;
- Inspector may order complainant to do the work and recover costs.
6. The inspector, after the expiration of the delay granted by him, may, if required so to do, authorize the complainant to perform or cause to be performed the work, the execution of which he has ordered, and such complainant alone shall be entitled to recover the costs of such work and all his fair expenses, if the person condemned to do such work neglects or refuses to pay the amount ;
- Certain lands in the townships subject to the same provisions.
7. In the townships in which lands have been set apart by government for public by-roads (*routes*), the said lands shall be subject to the same provisions as lands belonging to private individuals ;
- In case of inundation from insufficiency of ditches.
8. If a proprietor or occupant of cultivated land suffers from the over-flowing or flooding of such land, occasioned by the insufficiency of the ditches which his neighbour has upon any land in standing timber or brushwood, he may require the inspector to visit the premises in question ;

9. After his visit the inspector may order, if it is necessary for the purpose of putting a stop to the said inundation or overflowing of water, that the necessary work be done either upon the lines or in any other part of the land in standing timber or brushwood ;

After visit the Inspector may order certain work to be done.

10. The power conferred by the two preceding paragraphs upon the inspector shall only be exercised in so far as regards land in standing timber or brushwood, and not otherwise ;

Effect of the two preceding paragraphs limited.

11. The establishment of a front road between two ranges or concessions shall in no respect alter the obligations between neighbors, when such road is entirely within one of the ranges or concessions ;

As to new front roads.

12. Whoever obstructs or allows to be obstructed in any manner whatsoever, any line ditch, shall be liable to a penalty not exceeding one dollar for each day such ditch is so obstructed. 20 V. c. 40, s. 30.

Obstructions to line ditches.

LINE FENCES.

1. Upon the requisition of any proprietor or occupant of land, the inspector shall proceed to inspect the line which divides his land from that of his neighbor, and on which it is proposed to erect a new *mitoyen* fence, and shall determine in what manner the said *mitoyen* work shall be done or apportioned, and shall prescribe the shortest possible delay for the execution thereof :

General duties of Inspectors with respect to line fences.

2. Upon a similar requisition, the inspector shall further visit any fence separating the land of the complainant from that of his neighbor, and shall determine whether the said fence is sufficient ;

To visit fences.

3. If he declares the same to be insufficient, he may order the person complained of to repair it within a delay which shall not exceed the time strictly necessary to do the said work ;

If he finds them insufficient.

4. If the Inspector finds that the line fence of the complainant is equally insufficient, and if he is required so to do by the person complained of, he shall immediately condemn the complainant to repair it within a delay which shall not exceed the time strictly necessary ;

If complainant's fence be also insufficient.

5. For each day during which the said party fails to conform to the order of the Inspector, he shall incur a penalty of forty cents for each arpent in length of such fence (any fraction being reckoned as a whole arpent) ;

Penalty for not obeying his orders.

6. The Inspector, after the expiration of the delay, may, if required so to do, authorize the complainant to perform or cause to

Complainant may make the fence at the

to

expense of the party neglecting.

to be performed, the work the execution of which he has ordered, and such complainant alone shall be entitled to recover the costs of such work and all his fair expenses, if the person condemned to do such work neglects or refuses to pay the amount ;

As to certain township lands.

7. In the Townships in which lands have been set apart by Government for public by-roads (*routes*) the said lands shall be subject to the same provisions as lands belonging to private individuals ;

As to new front roads.

8. The establishment of any front road between two ranges or concessions shall in no respect alter the obligations of one neighbor to another when such road is entirely within one of the ranges or concessions. *ibid*, s. 31.

Previous notice in certain cases.

33. When the matter in question relates to the making of a new fence or the repairing of one which is in such a state that the costs of repairing it would be equal to that of a new one, the Inspector shall not condemn the party against whom complaint is made, unless the party complaining proves that he gave the party complained against or the party usually acting in his behalf, special notice thereof before the first day of December next preceding such complaint :

If the party be unknown.

2. If the party complained against does not reside within the Parish or Township, or has no known agent, or tenant, or party acting in his behalf, the complainant must prove that a notice was posted up at the door of some church in the parish or township in which the property is situate for four consecutive Sundays, during any time of the year preceding the first day of December then last past. *ibid*, s. 32.

#### FEEs AND RECOVERY OF COSTS.

Fees to Inspectors.

34. Each Inspector, whenever required to act by virtue of this Act, shall be entitled to ten cents for every hour he is necessarily employed in the execution of his duty :

In case of joint labor.

2. In case of joint labor (*travaux mitoyens* or *en commun*), the costs shall be paid by the party in default whether that be the party at whose instance the Inspector acted or the adverse party ;—or they shall be paid in equal portions by the parties interested in the matter in dispute, if the Inspector has condemned them respectively to perform their joint labour or caused it to be performed ;

In cases of water-courses.

3. When the Inspector has been called upon to visit a water-course, he shall also be entitled to ten cents per hour, and to the expenses incurred for advertisements, homologation and registry of the *procès-verbaux*, apportionments and the copies thereof, necessary for the Inspector charged with the superintendence of the works ;

4. The Inspector shall also be entitled to ten cents per hour Fees. for superintending the construction of a water-course ;

5. All these costs shall be recovered by him and apportioned By whom pay- in equal parts among all the parties interested, without regard able. to the value or extent of their respective lands ;

6. If, however, he has made but one visit to the premises and decided that it is not advisable to make or change a *procès-verbal*, he shall still be entitled to ten cents per hour and his expenses, if any be incurred, to be paid by the person who shall have employed him ; Fees for in-  
pection only.

7. The Inspector shall be entitled to ten cents for every hour necessarily employed, when he is obliged to sue any person Further fees in for the recovery of the costs incurred for the establishing of a certain cases. water-course, of which the *procès-verbal* has been homologated ;

8. If any Justice of the Peace finds the complaint brought before him to be well founded, may give judgment in favor of Justice to give the Inspector for the amount which he claims for neglect or judgment. refusal to pay the costs of the *procès-verbal* and other expenses, together with the amount to which the Inspector is himself entitled ;

9. Every Secretary-Treasurer shall be entitled to five cents Fee to Secre- per one hundred words, for the registration of *procès-verbaux* tary-Treasurer. and apportionments, and also for certified copies of all documents delivered by him in virtue of this Act ; The copies thus certified shall be received in evidence in all Courts of competent jurisdiction or before any Justice of the Peace. *ibid*, s. 33.

35. Any person who has made or caused to be made any Recovery of water-course, ditch, bridge, fence or *découvert*, in conformity expenses in with the provisions of this Act, may recover the amount of the certain cases. expense incurred in performing such work from the person bound to perform such work or from the owner of the land on which it has been performed, before any Court of competent jurisdiction or before any Justice of the Peace, if the person bound to perform such work neglects or refuses to pay such amount ; and such amount may also be recovered in the manner prescribed by the laws and statutes then in force in Lower Canada. *ibid*, s. 34.

#### ALTERATION OF A PROCÈS-VERBAL.

36. Any party interested in a *procès-verbal* of a water course *Procès-verbal* duly homologated or regulated by act of agreement or by municipal authority, may demand a change in or amendment to the said *procès-verbal*, act of agreement or municipal By-law ; may be amend- provided his said demand be supported by the affidavits of two ed in certain cases. of

of the parties interested in the water-course regulated by the *procès-verbal*, act of agreement or municipal By-law sought to be amended, or by one affidavit only, if such *procès-verbal*, act of agreement or municipal By-law only concerns two interested parties :

What shall be stated in affidavit.

2. It shall be sufficient to state in the said affidavits that useful or necessary changes may be made, (without specifying or enumerating the said changes,) to entitle any of the parties interested to require a visit from the inspector to examine and decide upon the said changes ;

Certified copy to be proof, &c.

3. These affidavits shall be annexed to the new *procès-verbal* founded upon them ; and copies of these affidavits, certified by the person charged with the enregistration of the *procès-verbal* shall be sufficient proof before any Court of competent jurisdiction or before any Justice of the Peace ;

How amendments shall be effected.

4. Any change in any *procès-verbal* shall be made by a second *procès-verbal*, but not, however, until all the formalities required for the making of a new *procès-verbal* have been fulfilled ;

If there is too much water in a water-course.

5. By virtue of a new *procès-verbal* as aforesaid, any water-course may be divided if the water is too abundant for a single water-course, either by directing the water into a water-course already verbalised, or by causing it to flow in any other direction. *ibid*, s. 35.

#### COMPLAINTS.

How complaints shall be made.

§7. Any person making a complaint in virtue of this Act before a Justice of the Peace, shall make his declaration under oath, unless it is otherwise provided for by this Act, and the Justice of the Peace may issue his warrant or summons to appear, against the person whom the complaint affects, ordering him to appear before him or any other Justice of the Peace, and may render judgment in a summary manner upon the oath of one credible witness other than the party bringing the said complaint ; Provided however, that if the defendant resides within the same parish or township as the complainant, the Justice shall only issue a summons :

Proviso.

Justice may issue execution.

2. The Justice of the Peace may issue a warrant eight days after judgment, for seizure and sale of the goods and chattels of the person condemned ;

Costs—if case dismissed.

3. When the Justice of the Peace acquits the defendant, he shall dismiss the complaint with costs against the complainant ;

Justice must be disinterested.

4. No Justice of the Peace shall hear any complaint or give any decision, if he is related within the third degree to any of the parties in the said suit, or in any wise interested therein ;

5. With the exception of the cases for which it is otherwise provided by this Act, no inspector shall act as such in any matter in which he is interested or in which any one of his relations within the third degree is interested;—And if it be impossible to find in the parish or township in which the services of an inspector are required, any disinterested inspector not related as aforesaid, an inspector shall be chosen from one of the neighbouring parishes or townships. *ibid*, s. 36.

Inspectors to be disinterested.

SUITS.—PENALTIES.

38. Actions and proceedings brought or taken in virtue of this Act shall be brought or taken before one or more Justices of the Peace, as the case may require; such Justices of the Peace shall only have jurisdiction when they reside in the county in which the offence has been committed,—or when the question relates to the homologation of *procès-verbaux* and apportionments, in the county or counties in which the parties affected are situate :

How and where suits under this Act shall be brought.

2. All suits for penalties or damages must be commenced within three months after the commission of the offence on which they are founded. *ibid*, s. 37.

Limitation.

39. All the penalties, damages and assessments imposed by virtue of this Act may be sued for and recovered summarily by one and the same action against the same person (if it is not provided for otherwise) upon the oath of one credible person, other than the party complaining, or upon the confession of the person sued, and the amount may be levied with the costs, by a warrant under the hand and seal of the justice of the peace, and by seizure and sale of the moveable effects of the offending party :

How penalties may be recovered.

2. One half of the penalty shall belong to the party informing, and the other to the municipality within the limits of which the offence has been committed, unless it is otherwise provided; If, however, the party informing or suing be an inspector, the penalty shall, in that case go to the local municipality in which the offence has been committed ;

Application of penalty.

3. Any inspector may in his quality of inspector sue for all infractions or contraventions of the provisions of this Act, unless it is otherwise provided for, and he shall have the same rights and privileges as any informer or party complaining for the recovery of his costs, expenses, or other claims ;

Privileges of Inspector as to such suits.

4. Whoever refuses or neglects, when required, to fulfil the duties imposed upon him by this Act, shall incur a penalty of one dollar for each time he so refuses or neglects to act. *ibid*, s. 38.

General penalty for failure to comply with this Act.

Amount and recovery of penalties in cases unprovided for.

40. Any penalty for contravening the provisions of this Act, the amount of which is not fixed by this Act, shall be not less than one nor more than eight dollars, and may be sued for, recovered and made payable in the same manner as the penalties expressly fixed by this Act :

Imprisonment on failure to pay.

2. Any person condemned to pay a penalty or damages and costs, as the case may be, and who does not pay the same within eight days after judgment, shall be punishable by imprisonment for a period not exceeding thirty days, if the party has no goods, moveables or effects, and this fact be proved to the satisfaction of the justice of the peace by the return of the person charged with the warrant of distress (*saisie exécution.*) *ibid*, s. 39.

#### GENERAL PROVISIONS.

False oath to be perjury.

41. Any person who knowingly takes a false oath, in whatever case it may be, shall be liable to the pains and penalties provided by law for wilful and corrupt perjury. *ibid*, s. 40.

#### MANNER OF GIVING PUBLIC OR SPECIAL NOTICE WHEN NOT OTHERWISE PROVIDED FOR BY THIS ACT.

##### *Public Notice.*

How public notice shall be given.

42. Whoever has to give public notice, shall, after having signed or attested it in the presence of two witnesses, cause it to be read and posted for two consecutive Sundays at the principal door of the parish church or chapel or other place of public worship in the parish or township, immediately after divine service in the morning :

And posted.

2. Such notice shall also be posted up in some frequented place in the parish or township ;

If it relates to two or more parishes.

3. If the notice relates to work to be executed in two or more parishes or townships, the notice shall be given in those parishes or townships in the manner provided by the two preceding paragraphs.

##### *Special Notice.*

Special notice how given.

43. Every special notice required by this Act shall be given during eight days, and either in writing, or *vivâ voce* before two witnesses, whose evidence shall be the proof of such notice :

If it be in writing.

2. If the notice is given in writing, it shall not be necessary to adopt any particular form ; it shall suffice that the purport of the notice be set forth in an intelligible manner ; that the notice in all cases be dated ;---and that it be attested before two witnesses or a notary, if the person giving it be unable to sign

sign it,—and that it mention the official capacity, if any, of the signer. *ibid*, s. 42.

44. This Act shall be called the “Agricultural Act.” *ibid*, Short Title. s. 44.

INTERPRETATION.

45. In this Act the word “land” (*terrain*) means also land Land. generally (*terre*) :

2. The word “water-course” includes any “ditch,” “drain” Water-course. or “stream” in which one or more persons are interested ;

3. The word “inspector” means either “road inspector” or Inspector. “inspector of fences and ditches” :

4. By the word “disinterested,” shall be understood “who Disinterested. has no personal interest or is under no obligation with respect to the work to be done, and is not related to or connected with any of the parties interested, within the third degree.” *ibid*, s. 45.

## C A P . X X V I I .

## An Act respecting Masters and Servants in the Country Parts.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

This Act not to apply to cities, towns and villages.

1. This Act shall apply to those parts only of Lower Canada which are not within the Cities of Quebec, Montreal or Three-Rivers, nor within any incorporated city, town or village :

To apply to servants, &c., of either sex.

2. This Act shall apply equally to servants and apprentices of either sex. 12 V. c. 55, ss. 2, 3, and 18 V. c. 105, s. 24.

Punishment of ill behaviour on the part of any apprentice or servant.

3. Any apprentice or servant, or journeyman or labourer bound by Act of Indenture or written contract or agreement, and any servant, or journeyman or labourer verbally engaged before one or more witnesses for one month or for any longer or shorter period, who is guilty of ill behaviour, refractory conduct, or idleness or of deserting from his service or duties, or of absenting himself by day or night without leave, from his said service, or from the house or residence of his employer, or who refuses or neglects to perform his just duties, or to obey the lawful commands which shall be given him by his master or mistress, or who is guilty of dissipating his master's or mistress' property or effects, or of any unlawful act that may affect the interest of his master or mistress, shall be liable, upon conviction before any Justice of the Peace, to a penalty not exceeding twenty dollars, or to an imprisonment not exceeding thirty days, for each and every offence, or both. 12 V. c. 55, s. 3.

Punishment of servants deserting their work.

3. Any domestic servant, journeyman or labourer, engaged by the month or longer space of time, or by the piece or job, who deserts or abandons the service or job for which he was engaged, before the time agreed upon, shall for each offence be liable to a penalty not exceeding twenty dollars, or to an imprisonment not exceeding thirty days, or to both. 12 V. c. 55, s. 6.

Punishment of persons harbouring run-away servants.

4. Any persons knowingly harbouring or concealing any apprentice or servant engaged by written act or agreement, who has abandoned the service of his master or mistress, or instigating or engaging any apprentice or servant to abandon such service, or keeping such servant in his or her service after being informed of the fact, shall be liable to a penalty not exceeding twenty dollars, or to an imprisonment not exceeding thirty days, or to both, for each offence. 12 V. c. 55, s. 7.

5. Any domestic servant, journeyman or labourer, engaged for a fixed period, or by the month or longer space of time, and not by the piece or job, who intends to quit the service in which he is engaged, shall give notice of such intention at least one month before the expiration of such agreement; and if any of such person quits the service without giving such notice, he shall be considered as having deserted from the said service, and be punished accordingly;—and every master, mistress or employer shall give to any such servant, journeyman or labourer like notice of his or her intention no longer to keep or employ them after the expiration of their time of service:

What warning necessary in case a servant wishes to quit his service.

Or a master no longer to employ his servant.

2. But any domestic servant, journeyman or labourer, engaged for a time, may be discharged by his or her master, mistress or employer, at or before the expiration of his engagement, without notice, upon full payment of the wages which he would have received for the full time of his service; and if such time has expired, the person so discharged without notice shall be entitled to wages for the full time included between the day when such notice should have been given, and the day of his discharge as aforesaid. 12 V. c. 55, s. 4.

6. Any master or mistress who discharges his or her servant without paying their wages as aforesaid, shall incur a penalty not exceeding twenty dollars, and the Justice of the Peace may allow the servant such portion of the fine as he considers to be a reasonable compensation for the injury incurred by such servant, and shall moreover condemn the said master or mistress to pay to the said servant the amount of wages to which he is entitled. 12 V. c. 55, s. 5.

Penalty for discharging servant without payment of wages.

7. Any complaint founded upon contravention of any of the five next preceding sections of this Act, may be heard and determined before any one Justice of the Peace, who may, by warrant or summons, require the attendance of the offender before him, and upon the offender being brought up under warrant, or, if summoned, upon proof of the service of such summons, may, either in the absence or presence of the offender, determine such complaint in a summary manner, on the oath of any one or more credible witness or witnesses to be sworn before him, and may, if the offender be convicted, sentence such offender to the penalty or imprisonment or both hereby imposed for the offence, and may commit such offender to gaol accordingly, and levy such penalty by warrant of distress and sale of the offender's goods and chattels; but such warrant of distress shall not issue if sufficient security be offered for the payment of the fine and costs within a period of fifteen days. 12 V. c. 55, s. 8.

How complaints under five next preceding sections shall be heard and determined.

8. Any apprentice, domestic servant or journeyman, bound or engaged as aforesaid, having any just cause or complaint against his master, mistress or employer, for any mis-usage, defect

Servants and apprentices may complain

of ill-treatment on the part of their masters, &c.

Penalty for such ill-treatment.

Contract between master and servant or apprentice may be annulled in certain cases.

Appropriation of penalties.

All prosecutions to be commenced within three months.

defect of sufficient wholesome provisions or food, or for cruelty or ill-treatment of any kind, may cause such master or mistress to be summoned and to appear before one of the nearest Justices of the Peace to the residence of the party complained against, to answer the complaint to be preferred against him or by such apprentice, domestic servant or journeyman; and any master or mistress, convicted upon such complaint of any offence aforesaid, towards his or her apprentice, domestic servant or journeyman, shall, upon each and every conviction, be liable to a penalty not exceeding twenty dollars, or to an imprisonment not exceeding thirty days; and such complaint shall be heard and determined, and such penalty levied, or such imprisonment enforced in the manner provided by the next preceding section of this Act. 12 V. c. 55, s. 9.

9. Upon complaint by any master, mistress or employer, against his or her apprentice, servant or journeyman, or by any apprentice, servant or journeyman, against his master, mistress or employer, of continued mis-conduct or mis-usage, and of repeated violations of the ordinary and established duties of the parties towards each other, or of incapacity to perform the services for which he is hired, any two Justices of the Peace may, at a special sitting, upon due proof of the facts, annul the contract or agreement, whether written or verbal, by which such master, mistress or employer, and such apprentice, servant or journeyman were bound to each other. 12 V. c. 55, s. 10.

10. All pecuniary penalties imposed by this Act shall be paid to the Municipality having jurisdiction over the parish or township wherein the offence is committed, except in so far as hereinbefore otherwise provided. 12 V. c. 55, s. 11.

11. The prosecution for any offence against the provisions of this Act shall be commenced within three calendar months after the offence has been committed, and not after. 12 V. c. 55, s. 12.

C A P . X X V I I I .

An Act respecting Grass growing on certain Beaches, in the District of Quebec.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. The proprietors of the lands bordering the south side of the river St. Lawrence, below the city of Quebec, shall be entitled to cut and cure the grass on the beaches or strands thereof, between high and low water marks, in the front of their respective lots of land and farms, to the exclusion of all other persons :

Who shall be entitled to the grass on the beaches of the St. Lawrence below Quebec.

2. An action of trespass may be maintained by the party aggrieved against any person offending, by cutting any grass hereby reserved to such party as aforesaid, and contravening this act, to the prejudice of such party or person ;

Action of trespass by party entitled.

3. But in all cases of difficulty, the quiet and public possession, as had before the twenty-first day of March, 1836, shall avail and be maintained ; And nothing herein contained shall limit the right of fishing on the beaches, as established and exercised before the said day. 6 W. 4, c. 55, s. 1.

Party in possession on 21st March, 1836, to retain it.

2. No person shall suffer live stock of any description to stray or run at large between high and low-water marks, in the summer or autumn, on any of the said beaches or strands of the river Saint Lawrence, under the penalty of fifty cents, for each animal so allowed to stray or run at large as aforesaid, which penalty shall be recovered from the possessor or owner of such cattle :

No live stock to be allowed to stray on such beaches.

2. In case such possessor or owner is not known, the cattle or animals so straying may be confined by any person whomsoever, until they are claimed by the owner or possessor, who shall pay to the person so detaining them, a reasonable price for the keeping thereof, which price, if the owner or possessor refuses to pay, shall be levied in the manner provided for the penalties imposed by this Act ;

In case owner of straying animals be unknown.

3. But all persons, detaining any cattle found straying, shall give notice thereof at the church door of the nearest parish, on a Sunday or other holiday after Divine service in the afternoon ; and if such cattle be not claimed, and such expenses paid within eight days after such notice, then the said cattle may be sold by order of any justice of the peace, and the price, after deducting such expenses, and those of the notice, shall remain in the hands of such justice of the peace, for the owner of such cattle when known. *ibid*, s. 2.

Duty of persons finding straying cattle.

Rights of Her Majesty preserved.

**3.** This Act shall not in any wise affect the rights of Her Majesty, or of any person, body politic or corporate, in any such beach or strand of the said river Saint Lawrence. *ibid*, s. 3.

Nothing herein to authorize the enclosing of such beaches.

**4.** This Act shall not give to the proprietors of the banks of the said river, any right or title whatsoever to inclose or embank, by fences or otherwise, the said beaches and strands, or in any manner to impede the free and open navigation and commerce over the said river, to all Her Majesty's subjects, or to deprive any person of the free use of the beaches of the said river Saint Lawrence as by law provided. *ibid*, 4.

How penalties shall be recovered.

**5.** The penalty, by this Act imposed, shall be recoverable in a summary way, before any justice of the peace, upon the evidence, on oath, of any one credible witness, other than the informer, and be levied by seizure and sale of the goods and chattels of the offender, (returning to the said offender the overplus, if any, after deducting the costs of suit, seizure and sale,) by virtue of a warrant under the hand of a justice of the peace before whom the conviction takes place. *ibid*, s. 5.

Appropriation of penalties.

**6.** One moiety of any penalty, levied under this Act, shall go to the informer, and the other moiety to Her Majesty, for the public uses of the Province. *ibid*, s. 6.

## C A P . X X I X .

## An Act respecting Game and Hunting.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

## OFFENCES AND PENALTIES.

1. No person shall hunt, kill or destroy any red or grey deer, moose, elk, reindeer, cariboo, nor the young of any of the same, between the first day of March and the first day of September in every year, nor buy, sell, offer for sale, or have in possession any of the above named species of animals, or any parts thereof, so taken within the periods hereinbefore mentioned. 22 V. (1858) c. 103, s. 3. Period for hunting deer limited.

2. No person shall hunt, kill, destroy, nor attempt to capture or kill, or to buy, sell, offer for sale, or have in possession, any woodcock or snipe between the first day of March and the first day of August in every year. *ibid.* s. 4. Woodcock and snipe.

3. No person shall snare at any time, or hunt or kill, buy, sell, offer for sale, or have in possession, any grouse, partridge, ptarmigan or pheasant between the first day of March and the twentieth day of August in every year. *ibid.*, s. 5. Grouse, partridge, &c.

4. No person shall hunt, take, shoot, kill or destroy, nor buy, sell, offer for sale or possess any wild swan, wild goose or wild duck of the kinds known as mallard, gray duck, black duck, wood duck, teal, widgeon or any other kind of wild duck whatsoever, at any time between the twentieth day of May and the twentieth day of August in every year. *ibid.*, s. 6. Wild swans, geese and ducks.

5. No person shall kill, shoot, destroy, sell, or offer for sale, purchase or receive, any Muskrat, between the tenth day of May of any year and the first day of March of the following year. 20 V. c. 39, s. 1. Muskrats.

6. Every person so found having actual possession of any of the aforementioned game or animals, or any portion thereof, within the respective periods above prescribed, shall be held to have obtained the same in violation of the provisions of this Act, except only upon legal proof to the contrary, the burden of which proof shall lie wholly upon the person accused, and such game may be seized by any person and carried before a Justice of the Peace. 22 V. (1858) c. 103, s. 7. Persons in possession of the said game during above periods, how dealt with.

7. No person shall at any time use strychnine, or other deadly poison, either mineral or vegetable, for the purpose of Use of strychnine and other killing

poisons, prohibited.

killing or catching any kind of wild animal or animals, of any species whatsoever. *ibid*, s. 8.

Offences against this Act, how punished.

8. All offences against any of the preceding provisions of this Act shall be punished by a separate fine for each and every offence of not less than two dollars and not exceeding forty dollars in addition to all costs, in the discretion of any Justice of the Peace, Stipendiary or other Magistrate, before whom any complaint under this Act is tried and determined; and in default of immediate payment, on conviction, of such fine and costs, the offender shall be forthwith imprisoned in the nearest common gaol for a term of not less than fourteen days, and not exceeding three months, at the discretion of the committing Magistrate, and in proportion in his judgment to the amount of penalty imposed, or until such fine and costs are fully paid. *ibid*, s. 9.

Imprisonment on failure to pay fines.

Game seized to be forfeited.

9. Any animal or game seized as hereinbefore provided, shall be forfeited, and it shall thereupon be, by any Justice of the Peace before whom the conviction is had, appropriated at his discretion to purposes of charity within the limits of the parish or district over which his jurisdiction extends. *ibid*, s. 10.

Duties of officers in charge of markets.

10. It shall be the duty of every police officer or constable, clerk of the market or other party in charge at the market place in every village, town and city, to seize and forfeit, on view, to his own proper use, any game enumerated in the foregoing sections, which is found exposed for sale or otherwise, during prohibited seasons; But every such seizure and appropriation shall be duly reported, together with a full description of the person in whose possession such game was found, to some Justice of the Peace having jurisdiction over the district within which such forfeiture has taken place. *ibid*, s. 11.

Penalty for carrying away eggs of sea-fowl between certain periods.

11. Any person or party found engaged in collecting, carrying away, destroying or attempting to gather, carry away or destroy, or having in possession (being so gathered) or in the act of carrying away any of the eggs of any species of wild fowl from any part of Lower Canada or in the gulf of or river Saint Lawrence or Islands therein, after the first day of June in each year, shall be severally liable to a penalty of not less than twenty dollars, nor more than one hundred dollars, to be recovered either on complaint and conviction according to the form prescribed in this Act, or upon view had by any Stipendiary or other Magistrate; and in default of the instant payment of such penalty, and all costs incurred, the offender shall be committed to the nearest gaol for a term of not less than two months, nor more than four months. *ibid*, s. 19.

Forfeiture of boats, &c., employed in con-

12. Every boat or other vessel found employed in gathering or carrying away the eggs of any species of wild fowl in contravention

contravention of the next preceding section, shall be and is hereby declared absolutely forfeited to Her Majesty for the public uses of this Province, and may be immediately seized and taken possession of, either upon view of any Stipendiary or other Magistrate or by order of, or under warrant (in the form H of the annexed Schedule) from any Justice of the Peace, Stipendiary or other Magistrate, who shall cause the property so seized to be disposed of at public auction, and the proceeds thereof to be paid over to Her Majesty's Commissioner of Crown Lands for the public uses of this Province; But out of the proceeds of such confiscation and sale, all reasonable costs and charges attending the seizure and disposal of the boat or vessel so seized and sold as aforesaid, shall first be defrayed. *ibid.* s. 20.

travening the next preceding section.

13. This Act shall not preclude Indians from killing or possessing, within the season of prohibition, any species of game, eggs, wild fowl or animals mentioned therein, provided the same can, by reasonable presumption, be deemed to be for their own immediate and personal use and consumption, but in no wise intended nor offered for sale, barter or gift, either within the Province of Canada or in any other country; and the burden of furnishing evidence of such reasonable presumption shall lie upon such Indians. *ibid.* s. 21.

Provision in favor of Indians.

RECOVERY OF PENALTIES, &c.

14. All penalties incurred under this Act shall be recoverable with costs as aforesaid, by summary proceeding before any Stipendiary or other Magistrate, upon the oath or affirmation of at least one credible witness, other than the prosecutor, or of the prosecutor alone if he renounces all claim to any share of the penalty,--or, without any witness, upon view had of any such offence by any Justice of the Peace; and a prosecution under this Act may be commenced at any time within twelve months after the commission of the offence. *ibid.* s. 12.

Proceedings under this Act to be summary.

Within what time to be commenced.

15. One third of every fine levied by virtue of this Act shall be paid to Her Majesty for the public uses of the Province, and the remaining two thirds thereof shall be paid to the prosecutor, together with costs taxed to him for attendance as a witness, or otherwise, unless the prosecutor has been examined as a witness, and has renounced his share of the penalty, in which case he shall have his costs only, and the whole penalty shall belong to the Crown for the uses aforesaid. *ibid.* s. 13.

Appropriation of fines.

16. Complaints under this Act may be in the form A---summonses in the form B---warrants to arrest defendant in the form C---subpœnas in the form D---convictions in the form E---and warrants to commit in the form F, G and H,--of the Schedule hereunto annexed. *ibid.* s. 14.

Forms for proceedings.

In case witness refuses to attend, warrant may be issued to bring him.

**17.** If a witness so summoned refuses or neglects to attend in obedience thereto, any such Stipendiary or other Magistrate (on proof of due service and the lapse of such reasonable time as fixed by the summons) may thereupon issue a warrant, in the form G of the schedule hereto annexed, returnable immediately, to compel the attendance of such witness to give evidence in the premises, under pain of committal to the common goal during eight successive days, for the contempt. *ibid*, s. 15.

Summons and summary procedure under this Act.

**18.** When any person is charged upon oath or otherwise, in writing, before any Justice of the Peace with any offence against the provisions of this Act, the said Justice shall forthwith summon the person so charged to appear before him at a reasonable time and place to be named in such Summons according to the discretion of the Justice issuing the same;—and if such person fails or neglects to appear accordingly, then, upon proof of the personal service of such summons, or the exercise of due diligence to effect a service of the summons, (either personally in view of such Justice, or by delivering or leaving a copy thereof at the defendant's usual place of abode or of common resort, or by reading the same to the defendant in person) the said Justice may either proceed in the case *ex parte*, or issue his warrant, (in the form C of the Schedule hereto annexed) for apprehending such person and bringing him before himself, or some other Justice of the Peace in which last mentioned case such other Justice shall thereupon proceed to hear and determine the case as if he had himself proceeded therein *ab initio*. *ibid*, s. 16.

Case where defendant is not a resident in the Province.

**19.** If any defendant is not resident in this Province, and it is deemed expedient to proceed against such defendant without delay, any Stipendiary or other Magistrate may, upon complaint, issue a summons, returnable before him immediately after the service thereof, or within a reasonable time to be stated in the summons; and if deemed necessary by the Magistrate, the process provided by the next preceding section for apprehending the defendant shall be likewise issued simultaneously with such summons. *ibid*, s. 17.

Proceedings in cases not specially provided for.

**20.** Every proceeding under this Act and not specially directed by its provisions, and also all costs recoverable thereunder, shall be the same as provided by law in other cases where summary jurisdiction is given to Magistrates. *ibid*, s. 18.

Convictions not void for want of form.

**21.** No proceeding under this Act shall be dismissed, and no conviction had under this Act shall be quashed, for want of form; nor shall any warrant of arrest or commitment be held void by reason of any defect therein, provided that it is alleged that the party has been convicted, and there is a good and valid conviction to sustain the same. *ibid*, s. 22.

22. Every Justice of the Peace before whom any person shall have been convicted of any offence against this Act, shall transmit the conviction to the next Court of General Quarter Sessions, holden for the district wherein the offence was committed, there to be kept by the proper officer, among the records of the said court. *ibid*, s. 23.

Convictions to be transmitted to proper Clerk of the Peace.

23. For all the purposes of this Act, the Superintendent of Fisheries for Lower Canada shall be deemed a Justice of the Peace for the whole of that section of the Province, whether otherwise qualified or not :--And the word " game," shall mean and include all the birds and animals, mentioned in this Act, and any part or parts thereof. *ibid*, s. 24.

Superintendent to be a Justice of the Peace.  
"Game" what.

24. Any Justice of the Peace, Stipendiary or other Magistrate, may search or issue a warrant to search any house or place, where he has reason to believe that any game taken, killed or possessed in contravention of this Act, is concealed or otherwise. *ibid*, s. 25.

Searches and search warrant.

25. This Act shall be known and cited as *The Lower Canada Game Act*. *ibid*, s. 28.

Short Title.

SCHEDULE A.

*Form of Complaint.*

Lower Canada, }  
to wit : }

This                      day of                      , &c., 18 .

To

A B., actually at                      , complains that C. D., of                      , hath (*state the offence briefly, either with the time and place at which it was committed, or between two given dates extending over a period not exceeding thirty days inclusive*) in contravention of the Lower Canada Game Act; wherefore, the complainant prays that judgment may be given against the said C. D., as by the said Act provided.

(Signature)      A. B.

## SCHEDULE B.

*Summons to Defendant.*

Lower Canada, }  
to wit: }

To C. D., actually at \_\_\_\_\_, &c

Whereas complaint hath this day been made before me that you (*state the offence laid in the complaint*) in contravention of the Lower Canada Game Act; Therefore, you are hereby commanded to come before me forthwith (*or at a specified time and place, which state here*) to answer the said complaint and be dealt with according to law.

Witness my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_ 18 .

J. S.

Justice of the Peace for \_\_\_\_\_

(L. S.)

## SCHEDULE C.

*Form of Warrant to arrest Defendant.*

To the Constables and Peace Officers of the District of \_\_\_\_\_

Whereas C. D., actually at \_\_\_\_\_, hath, by Summons, issued under my hand and seal the \_\_\_\_\_ day of \_\_\_\_\_, 18 ., been commanded to appear before me at a time and place mentioned therein; and notwithstanding the due service thereof according to law, doth refuse and neglect so to appear in obedience thereto;

Therefore, I command each and every of you, the said Constables and Peace Officers, forthwith to arrest the said C. D., wheresoever he may be found, and to produce the said C. D., before me, to be dealt with according to law.

Witness my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_ 18 .

J. S.

(*As in Summons.*)

(L. S.)

SCHEDULE D.

*Subpœna for Witness.*

Lower Canada, }  
to wit: }

To E. F., actually at \_\_\_\_\_, &c.

Whereas complaint has been made before me that C. D., did (*state the offence*), and I am informed and have reason to believe that you can give material evidence in the case ;

Therefore, you are commanded to appear before me forthwith, (*or at some specified time and place*) to testify what you may know concerning the matter of the aforesaid complaint.

Witness my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_ 18 .

J. S.

(*As in Summons.*)

(L. S.)

SCHEDULE E.

*Form of Conviction.*

Lower Canada, )  
to wit: }

Be it remembered that on this \_\_\_\_\_ day of \_\_\_\_\_ 18 , at \_\_\_\_\_, C. D., actually at \_\_\_\_\_, is convicted before me for that he did, &c. (*here state the offence briefly, with circumstance of time and place proven*) in contravention of the Lower Canada Game Act ; and I adjudge the said C. D. to forfeit and pay the sum of \_\_\_\_\_ (*also mention the article to be forfeited*) to be applied as the law directs, and also to pay A. B. (*the complainant*) the sum of \_\_\_\_\_ for costs :

(*If the penalty be not forthwith paid, add*) and the said C. D. having failed to pay the said penalty and costs forthwith after the said conviction, I adjudge him to be committed to and imprisoned in the Common Gaol of the District of \_\_\_\_\_ for the period of \_\_\_\_\_

Witness my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_ 18 .

J. S.

(*As in Summons.*)

(L. S.)

SCHEDULE

## SCHEDULE F.

*Form of Warrant of Commitment for non-payment of penalty or forfeiture and costs.*

Lower Canada, }  
to wit: }

To the Constables and Peace Officers of the District of \_\_\_\_\_, and the Keeper of the Common Gaol of the District of \_\_\_\_\_, at \_\_\_\_\_,

Whereas C. D., actually of \_\_\_\_\_, was on the day of \_\_\_\_\_ (as in conviction), and I did thereupon adjudge the said C. D. to forfeit and pay to A. B., &c., (as in conviction);

And whereas the said C. D. hath not paid the said penalty or forfeiture and costs;

Therefore, I command you the said Constables and Peace Officers, or any of you, to arrest and convey the said C. D. to the Common gaol for the \_\_\_\_\_ at \_\_\_\_\_, and deliver him to the Keeper thereof with this Warrant; And I command you the said Keeper of the said gaol to receive the said C. D. into your custody, and keep him safely imprisoned in the Gaol for the space of \_\_\_\_\_, and for so doing this shall be your sufficient warrant.

Witness my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_ 18 .

J. S.

(As in Summons.)

(L. S.)

## SCHEDULE G.

*Form of Warrant for Witness.*

Lower Canada, }  
to wit: }

To the Constables and Peace Officers of the District of \_\_\_\_\_

Whereas E. F., of \_\_\_\_\_, having been duly subpœnaed to appear before me on \_\_\_\_\_, at \_\_\_\_\_, to give evidence in a matter of complaint for contravention of the Lower Canada Game Act, and notwithstanding due service of such Subpœna certified before me, hath neglected and doth wilfully neglect to appear in obedience thereto;

Therefore

Therefore this is to command you, or any of you, to forthwith arrest the said E. F. so that you shall have him before me to be dealt with according to law.

Witness my hand and seal, this            day of            18 .

J. S.

*(As in Summons.)*

(L. S.)

SCHEDULE H.

*Form of Warrant to attach a forfeited Vessel or Boat.*

Lower Canada, }  
to wit :        }

To the Constables and Peace Officers, Officers of Militia, &c.,  
of            , or actually within the            of            .

Whereas a certain *(here describe succinctly the property illegally employed, and the nature of the offence committed)* in contravention of the provisions of the Lower Canada Game Act, in such case made and provided ;

Therefore, I command you, or any of you, forthwith to take possession of and seize the vessel *(or boat)* above described, and deliver up the same into my immediate custody, to be dealt with as the law directs.

Witness my hand and seal, this            day of            18 .

J. S.

*(As Justice of the Peace, Stipendiary or other Magistrate.)*

(L. S.)

Schedules A. B. C. D. E. F. G. H. to 22 Vict. (1858) c. 103.

*And see as to the County of Kamouraska only, 14, 15 V. c. 107.*

## C A P . X X X .

## An Act respecting furious driving on certain Highways.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Horses not to be driven faster than a trot within certain limits.

1. No person shall ride or drive any horse upon any of the public highways, within the distance of ten miles from either of the cities of Quebec or Montreal, or the town of Three Rivers, at a rate faster than an ordinary trot. 18 V. c. 113, s. 1.

Penalty for contravention.

2. If any person is convicted of any offence against the next preceding section, before any one or more of Her Majesty's Justices of the Peace for the district in which the offence was committed, upon the oath of one credible witness or more, or on view had of such offence by such Justice, such person shall, upon conviction, forfeit a sum not exceeding twenty dollars, nor less than four dollars, at the discretion of such Justice or Justices, with all reasonable costs, both before and after conviction. 18 V. c. 113, s. 2.

Penalty may be enforced by distress—imprisonment in default of payment.

3. Upon any such conviction as aforesaid, the Justice or Justices before whom such conviction is had, may forthwith issue his or their warrant of distress against the goods and chattels of the offender, directed to any constable in the said district, and commanding him to levy the said fine and costs of the goods and chattels of the offender; and in default of payment of such fine and costs as aforesaid by such offender, and if no goods and chattels of such offender can be found whereof such fine and costs can be levied as aforesaid, such Justice or Justices shall commit such offender to the common gaol of the district, for a term not exceeding thirty days, unless the fine and costs are sooner paid. 18 V. c. 113, s. 3.

Appropriation of fines.

4. Of all fines to be levied or collected by virtue of this Act, one half shall belong to the informer and the other half shall be paid to the Receiver General of this Province, for the public uses thereof. 18 V. c. 113, s. 4.

No appeal.

5. No appeal shall lie from the decision of any Justice rendered under this Act. 18 V. c. 113, s. 5.

C A P . X X X I .

An Act respecting Vehicles used on Winter Roads.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. No winter carriage or vehicle, without wheels, shall be used for the conveyance of any other load than passengers and their baggage, to the amount of one hundred weight for each passenger, on any of the Queen's highways or public roads, except sleighs or sleds having runners at least six English feet in length on the straight part of the bottom thereof, and eight and a half feet in length, including the curved part, and that have no part of the bottom of the sleigh or sled, or of the cross beams that support the bottom thereof, lower than ten English inches above the bottom of the runners, such sleigh or sled to have an open space between the runners and the raves on which the body rests, except where such space is broken by the perpendicular knees between the said raves and runners, and a clear distance of at least two and a half English feet between the inside of the runners at the bottom thereof, nor shall the shaft or pole be attached to the body of the sleigh or sled, or runners thereof, at a lower height than ten English inches above the bottom of the runners :

Description of sleighs to be used for transport of loads on the Queen's highways in winter.

2. But the length hereinbefore prescribed for the runners of the said sleighs or sleds, shall not affect the sleds used for saw-logs or heavy timber, commonly called bob-sleds. 3, 4 V. c. 25, s. 1, and 6 V. c. 12, and 12 V. c. 59.

Bob-sleds not affected.

3. Nothing in this Act shall prevent any kind of winter carriage from being used for crossing any such Queen's highway or public road, or proceeding along it for a distance not exceeding six arpents, for the purpose of passing from one part to another of the property of the owner of such carriage. 3, 4 V. c. 25, s. 2.

Any kind of winter carriage may be used for crossing such highways.

4. No cariole, train, berline or other winter carriage, other than such sleighs or sleds as are hereinbefore described and permitted, shall be used on any such Queen's highway or public road, unless the shafts of such carriage (if any there be) shall be attached to such cariole, train, berline or other winter carriage at the height above the bottom of the runners hereinbefore prescribed, and fixed otherwise than under the bottom thereof. 3, 4 V. c. 25, s. 3 and 4 V. c. 33, s. 2.

No winter carriage to be used on such highway, with the shafts fixed under the bottom, &c.

5. The foregoing sections apply to all Lower Canada, excepting the district of Quebec, the district of Gaspé, and that part of the district of Three-Rivers, which extends on the south side of the river Saint Lawrence from the district of Quebec

The foregoing sections not to apply to certain parts of L. C.

Quebec up to the parish of Nicolet exclusively, and on the north side up to the town of Three-Rivers inclusively. The said districts being bounded for the purposes of this Act as before the passing of the Act 20 V. c. 44. 12 V. c. 59.

When winter vehicles meet each to drive to the right.

5. When two winter vehicles meet, or a winter vehicle meets a person on horseback travelling on the same beaten track or snow, it shall be the duty of the driver or drivers of such vehicle or vehicles, to drive their horse or horses, or other beast or beasts of draught, to the right, so that while passing, but one of the runners of such vehicle or of each of such vehicles shall occupy the beaten track. 3, 4 V. c. 25, s. 4.

Preceding section applicable to all public roads during the winter season.

6. The next preceding section of this Act extends and applies to all public roads in Lower Canada, defined and laid out during the winter season by lawful authority, on the rivers and other waters when frozen, and on land. 3, 4 V. c. 25, s. 5.

Penalty upon persons offending against this Act.

7. Any person offending against the provisions of this Act, shall, for each such offence, incur a penalty of two dollars, on conviction thereof before any justice of the peace for the district, on the oath of one credible witness other than the informer; and such justice of the peace may, if such penalty be not forthwith paid, with the costs of the prosecution, at his discretion, cause the amount thereof to be levied by distress and sale of the goods and chattels of the offender, by warrant under the hand of such justice of the peace, or may commit such offender to the common gaol of the district, for a period not exceeding eight days. 3, 4 V. c. 25, s. 6 and 4 V. c. 33, s. 3.

Penalties how to be disposed of.

8. One moiety of all pecuniary penalties, recovered under the authority of this Act, shall be paid over to the Receiver General, and shall belong to Her Majesty for the public uses of the Province, and the other moiety shall belong to and be paid over to the informer. 3, 4 V. c. 25, s. 7.

#### *Enforcement of this Act in the City of Montreal.*

Powers of Recorder's Court in Montreal under this Act.

9. The Recorder's Court for the city of Montreal may hear, try and dispose of, in a summary manner, all complaints and informations laid against persons contravening the provisions of this Act, and may summarily condemn such offenders to the payment of the penalties prescribed by the *seventh* section of this Act, and the said court shall have the same powers with respect to the levying and recovery of such penalties as are by the said section conferred upon justices of the peace. 20 V. c. 47, s. 1.

Policemen in Montreal may arrest offenders against this Act.

10. Any officer or constable of the constabulary or police force of the said city of Montreal, may arrest on view any person contravening the provisions of this Act, or may arrest any person contravening

contravening the same, immediately or very soon after the commission of the offence, upon good and satisfactory information given :

2. Every person so summarily arrested shall be forthwith conveyed to the City Hall for trial before the said Recorder's Court, if then sitting, or if the said Recorder's Court can be soon thereafter assembled, or if not, then bail may be taken for his appearance at the next sitting of the said Court to answer the charge or plaint preferred against him and for which he may have been so arrested as aforesaid ; and to the cases of all persons so arrested the provisions of the eighty-seventh section of the Act passed in the session held in the fourteenth and fifteenth years of Her Majesty's Reign, intituled : *An Act to amend and consolidate the provisions of the Ordinance to incorporate the City of Montreal, and of a certain Ordinance and certain Acts amending the same, and to vest certain other powers in the Corporation of the said City of Montreal*, shall apply as fully and effectually as if persons contravening the provisions of this Act were specially mentioned and referred to in the said section. 20 V. c. 47, s. 2.

And take them before the Recorder's Court.

Provisions of section 87 of 14, 15 V. c. 128, to apply to such cases.

## C A P . X X X I I .

## An Act respecting the Destruction of Wolves.

**W**HEREAS it is expedient to endeavour to arrest the ravages committed among sheep and cattle by wolves: therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

Inhabitants of Lower Canada killing wolves, on proof thereof, to receive certificates.

1. If any person, being an inhabitant of Lower Canada, kills or causes to be killed any wolf, and after the death thereof, produces the same or the head thereof, with the skin and ears entire thereon, before any justice of the peace for the district within which such wolf was killed, and makes oath before such justice that such wolf was killed by him, within six miles of any inhabited place in the said district, the said justice, having first caused the ears and scalp of such wolf to be cut off and burnt, shall give to such person a certificate that proof of the killing of such wolf by such person, at such place, was made to his satisfaction. 1 W. 4, c. 6, s. 1.

Receiver General to pay ten dollars for each certificate.

2. The person possessed of such certificate shall cause the same to be presented to the secretary of the Province, and the Governor may thereupon, by warrant under his hand, order the payment to such person, or his representatives, out of any unappropriated moneys in the hands of the receiver-general, of the sum of ten dollars, for each wolf of which the destruction is so certified. 1 W. 4, c. 6, s. 2.

Duration of this Act.

3. This Act shall be in force until the end of the session of the Provincial Parliament next after the first day of January 1860, and no longer.

## C A P . X X X I I I .

## An Act respecting the storing of Gunpowder in Quebec and Montreal.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

*Quebec.*

1. No master of any ship or other vessel, having on board more than five pounds of gunpowder, shall bring alongside or make fast such ship or vessel to any wharf or quay in the port of Quebec, under a penalty not exceeding four hundred dollars, nor less than eighty dollars. 59 G. 3, c. 9, s. 1.

Vessels having powder on board not to lay alongside the wharves.

2. Every master of a ship or other vessel, in the landing of gunpowder at Quebec, shall employ boats or bateaux, each of which shall have sufficient tarpaulings or oil-cloths to cover the gunpowder, under the penalty of forty dollars for each boat or bateau not so provided and covered. 59 G. 3, c. 9, s. 2.

How gunpowder shall be landed.

3. All gunpowder coming from on board of any ship or other vessel in a boat or bateau as aforesaid, shall be landed by the master of such ship or vessel during high water, at the following places, that is to say :---at the landing place at the foot of the *Canoterie* hill with respect to gunpowder which is to be conveyed to the magazines situate east of Palace-gate,---and at the place commonly called *the landing place*, facing the King's fuel yard, adjacent to Palace-gate, with respect to gunpowder which is to be conveyed to the magazines situate south of Palace-gate, under the penalty of forty dollars. 59 G. 3, c. 9, s. 3.

Where gunpowder shall be landed.

Penalty.

4. In carting or transporting of gunpowder in Quebec in carts, trucks or other carriages, each one shall be provided with an oil cloth or tarpauling sufficient for covering and enveloping such gunpowder ;---and all gunpowder which shall be landed at the landing places above mentioned, shall be transported through Palace-gate or Hope-gate, and from thence by the shortest route to such of Her Majesty's magazines as may be fit to receive the same, according to such directions as may be given in that respect by any justice of the peace, under the penalty of twenty dollars, for every cart, or truck transporting gunpowder contrary to this section :

How gunpowder shall be conveyed through the city.

Penalty.

2. All penalties and forfeitures incurred under this and the three next foregoing sections, shall be sued for within eight days after the offence committed, before any two or more of Her Majesty's justices of the peace, for the district of Quebec in their weekly sittings, one half thereof shall belong to the informer

Collection of penalties.

May be levied  
on vessel.

informer and the other half to Her Majesty ; and the said justices of the peace shall hear and determine the same on the oath of one credible witness, other than the informer, and shall levy the same, with costs of suit, by warrant of distress and sale of the guns, boats, tackle and apparel, and furniture of the ship or other vessel or of the goods and chattels of other persons offending in the premises, under the hands and seals of such justices of the peace directed to any constable, rendering the surplus, if any, after deducting the costs and charges of distress and sale, to the master of such ship or other vessel, or other person to whom of right it may appertain. 59 G. 3, c. 9, s. 4.

### Montreal.

Within what  
limits and how  
gunpowder  
may be kept as  
regards the city  
of Montreal.

5. No person shall store, keep or have, within the city of Montreal, or within three miles from the boundaries thereof, any quantity of gunpowder exceeding in weight twenty-five pounds, at any one time, in any house, building or place other than a building of stone, covered with metal, made fire proof, and furnished with proper lightning rods or conductors, and being at the distance of at least two hundred feet, on every side, from any other building ; which building constructed as aforesaid, shall before any gunpowder shall be stored or kept therein, be certified by a person of competent skill, to be sufficient for the safe storing and keeping of gunpowder therein, and shall be approved of as sufficient for that purpose by two or more of the justices of the peace resident in the said city. 3, 4 V. c. 33, s. 1.

Penalty on  
keeping more  
than a certain  
quantity within  
the said limits.

6. Any person who stores, keeps or has any quantity of gunpowder exceeding the said quantity of twenty-five pounds, at any one time, in any building or place within the limits aforesaid, other than a building constructed, covered, furnished and situated as aforesaid, shall forfeit to Her Majesty, for every such offence forty-eight dollars and sixty-six cents ; and all gunpowder so stored or kept, contrary to the provisions of the next foregoing section, shall be forfeited. 3, 4 V. c. 33, s. 2.

Appropriation  
of penalties,  
and their re-  
covery.

7. One half of the said penalty of forty-eight dollars and sixty-six cents, and of the said gunpowder forfeited, shall belong to the person suing for the same within three months from the commission of the offence, and one half thereof to Her Majesty ; and the said penalty may be sued for, and such forfeiture of gunpowder, be declared and adjudged in any court of record in Lower Canada, or by and before any two justices of the peace for the district of Montreal, who may cause the said penalty, with costs, to be levied by warrant of distress, after conviction of the offender, on the oath of one or more credible witness or witnesses other than the informer, and shall declare and adjudge such forfeiture of gunpowder, and that it be sold and the proceeds thereof divided under their authority, according to the provisions of this section. 3, 4 V. c. 33, s. 3.

8. Any justice of the peace for the district of Montreal, on information and complaint on oath made before him, or on complaint by any two or more householders, being inhabitants within the limits mentioned in section *five* assigning a reasonable cause for believing that any quantity of gunpowder exceeding in weight twenty-five pounds, is stored or kept within the said limits, contrary to the provisions of the said section, may issue his warrant under his hand and seal, to be directed to one or more constables of the said city of Montreal, for the seizure of the said gunpowder and for the conveyance of the same to a place in which it may be lawfully stored and kept with safety; and any constable charged with the execution of any such warrant may, enter into, and, if there be occasion, may break open the door of the house, building or place mentioned in such warrant, in the day time only, and there search for, seize and secure such gunpowder, to be conveyed, as aforesaid, and to be detained until it is determined, in due course of law, as aforesaid, whether the same has been forfeited. 3, 4 V. c. 33, s. 4.

Proceedings in case of information that there is more than 25lbs. stored within said limits.

9. Provided always that the *four* next preceding sections of this Act shall not apply to, or affect any store-house or magazine belonging to Her Majesty, wherein gunpowder or other stores are kept for the use of the public, or to the conveyance of gunpowder to or from Her Majesty's magazines, or by Her Majesty's forces on military service. *Ibid*, s. 5.

Not to affect any magazine belonging to Her Majesty.

10. The council of the city of Montreal, at any meeting composed of at least the two thirds of the members thereof, may make by-laws, which shall be binding on all persons, for regulating the carting and transporting of gunpowder within the limits of the city; and by any such by-laws the said council may impose such fine not exceeding twenty dollars, or such imprisonment not exceeding thirty days, or both, as it may deem necessary for the enforcing the same. 13, 14 V. c. 92, s. 2.

City Councils to make By-laws touching the transporting of gunpowder.

## TITLE VI.

## PRIVATE RIGHTS,—PERSONAL.

## CAP. XXXIV.

## An Act respecting divers Personal Rights.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

## AGE OF MAJORITY.

Twenty-one years to be age of majority.

1. The age of majority shall, in Lower Canada, for every purpose whatever, be the age of twenty-one years, from the day of birth. 22 G. 3, c. 1, s. 1.

## WILLS AND TESTAMENTS.

Persons having legal exercise of their rights may devise their estates, &c., by last will and testament.

2. Every person of sound intellect and of age, having the legal exercise of his or her rights, may devise or bequeath by last will and testament, whether the same be made by a husband or wife, in favor of each other, or in favor of one or more of their children, as the testator sees meet, or in favor of any other person or persons whatsoever, all and every their lands, goods or credits, whatever be the tenure of such lands, and whether they be *propres*, *acquets* or *conquets*, without reserve, restriction or limitation whatsoever:

Provide as to husbands and wives.

2. But a husband or wife, making such last will and testament, shall not devise or bequeath more than his or her part or share of their community, or other property and estate which he or she may hold, or thereby prejudice the rights of the survivor, or the customary or settled dower of the children;

As to parties who would hold in mortmain.

3. And the said right of devising, as above specified and declared, shall not extend to a devise by will and testament, in favor of any corporation or other persons in mortmain, unless the said corporation or persons be, by law, entitled to accept thereof. 41 G. 3, c. 4, s. 1.

Method of proving wills.

3. The method followed at the time of the passing of the Act, 41 G. 3, c. 4, of proving last wills and testaments, made and executed according to the forms prescribed by the laws of England, before one or more of the judges of the courts of civil jurisdiction in Lower Canada, shall have the same effect, as if made and taken before a Court of Probate. 41 G. 3, c. 4, s. 2.

OPPOSITIONS TO MARRIAGES.

4. No opposition to any Marriage, founded on a Promise of Marriage alleged to have been made to some third party by one of the parties about to be married, shall be maintained or received in Lower Canada; nor shall any Marriage be delayed or prevented by any opposition founded on the allegation of any such Promise of Marriage, but the Priest or Minister to whom the same is tendered or offered shall refuse to receive the same, and act in all respects as if the same had not been tendered or offered. 12 V. c. 53, s. 1.

Oppositions founded on promises of marriage to a third party not to be received or to delay marriage.

ACTIONS FOR CRIMINAL CONVERSATION.

5. It shall be no valid exception or plea in bar to an action for a pecuniary compensation in damages for criminal conversation, that the plaintiff hath not instituted a criminal process and obtained a verdict, convicting the defendant of adultery. 40 G. 3, c. 7.

Criminal actions not required before actions for damages for criminal conversation.

GUARDIANS OF CERTAIN FOUNDLINGS.

6. The commissioners appointed by the Governor for superintending the Hotel-Dieu at Quebec,---the General Hospital of the Grey Nuns at Montreal,---the General Hospital at Quebec, or any institution receiving foundlings in the district of Three-Rivers, and their successors in office, shall be the legal guardians (*tuteurs*) of the foundlings in the institutions with reference to which they have been respectively appointed, and shall have such powers as they would have, if appointed to be such guardians in the ordinary course of law. 2 W. 4, c. 34, s. 2.

Commissioners of certain Hospitals to be *tuteurs* to the foundlings received into their respective institutions.

POLITICAL RIGHTS OF JEWS.

7. All persons professing the Jewish religion being natural born British subjects inhabiting and residing in this Province, are entitled to the full rights and privileges of the other subjects of Her Majesty, to all intents, constructions and purposes whatsoever, and capable of taking, having or enjoying any office or place of trust whatsoever, within this Province. 1 W. 4, c. 57.

Jews entitled to all the rights enjoyed by other subjects of Her Majesty.

RESPECTING QUAKERS.

8. The people commonly called Quakers, residing in Lower Canada, shall not be compellable to take oaths, but instead thereof may make solemn affirmation in the same form and words in which an oath is directed to be administered, leaving out the word *swear*, and inserting in the place thereof, *do solemnly, sincerely and truly declare and affirm*. 33 G. 3, c. 4, s. 1.

Quakers may affirm instead of swear.

9. If any Quaker, taking the said affirmation, is convicted of wilful false and corrupt affirming or declaring any matter or thing,

But false affirmations to be

deemed per-  
jury.

thing, which, if sworn in the common and usual form, would have amounted to wilful and corrupt perjury, he shall incur and suffer the same pains, penalties and forfeitures as are enacted by law against persons convicted of wilful and corrupt perjury. 33 G. 3, c. 4, s. 3.

Person desiring  
to affirm must  
produce proper  
certificate that  
he is a Quaker.

10. No person not publicly known to be of the people called Quakers, for some years before an affirmation is to be administered to him in any Court, or before any Justice of the Peace, or any person qualified to administer the same, shall be admitted to make any affirmation in manner aforesaid, unless it appears by a certificate from the quarterly meeting of the people called Quakers, where such person dwells or resides signed by six or more of the principal people of such meeting, that such person has been allowed as one of the people called Quakers, for the space of twelve months or upwards before he is to make such affirmation as aforesaid.

This provision  
not to extend  
to evidence in  
criminal cases.

11. No Quaker shall, by virtue of the three next preceding sections, be qualified to give evidence in any criminal cause, or to serve on Juries. 33 G. 3, c. 4, s. 4, and 13, 14 V. c. 18, ss. 5, 6, &c.

#### INHABITANTS OF A CERTAIN INDIAN RESERVATION.

Township of  
Dundee.

12. The tract of land formerly known by the name of "the Indian Reservation of St. Regis and Dundee," or "the Indian Lands," that is to say, all that tract of country included between lake Saint Francis, the Province line, and the township of Godmanchester, in the district of Montreal, shall be known and designated by the name of "the township of Dundee:"

All the benefits  
conferred by  
the laws of L.  
C., extended to  
the inhabitants  
of the township  
of Dundee.

2. And all the benefits and advantages, conferred by the laws of Lower Canada on the inhabitants of the townships therein, as to the appointment of commissioners for the summary trial of certain small causes, and of justices of the peace, the benefit of the acts passed for the encouragement of education, and of all other acts of a similar nature, and generally all the civil rights, privileges and advantages, enjoyed by the inhabitants of the townships of this Province as such, extend to, and shall be enjoyed by the inhabitants of the said township of Dundee. 1 W. 4, c. 39.

## TITLE VII.

## REAL PROPERTY AND RIGHTS.

## CAP. XXXV.

An Act respecting Lands held in Free and Common Soccage, and the transmission and conveyance thereof.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. The Act passed by the Legislative Council and Assembly of Lower Canada, in the ninth year of the Reign of King George the Fourth, and intituled : *An Act for rendering valid conveyances of lands and other immoveable property held in free and common soccage within the Province of Lower Canada, and for other purposes therein mentioned*, and the Royal assent whereto was signified by Proclamation in the said Province on the First day of September, one thousand eight hundred and thirty-one, is hereby declared to have been since the passing thereof, that is to say, upon and after the day last aforesaid, in force in Lower Canada. 20. V. c. 45, s. 1.

Act of L. C.,  
9 G. 4, cap.  
77, declared in  
force.

2. The word "Lands" in this Act includes any immoveable property or hereditament capable of being held in free and common soccage, and any estate or interest therein ; the word "Deed," shall include any instrument by which any lands can be conveyed, hypothecated or incumbered by the Laws of Lower Canada ; and the word "Hypothec" or "Charge," shall include the privilege of *baillieur de fonds* and all other privileged or hypothecary charges. 20 V. c. 45, s. 6.

Words  
"Lands,"  
"Deed," "Hy-  
pothec" or  
"Charge,"  
how to be in-  
terpreted.

3. All grants, bargains, sales, enfeoffments, alienations, gifts, exchanges, disposals, descents, devises, inheritance, right of dower, or other alienation or conveyance whatsoever, by or in virtue of which any person or persons whosoever are or shall be the proprietor or possessor of, or lay claim to be the proprietor and possessor of any lands or other immoveable property, granted in free and common soccage within Lower Canada, and which may have been made and executed prior to the First day of September, one thousand eight hundred and thirty-one, for the transfer, alienation, and conveyance of any such lands or other immoveable property, though not made and executed according to the rules and restrictions established by the law of England in reference to such grants, bargains, sales, enfeoffments, alienations, gifts, exchanges, disposals, descents, devises, inheritance, right of dower or other conveyances, shall be and are hereby declared to be as valid in law, to all intents,

All convey-  
ances or trans-  
fers of immove-  
able property  
held in free and  
common soccage  
executed  
before 1st Sept.,  
1831, to be good  
and valid  
though not ex-  
ecuted accord-  
ing to law of  
England.

Proviso.

as if they and each and every of them had been made and executed in conformity to such rules and restrictions as aforesaid, and that as fully as if the said rules and restrictions of the law of England had never been in force, or had not been declared to govern and affect the transfer, alienation and conveyance of lands or other immoveable property so held in free and common soccage; provided such grants, bargains, sales, enfeoffments, alienations, gifts, exchanges, disposals, descents, devises, inheritance, right of dower or other conveyances, and each and every of them, respectively, were at the time of making and executing the same, sufficient to operate as such grants, bargains, sales, enfeoffments, alienations, gifts, exchanges, disposals, descents, devises, inheritance, right of dower or other conveyances, under any law or usage in force in Lower Canada at the time of making and executing the same. 9 G. 4, c. 77, s. 1.

All conveyances executed since 1st Sept., 1831, according to laws of England or of Lower Canada, to be valid.

4. All grants, bargains, sales, enfeoffments, alienations, gifts, exchanges, disposals, devises, or other conveyances of any lands or other immoveable property, holden, in free and common soccage, within Lower Canada, and duly made and executed upon or after the said First day of September, one thousand eight hundred and thirty-one, either upon and under such rules and restrictions as are by the law of England established and in force in reference to such grants, bargains, sales, enfeoffments, alienations, gifts, exchanges, disposals, devises, or other conveyances, or by deed or instrument in writing, duly made and executed by and before two notaries public, or by and before one notary and two witnesses, according to the laws and usages of Lower Canada, shall be equally valid in law. 9 G. 4, c. 77, s. 2.

Hypothecs and mortgages on such lands created before 1st Sept., 1831, according to laws of Lower Canada declared valid.

5. All mortgages and *hypothèques*, and all privileged claims of *baillieur de fonds* created before the day last aforesaid, upon any lands or other immoveable property holden in free and common soccage in Lower Canada, and which were so made and created according to the forms, laws and usages of Lower Canada, affecting other lands not holden in free and common soccage, shall be held valid in law to all intents. 9 G. 4 c. 77, s. 3.

Hypothecs, &c., created on or after the said day according to laws of Lower Canada to be valid if lands hypothecated are described in the instrument.

6. All mortgages and *hypothèques*, and all privileged claims, created upon or after the day last aforesaid, upon any land or other immoveable property holden in free and common soccage, according to the forms, laws and usages of Lower Canada, shall be valid to all intents, provided that the lands so mortgaged or hypothecated, or upon which such privileged claim is so intended to be reserved, are specially set forth and described in the instrument creating or reserving the same, and not otherwise. 9 G. 4, c. 77, s. 4.

7. Nothing in this Act shall be so construed as to prejudice in any manner whatsoever the rights of any persons by whom any real property has been sold, (*bailleur de fonds*) who shall always be allowed to demand and exercise their rights of preference of *hypothèque* and privileged claim upon the moneys which shall form the consideration of any sale or transfer of any land or hereditament, although no stipulation to that effect, or express mention of such right, be made in the deed of sale or transfer of such land or hereditament. 9 G. 4, c. 77, s. 5.

Nothing in this Act to prejudice the rights of *bailleurs de fonds*.

8. In all cases where any proprietor of land granted or held in free and common soccage in Lower Canada, died before the said First day of September, one thousand eight hundred and thirty-one, without having partitioned the same, either by last will and testament or otherwise, the heirs of such proprietor shall be held to partition such land according to the old laws of Lower Canada, (that is to say, as if such land had been held by the tenure of *franc alleu roturier*, being that known to the said old laws which is most analogous to free and common soccage,) unless the said heirs have agreed among themselves upon a different partition. 9 G. 4, c. 77, s. 6.

Persons having died intestate before 1st Sept., 1831, their heirs to partition lands according to the old laws of Lower Canada.

9. In all cases where the proprietor of any land held in free and common soccage in Lower Canada, died intestate as to such lands, between the Thirty-first day of August, one thousand eight hundred and thirty-one, and the tenth day of June, one thousand eight hundred and fifty-seven, the husband, widow and heirs of such proprietor, shall have respectively the same rights in respect of such lands as if they had been held in *franc alleu roturier*,—unless they have agreed upon, assented to or confirmed a different disposition or partition thereof, or have acquiesced therein during one year and one day from the death of such proprietor, by having allowed the same or any possession or act founded thereon, to remain unquestioned by them in any competent Court during that time; And this section shall apply to and bind minors, absentees and married women, and as well the heirs and legal representatives of or persons claiming through the parties who have agreed upon, assented to, confirmed or acquiesced in such disposition or partition, as such parties themselves:

How lands in free and common soccage shall be divided when the owner has died intestate between 31st August, 1831, and 10th June, 1857.

Minors, &c., to be bound.

2. Provided, that whenever any person has *bonâ fide* purchased or obtained any hypothec or charge upon any such land for a valuable consideration from any person who claimed to be and was entitled thereto as heir of the former owner so dying intestate, either under the English Law referred to in the Act aforesaid, or under the Laws of Lower Canada applicable to lands held in *franc alleu roturier*, and has registered the Deed creating such charge, or operating such Conveyance, before the registration of any sale, conveyance or incumbrance of such lands by any other person claiming to be such heir, and before the

Proviso in favor of *bonâ fide* purchasers or incumbrancers, whose titles are duly registered.

the day last aforesaid, or within six months next after the said day, but before registration by such other person; no person being at the date of such Deed in adverse possession of the lands as such heir or as claiming through any such heir, or having questioned the title of the vendor or grantor of the charge in any suit pending or decided in favor of the adverse claimant at the date of such Deed,—then as regards the conveyance, sale or charge operated or created by such Deed, the grantor or vendor therein mentioned shall be held to have been at the date thereof the person entitled to inherit the said lands from the proprietor so dying intestate as regards them ;

Devises accord-  
ing to English  
form, declared  
valid.

3. And in like manner any devise of any such lands held in free and common soccage, by last will and testament made according to the forms prescribed by the law of England in force there at the time of making such devise, shall have the same force and effect as if made before two Notaries Public according to the laws of Lower Canada. 20 V. c. 45, s. 2.

Two preceding  
sections not to  
affect cases  
pending on  
10th June,  
1857, nor deci-  
sions having  
force of *chose  
jugée*.

10. Nothing in the two next preceding sections of this Act, shall affect any case pending on the said tenth day of June, one thousand eight hundred and fifty-seven, or any case in which there was then any actual and open possession under a title adverse to their provisions or those of the Act of Lower Canada, mentioned in the first section of this Act, but such cases shall be adjudged upon as if the said sections had never been passed ; nor shall any thing in the said sections affect any case in which a judgment having authority of *chose jugée* was given before the day last aforesaid. 20 V. c. 45, s. 3.

What laws  
govern lands in  
free and com-  
mon soccage in  
certain matters.

11. The Laws which upon and since the day last aforesaid have applied to and governed and shall apply to and govern lands held in free and common soccage in Lower Canada, as well with regard to descent, inheritance, incumbrance, alienation, dower, and the rights of husbands and of married women, as with regard to all other incidents and matters whatsoever, shall be the same with those which apply to and govern lands held by the tenure of *franc alleu roturier*, in like manner, except only in so far as such Laws may have been expressly altered as regards lands held in free and common soccage, by the Act last mentioned, or any other Act of the Legislature of Lower Canada or of Canada :

As to rights of  
married  
women.

2. And as regards the rights of married women and their representatives, this section shall apply to cases where the husband has died since the day last aforesaid, whatever be the date at which the marriage may have taken place ; but nothing herein contained shall prevent the effect of any marriage contract or settlement made either in the English or French form. 20 V. c. 45, s. 4.

**12.** The Laws which have governed lands held in Free and Common Soccage in Lower Canada, in matters other than alienation, descent and rights depending upon marriage, are hereby declared to have always been the same with those which governed lands held in *franc alleu roturier*, except in so far only as it may have been otherwise provided by any Act of the Legislature of Lower Canada, or of this Province :

What laws have governed lands in free and common soccage in matters other than alienation, descent and rights depending on marriage.

2. But nothing in this section shall be construed as a declaration that such lands held in Free and Common Soccage have or have not at any time been governed by any other Law as regards alienation, descent or rights depending on marriage.  
20 V. c. 45, s. 5.

How this section shall be construed.



## C A P . X X X V I .

An Act respecting Secret Incumbrances on Lands—  
and Confirmation of Titles.

Recital.

**T**O secure property and prevent the disturbances and evictions from secret incumbrances unknown to the purchasers of such property ; to enable purchasers of real property to make such purchases with confidence and obtain a valid discharge after paying the price thereof ; and on the other hand to enable the vendors of such immoveables, within a reasonable time, to receive the purchase money without danger to the purchaser :— Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

How proprietors of immoveables may obtain the discharge of incumbrances thereon.

1. All proprietors of immoveables, whether the same be immoveables real or immoveables by fiction of law, having acquired the same by purchase, exchange, licitation, or other title of a nature to transfer property, who are desirous of discharging such immoveables from any hypothecs wherewith they have been incumbered immediately previous to and at the time they were purchased or acquired by such persons, may obtain a judgment of confirmation of their purchase or acquisition in the manner hereinafter mentioned :

Effect of judgment of confirmation.

2. The said judgment of confirmation shall have the effect of discharging the privileges and hypothecs wherewith such immoveables were incumbered previous to and at the time of such purchase or acquisition as aforesaid, in respect of all, each and every of the creditors of the vendors or assignors, and of their predecessors, neglecting to make their opposition in the form and within the time hereinafter prescribed ; and the purchasers or proprietors of such immoveables obtaining such judgment of confirmation, shall be and remain incommutable proprietors thereof, without being held or bound for the debts of the preceding proprietors of the same, in any manner whatsoever ;

It shall not give purchaser greater rights than vendor had.

3. But such judgment of confirmation shall not have the effect of giving to such purchasers or proprietors, in relation to the property, any other or greater real rights (*droits réels fonciers*,) or servitude than their vendors had ; and the sole effect of such judgment of confirmation shall be the discharging of privileges and hypothecs, only. 9 G. 4, c. 20, s. 1.

Proceedings to be taken by proprietor in order to obtain confirmation of title.

2. The purchaser or proprietor, before he shall be entitled to demand such judgment of confirmation, shall lodge at the office of the prothonotary of the Superior Court for the district wherein such immoveables lie, the title deed of purchase or acquisition thereof ; and thereupon public notice thereof, under the signature of the prothonotary, shall be given three several times

times in the course of four months, in the *Canada Gazette* stating the date of the deed, the names and descriptions of the parties thereto, its operation or general character, a description of the immoveable, and who has been in the actual possession thereof during the three years next before such notification, and the day on which such judgment of confirmation will be applied for, thereby calling on all persons who may have, or claim to have, any privilege or hypothec under any title or by any means whatsoever, in or upon the immoveables in respect of which such judgment of confirmation is to be applied for, to signify in writing their oppositions, and file the same in the office of such prothonotary, eight days at the least before the day fixed for such application :

2. Such notification shall be in the form or to the effect expressed in the schedule hereunto annexed, but with any additions or alterations which the nature of the case may require, and shall also be publicly and audibly read at the church door of the parish, township or place in which the immoveable is situate, at the issue or immediately after divine service in the forenoon, on the four Sundays next before the day on which such application is to be made as aforesaid ; and such notice shall also be posted up at the door of such church on the first Sunday on which the same shall be so read ; and where there is no church or other place of divine worship, such notice shall be so given at the most public place or places in the parish, township or place in which the immoveables are situate. 9 G. 4, c. 20, s. 2.

Form of notification.

3. In the case of immoveables by fiction of law, such proceedings shall be had and judgment of confirmation shall be obtained in the Superior Court sitting in term for the district where the vendor or assignor of such immoveables had his domicile for three years next preceding the sale to be so confirmed, or if his domicile during that period has been in more districts than one, then in that district in which he is actually domiciliated, giving the like public notice in the several districts where he may have been so domiciliated during any part of the said three years. 9 G. 4, c. 20, s. 5.

Case of immoveables by fiction of law provided for.

4. When the deed of purchase, exchange or other title of a nature to transfer property, includes immoveables real, or ground rents (*rentes foncières*) situate within the limits of different districts, the judgment of confirmation shall be obtained in such districts, respectively, in default of which the purchasers or proprietors shall be liable to the hypothecs of the vendor or assignor in relation to such immoveables as shall be within the limits of the district in which no such judgment has been obtained. 9 G. 4, c. 20, s. 6.

Judgment of confirmation to be obtained in district where immoveables situated.

5. Whenever any real property is situated partly in one District and partly in another, any proceeding for confirmation of

In case real property be situated

of

tuated in more than one district.

of title, may be commenced, prosecuted, allowed and carried into effect in one or the other of the Districts in which the real property in question may be partly situate at the option of the applicant, as if such real property were wholly situate in the District in which the applicant has chosen to commence his proceedings :

In the case of seigniories or fiefs.

2. Nevertheless, in the case of purchase or other title of a nature to transfer property of fiefs or seigniories which extend into different districts, such proceedings and judgment of confirmation shall be obtained in the Superior Court sitting in term for the district in which the principal manor of such fief or seigniority lies. 9 G. 4, c. 20, s. 6, and 14, 15 V. c. 60, s. 2.

On due proof, the Court to pronounce judgment of confirmation.

6. Upon proof of the formalities hereinbefore prescribed having been observed, the Superior Court in term shall, on the summary petition of the purchaser or proprietor, pronounce a judgment confirming such title deed, which judgment shall have the effect hereinbefore mentioned. 9 G. 4, c. 2, s. 4.

If no oppositions exist, judgment to be pronounced purely and simply.

7. If no oppositions are filed, the judgment of confirmation shall be pronounced purely and simply ; and in the case of oppositions, the same shall be mentioned and referred to in such judgment of confirmation, leaving the parties to enforce the same upon the proceeds of such sale in the ordinary course of law. 9 G. 4, c. 20, s. 12.

Persons, bodies corporate, &c., claiming any privilege, to file oppositions in order to preserve their rights.

8. All persons, bodies politic or corporate, ecclesiastical or civil, women subject to marital authority, minors, persons interdicted or absentees, having or claiming to have any privilege or hypothec, under any title whatsoever, in or upon the immoveables in respect of which such judgment of confirmation shall be applied for, shall file their oppositions, containing the usual election of domicile, with the prothonotary of the court in which such proceedings are had, within the period above limited, in order to preserve their privileges or hypothecs,—in default of which such privileges or hypothecs shall be extinguished ; but nothing herein shall diminish the liability of administrators, husbands, tutors or curators, for the consequences of any neglect in relation to the premises, or shall in any way affect substitutions :

How the purchaser may discharge privileges so preserved.

2. The purchaser may discharge the privileges or hypothecs so preserved, by paying the price, purchase money or consideration fixed and established in the manner hereinbefore provided, to the creditors entitled to receive the same, or by depositing the amount thereof in the hands of the prothonotary of the court in which the proceedings are had, to be distributed according to law. 9 G. 4, c. 20, s. 7.

9. Provided, always, that nothing hereinbefore contained shall extend to take away, alter, or in any way affect the rights or hypothecs of women during marriage, upon the immoveables of their husbands, or of children upon the immoveables of their fathers in relation to dower not yet open, nor in any manner or way to affect substitutions. 9 G. 4, c. 20, s. 8.

Rights of women during marriage and of children protected.

10. Provided also, that seigniors, and all persons, bodies politic, or corporate, ecclesiastical or civil, holding as proprietors, any fief or seignior, shall not be bound to file any opposition in relation to the *cens et rentes foncières* and other feudal and seignorial rights and burthens upon the lands for which such proceedings shall be had as aforesaid, except only in relation to any arrears of *cens et rentes* or any *lods et ventes* or other feudal or seignorial rights or dues accrued before such immoveables were so purchased, or otherwise acquired, for which they must file their oppositions as hereinbefore provided in respect of other creditors. 9 G. 4, c. 20, s. 9.

No opposition required for Seigniorial rights, excepting in relation to arrears.

11. During the said four months, any lawful creditor of the vendor or assignor, or of their predecessors, may appear at the office of the prothonotary, and there offer an increase in the price, purchase money or other consideration in the aforesaid title deed contained, and have the same received, provided such augmentation amounts to at least one tenth of the amount of such price, purchase money or other consideration :

Certain rights reserved to creditors of vendors or assignors, or their predecessors.

2. And in like manner, any other creditor of such vendor, or assignor, may, in like manner, outbid such creditor, provided each creditor out-bidding the previous creditor or creditors, offers an increase in price not less than one twentieth of the amount of the price, purchase money or other consideration in such deed of purchase or acquisition contained, and offers also to restore to the purchaser or proprietor his costs and lawful disbursements, for doing all which he shall give sufficient security to be received by one of the Judges of the Superior Court for the district in which such immoveables lie, at the time of making such bid and in the usual and accustomed manner ;

Each creditor must outbid the other by a certain amount.

3. But the purchaser or proprietor of such immoveables may nevertheless retain the same upon completing and making up the highest price and sum which has been lawfully bid for the same ; and in default of any such creditors offering such increase in the price, purchase money or consideration within the delay and in the form aforesaid, the value of the immoveables shall be and remain definitively fixed at the price or sum in the said title deed contained. 9 G. 4, c. 20, s. 3.

Proviso—rights of purchaser in such case.

12. Amongst the opposing creditors, those who are privileged shall be first paid out of the price or purchase money of such immoveables ; after them, the hypothecary creditors shall be collocated according to the order and rank of their hypothecs ;

Order of distribution of purchase money among opposing creditors.

hypothecs ; and if there remain any further money, it shall be distributed amongst the chirographary opposing creditors, in preference to privileged or hypothecary creditors who have neglected to file oppositions. 9 G. 4, c. 20, s. 10.

Fees to be allowed.

13. The following fees only shall be allowed :—To the prothonotary, for filing the deed, twenty cents ; for every opposition, ten cents ; for every necessary certificate, ten cents ; for every sentence or judgment, forty cents ; for a copy thereof, twenty cents :—To the bailiff, for posting up the advertisement, twenty cents ; for each publication thereof, twenty cents ; to him, for every league he shall travel in the country, thirty cents ; for his certificate, thirty cents ;—To the printer, for every ten lines of printing in both languages, one dollar for the first insertion, and twenty-five cents for every subsequent insertion ; and when such insertion shall exceed ten lines, then he shall be entitled to receive eight pence (or thirteen cents and one third) per line for the first insertion in both languages, and two pence (or three cents and one third) per line for every subsequent insertion for his advertisement. 9 G. 4, c. 20, s. 11.

Duties of Prothonotaries under this Act.

14. Every Prothonotary shall give due attendance at his office every day in the week, Sundays and Holydays excepted, during the usual hours, for the dispatch of business relating to the purposes aforesaid ; and every such Prothonotary, as often as required, shall make searches concerning all proceedings had as aforesaid, and deliver such extracts and certificates as are lawfully required ; and if such Prothonotary is guilty of any neglect, misdemeanour or fraudulent practice whereby any of the foregoing provisions are evaded, he shall pay the damages with full costs of suit to every person injured hereby, to be recovered by action in the Superior Court. 9 G. 4, c. 20, s. 13.

Proceedings in nature of voluntary decree, abolished.

15. All proceedings in the nature of voluntary *décrets* are and shall remain abolished. 9 G. 4, c. 20, s. 14.

## SCHEDULE.

Public Notice is hereby given that there has been lodged in the office of the Prothonotary of the Superior Court, of and for the district of \_\_\_\_\_, a *Deed* made and executed before A. B. and colleague, Notaries Public, on the \_\_\_\_\_ day of \_\_\_\_\_ between C. D. of \_\_\_\_\_, of the one part ; and E. F. of \_\_\_\_\_, of the other part ; being a (*sale*) by the said C. D. to the said E. F., of (*a lot or parcel of land*) situate, &c., and possessed by \_\_\_\_\_ as proprietor for the three years now last past ; and all persons who have or claim to have any privilege or hypothec under any title or by any means whatsoever

whatsoever in or upon the said (*lot of land*), immediately previous to and at the time the same were acquired by the said C. D., are hereby notified that application will be made to the said Court on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, for a judgment of confirmation, and they are hereby required to signify in writing their Oppositions, and file the same in the office of the said Prothonotary eight days at least before that day, in default of which they will be for ever precluded from the right of so doing.

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## C A P . X X X V I I .

An Act respecting the Registration of Titles to or Charges upon Real Estate,—the Dower and property of Married Women,—the Law of Hypothecs, and Conveyance of Soccage Lands.

**F**OR preventing losses from secret and fraudulent conveyances of or charges upon real estate, or from the uncertainty and insecurity of titles to such estate in Lower Canada; Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

## I.—REGISTRATION GENERALLY, AND ITS EFFECT.

Instruments, wills, judgments, recognizances &c. executed or given after 1st December 1841 may be registered.

1. Every deed or instrument in writing, executed after the thirty-first day of December, in the year one thousand eight hundred and forty-one,—every will made by any person dying after the said day,—every judgment, judicial act or proceeding, recognizance, appointment of tutor or guardian to minors, or of a curator to any interdicted person,—and every privileged and hypothecary right, claim or charge, from whatever cause resulting, and whether produced by mere operation of law or otherwise,—entered into, made, acquired or obtained after the said day,—of or concerning, or whereby any land or real estate in Lower Canada is alienated, devised, hypothecated, charged or affected, may be registered, as hereinafter directed:

Deeds or Instruments unless registered to be inoperative as against subsequent purchasers &c. in certain cases.

2. And every such deed or instrument in writing, judgment, judicial act and proceeding, recognizance, privileged and hypothecary right and claim and charge, shall be inoperative, void and of no effect, against any subsequent *bond fide* purchaser, grantee, mortgagee, hypothecary or privileged creditor or incumbrancer, for or upon valuable consideration, unless it has been registered before the registering of the deed, instrument in writing, judgment, judicial act or proceeding, recognizance, privileged or hypothecary right or claim, or incumbrance, under which such subsequent purchaser, grantee, mortgagee, hypothecary or privileged creditor, or incumbrancer, claims;

Devises by will to be inoperative in similar cases.

3. And every such devise by will shall be inoperative, void, and of no effect, against any subsequent purchaser, grantee, mortgagee, hypothecary or privileged creditor or incumbrancer, for or upon valuable consideration, unless such will be registered, as hereinafter prescribed;

Appointments of tutors to confer no hypothecary right

4. And every such appointment of a tutor to a minor or minors, and of a curator to a person or persons interdicted, shall be inoperative in conferring any hypothec or hypothecary

hypothecary right whatever, and shall be void and of no effect against any subsequent purchaser, grantee, mortgagee, hypothecary or privileged creditor, or incumbrancer, for or upon valuable consideration, unless such appointment of a tutor or curator has been registered, as herein prescribed; 4 V. c. 30, s. 1, *part.*

5. Such registration may be made by memorial, or at full length, or by extract in the case of a Notarial Instrument, subject to the provisions hereinafter made. *Present Acts passim.*

2. Any Notarial obligation, contract, instrument in writing, judgment, judicial act or proceeding, recognizance, privileged or hypothecary right or claim, in force on the said thirty-first day of December, one thousand eight hundred and forty-one, whereby any debt, sum of money, goods or chattels, were contracted, stipulated or secured, or were recovered or made, and were payable or deliverable, and whereby any real estate, was hypothecated, charged or incumbered, for the payment, satisfaction, or delivery thereof, might be registered on or at any time before the first day of November, one thousand eight hundred and forty-four; and such registration on or before the said day, has had and shall have the effect of preserving such hypothecs, privileged and hypothecary rights and claims, according to their respective rank and priority, in the same manner as if the Registration Ordinance, fourth Victoria, chapter thirty, had not been made :

2. But every such notarial obligation, contract, instrument in writing, judgment, recognizance, judicial act or proceeding, privileged or hypothecary right or claim, which was not registered on or before the day last mentioned, shall be and has been from the the said day inoperative, void and of no effect whatever, against any subsequent *bonâ fide* purchaser, grantee, mortgagee, hypothecary, or privileged creditor or incumbrancer, for or upon valuable consideration; 4 V. c. 30, s. 4, *part.*

3. Nothing in the next preceding section shall require the registration of the original grant, letters patent, conveyance or title by which lands were held, *en fief, à titre de cens, en franc alleu*, or in free and common soccage, on the said thirty-first day of December, one thousand eight hundred and forty-one, or of any rent, due, duty, or service, thereby stipulated or reserved by the seignior, *original grantor*, or lord of the fee. 4 V. c. 30, s. 4, *part.*

4. The documents, instruments in writing, acts and things mentioned in the first section of this Act, or required to be registered, as well those passed before Notaries as those passed before witnesses, and judgments, judicial acts and proceedings and other matters of record, may be registered, by transcribing

proper books of registration.

the same at full length into the proper Books of Registration, in the proper Registry Office ; and the certificate of the Registrar, on any such document, instrument in writing, act or thing registered at full length, shall be evidence of such Registry :

Effect of Registrar's certificate.

2. Provided, that if such document, instrument in writing, act or thing to be registered at full length, be passed before Notaries, or be a judicial act or proceeding, or any matter of record, the production to the Registrar of a notarial copy thereof, or of a copy thereof certified by the proper officer, shall be sufficient to oblige such Registrar to register the same, without requisition in writing from any of the parties thereto ; 7 V. c. 22, s. 5.

Registration may be made by extract from Notarial Instruments.

5. Registration may be made by extracts from Notarial Instruments made as provided by the section of Chapter of these Consolidated Statutes (13, 14 V. c. 39, s. 10,) respecting the Notarial Profession ; and such registration shall have the same effect, as regards the contents of such extract only, as the registration of such instrument at full length ; the fee of the Registrar for the certificate on such extract shall be thirty cents. 19, 20 V. c. 15, s. 2.

Registration to affect all parties interested.

6. The Registration of any document, instrument in writing, act or thing shall avail to preserve the rights of all parties interested therein. 7 V. c. 22, s. 6.

Notice of prior unregistered sale or privilege not to affect the rights of subsequent purchasers, &c., for valuable consideration.

7. No notice or knowledge of any prior unregistered sale, grant, mortgage, hypothec, privilege or incumbrance, of or upon any real estate, subject to registration, given to or possessed by any party to whom or in whose favour any subsequent sale, grant, hypothec, privilege or charge of or upon the same land or any part thereof, duly registered, has been made or created, shall in any wise affect any right, title, claim or interest whatever, so derived to and vested in any such subsequent purchaser, grantee, mortgagee, hypothecary or privileged creditor or incumbrancer, for valuable consideration. 4 V. c. 30, s. 1, *part*.

Registration of title, &c., posterior to that of proprietor in possession, not to affect present proprietor.

2. Except that registration of any title to, or instrument creating any charge, incumbrance, or servitude upon, any immovable property, posterior to the title of any party in open and public possession of such property as proprietor, shall not affect the title or rights of such party, although the title of such party be not registered until after the registration of such posterior title or instrument. 8 V. c. 27, s. 7.

Registration of conveyances of lands not to affect parties whose title is derived from a different source.

8. The registration of any deed, conveyance or will, whereby an estate of inheritance, or in freehold is passed, shall not prejudice any grantee or purchaser, for valuable consideration, or devisee, whose title is derived from a different grantor, vendor, or testator, but shall have effect only between and

and in respect of grantees, purchasers and persons whose title is derived from the same grantor, vendor, or testator. 4 V. c. 30, s. 3.

9. The registration of hypothecs and hypothecary rights and claims, made within the ten days next before the *bankruptcy* of the debtor, shall give no priority to the registering creditor over other creditors, or produce any effect whatever. 4 V. c. 30, s. 18.

Registration of hypothecs, &c., ineffectual in certain cases.

10. It shall not be necessary to register any claim for arrears of *cens* due to the seignior,—or for seigniorial dues, servitudes, or rights, (legal or conventional,)—or for arrears of *rentes foncières* for not exceeding seven years,—or for the expenses of affixing seals for safe custody,—or of making any inventory when required by law,—or for costs of suit incurred for the common benefit of creditors,—or for funeral expenses and those of the last sickness, or for servants' wages for not exceeding two years; and such debts shall not require registration to preserve any hypothec or privilege attached to them. 4 V. c. 30, s. 2.

Certain claims for arrears, &c., need not be registered.

11. The *bailleur de fonds* shall register the deed creating his right as such, in the manner prescribed with respect to the registering of hypothecary claims, within thirty days from the date of the passing of such deed, and failing so to do, such right of *bailleur de fonds* shall be of no effect with respect to any subsequent purchaser, donee or hypothecary, privileged or judgment creditor, for valuable consideration whose title is registered before it; but until the expiration of the said thirty days, such privilege of *bailleur de fonds* shall not be affected by the non-registration thereof:

*Bailleur de fonds* to register within 30 days from passing of deed.

2. But nothing in this section shall be construed to affect the judgment of the Civil Courts in Lower Canada, rendered before the fourteenth day of June, one thousand eight hundred and fifty-three, which have decided that the *bailleur de fonds* was not bound to register the deed establishing his right of *bailleur de fonds*. 16 V. c. 206, ss. 4, 5, 6.

Judgments to the contrary not to be affected.

12. The provisions of this Act shall not extend to leases for a shorter period than nine years. 4 V. c. 30, s. 17.

Leases for less than 9 years not affected by this act.

2.—REGISTRY OFFICES.

13. The present Registry Office for any place shall continue to be the Registry Office for such place until some other shall, under this Act, become the Registry Office thereof, and the present Registrars shall continue in office, subject always to the exceptions hereinafter contained. *Present Acts passim*.

Present Registrars and Registry offices to continue such.

14. Any Registrar having the legal custody of the books in which any document is registered, or of any official transcript

Registrar having legal custody of the

books, &c., may grant certificates, &c.

of such books, or of the portion thereof containing the registration of such document, shall have full power to grant certificates and to do all other things relative to such registration, although it has been originally effected in some other Registry Office. *Id.*

A Registry Office may be established and a Registrar appointed in each Electoral County.

**15.** Subject to the provisions hereinafter made, there shall be in each Electoral County in Lower Canada, at such place as the Governor has appointed or shall appoint, a Public Office for the registering of all deeds, wills, conveyances, notarial obligations, contracts and instruments in writing, and all other acts and writings whatsoever, in any manner affecting real estate, situate within such County; and the Governor may, from time to time, appoint a fit person to be Registrar of each of the said Counties respectively, by whom the said office shall be kept and the duties of Registrar performed. 7 V. c. 22, s. 2, *as amended by subsequent Acts.*

Registration books, &c., of certain former counties to make part of Records of Registry Offices of the counties in which the property to which they relate is situate.

**16.** All the books, records, indexes, documents and papers appertaining to the County Registry Offices, established under the several Acts of the late Province of Lower Canada, in the then Counties of Drummond, Sherbrooke, Stanstead, Shefford and Missisquoi, and also in the then Counties of the Two Mountains, Beauharnois, Ottawa, Megantic and Acadie, which were, by the Ordinance 4 Vic. c. 30, required to be transmitted to the Registry Offices in the several Municipal or Registration Districts in which the Registry Offices for the said Counties respectively were situate, shall be returned into, or if returned into, shall remain in, the Registry Offices of the respective Counties where the Real Estate to which they relate lies, and shall make part of the records of such Registry Offices; and the Registrars in whose custody they will respectively be, shall have the same powers and duties with regard to them, and may grant certificates concerning them, as if originally registered in such offices. 7 V. c. 22, s. 3, *as amended.*

Where records, &c., made under 4 V. c. 30, shall be kept.

**17.** All the memorials, books, records, indexes, documents and papers, made under the provisions of the said Ordinance 4 Vic. c. 30, shall remain in and form part of the records and papers of the Registry Offices for the Counties within which the Registry Offices in which they now are, shall have been respectively kept, subject to the exceptions and provisions hereinafter contained. 7 V. c. 22, s. 4, *as amended, &c.*

Proceedings to be taken to constitute an Electoral County, a County for registration purposes.

**18.** So soon as the Municipal Council of any Electoral County now constituted, which has not become a County for Registration purposes, under the Act 18 V. c. 99, has fixed the place at which its sittings shall be held, and has provided thereat a proper place for the County Registry Office, with a sufficient metal safe or fire-proof vault for the safe keeping of the books and papers thereof, the Warden of the County shall represent the same to the Governor, and upon the report of the Attorney

Attorney or Solicitor General that the foregoing requirements have been complied with, the Governor shall, by Proclamation, declare the same, and such Electoral County shall be a County for Registration purposes. 18 V. c. 99, s. 1.

19. Upon and after the day named in such Proclamation, a Registry Office shall be kept in and for the said Electoral County at the place therein appointed, in which Office the registration of all deeds, instruments and documents affecting real property situate within such Electoral County shall be made, and all other things provided for by this Act shall be done, except in so far as it is otherwise hereinafter provided. 18 V. c. 99, s. 2.

After Proclamation a Registry Office to be kept for the County.

20. If there be already a Registry Office within such Electoral County, but it be not kept at the place so appointed, it shall, on and after the day so named, be removed thereto and kept thereat, and shall thereafter be the Registry Office of such Electoral County, and the Registrar by whom it was theretofore kept, shall be the Registrar of such Electoral County, but subject to be removed from office as other Registrars; and if there be no Registry Office in such Electoral County, a Registrar shall be appointed therefor, and shall keep his Office at the place so appointed. 18 V. c. 99, s. 3.

Registry Office to be removed to place appointed by Proclamation.

Present Registrar to retain office.

21. If there be in any territory which formed a Registration County or Division on the 30th day of May, 1855, and the Registry Office for which becomes that of an Electoral County, any place not included in such Electoral County or in any other Electoral County having become a Registration County, such Registry Office shall nevertheless remain, as theretofore, the Registry Office for such place, until the Electoral County in which it lies becomes a Registration County under this Act. 18 V. c. 99, s. 4.

Registry Offices in former Registration Division to remain so until the County has become a Registration County.

22. If in any Electoral County becoming a Registration County there be more than one Registry Office, that one of them which shall be at or nearest to the place where the sittings of the Municipal Council of the County are held, shall be the Registry Office for such Electoral County, when it becomes a Registration County, subject to removal to the place where the sittings of the said Council are held, if it be not already kept there; and any other Registry Office therein shall be removed to such place as the Governor shall direct in the Electoral County in which the greater part of the territory, for which it remains the Registry Office, shall lie, until such Electoral County shall become a Registration County under this Act, when it shall be kept at the place where the sittings of the Municipal Council thereof shall be held. (18 V. c. 99, s. 5.)

In case there be more than one Registry Office in any Electoral County.

23. Notwithstanding any change made in the name or limits of any Registration Division, or the removal of the Registry

Registrars to retain office and their se-

curities to remain in force.

Registry Office thereof, the Registrar by whom such Registry Office was kept at the time of such change or removal, shall, without any new appointment, be the Registrar of the Registration Division of which such Office becomes the Registry Office, and any bond or security he may have given, as a Registrar, shall remain in force, and shall apply fully to his acts and defaults after and before such change or removal; but this shall not prevent the Governor from removing any such Registrar, or requiring any new security. 18 V. c. 99, s. 6.

Governor however may remove them, &c.

County Municipality to keep vault or safe in Registry Office in good repair.

**24.** The Municipality of each Registration County or Division shall provide and keep constantly in repair, in the Registry Office of such County or Division, a proper metal safe or fire-proof vault, for the safe keeping of the books and papers of such Office; and for any failure so to do, such Municipality shall forfeit to the Crown two hundred dollars, to be recovered as a debt due to the Crown; and the Municipality shall further be liable for all damages which may be sustained by any person by reason of such failure:

Inspection of such vaults—Penalties how recovered.

2. The Governor may appoint proper persons to inspect such Registry Offices, safes and vaults, from time to time; and if any Registry Office be found without such safe or vault, or the same be insufficient, he may direct the Municipality to be sued for the said penalty, and may cause a proper safe to be placed or a proper Vault to be erected in such Registry Office, or the Safe or Vault to be renewed or repaired, as the case may require, and the cost to be paid out of the Public Moneys; and the sum so paid shall be recovered from the Municipality as a debt due to the Crown; and if there be more than one Municipality in such Registration County or Division, such penalty or cost may be recovered from any one of them, saving the recourse thereof against the other or others; and such penalty or cost may be recovered from any Municipality of which the major part shall be within such Registration County or Division, saving the recourse of such Municipality against any other whereof any part may be within such Registration County or Division. 18 V. c. 99, s. 7.

Municipal Council may require Registrar of former County to furnish transcripts of instruments and entries affecting real property within the County, on paying for the same.

**25.** Whenever the Municipal Council of any Electoral County or locality which has become a Registration County or Division, has provided funds for paying the necessary expense, such Council may require any Registrar in whose office there is registered any deed, instrument or document affecting real property in such Registration County or division to furnish the Registrar thereof with copies thereof and of all entries relative thereto, or of such abstract of such registered documents as may be desired, certified by such other Registrar and fairly transcribed in regular order in properly bound books to be furnished by the Municipality of such Registration County or division--which such other Registrar shall be bound to do, being paid therefor, at the rate of six cents and two-thirds for every hundred words:

2. And the Registrar of such Registration County or division shall thereafter grant copies of extracts from, or make searches and grant certificates, and perform all other official acts with respect to such deeds, instruments, documents or entries, as if the same had been originally registered and made in his Registry Office, and demand and take the like fees therefor; and such copies, extracts, certificates and acts shall *prima facie* avail as if granted and performed by the Registrar having the original books, entries and documents, saving the right of any party to prove error therein, and the recourse of all parties against such other Registrar if the error be in the copies furnished by him. 18 V. c. 99, s. 8.

Use of such transcripts.

Recourse for error in such transcripts.

26. The Registrar having the original books in which any deed, instrument or document has been or might have been registered, may and shall grant copies thereof and extracts therefrom, and make searches and give certificates in respect thereof (on payment of the proper fees,) notwithstanding the place in which the real property to which the same relates is situate is no longer within the limits of that for which he is the Registrar, and notwithstanding he has furnished copies of such deeds, instruments or documents to some other Registrar under the next preceding Section, and with the same legal effect as if he were still the Registrar for the place in which such real property is situate :

Registrar having custody of original books may grant copies though real property concerned is no longer within his Division.

2. And until such copies as are mentioned in the next preceding Section are furnished to the Registrar of the proper Registration division as therein provided, all documents evidencing the discharge of any hypothec or charge on any real property in such division, may be registered in the Registry Office in which the deed, instrument or document creating such hypothec, or charge was originally registered; but if such copies have been so furnished to the Registrar of the proper Registration division, then such discharge shall be registered in his Office. 18 V. c. 99, s. 9.

Discharges of hypothecs,—where they shall be registered.

27. Except as hereinafter provided, every County in Lower Canada mentioned and described in the Chapter of these Consolidated Statutes, (16 V. c. 152,—and 18 V. c. 76,) shall be an Electoral County for the purposes of this Act, with the boundaries assigned to it by the said Chapter. 18 V. c. 99, s. 10.

Electoral Counties for the purposes of this Act, defined.

28. Provided always, that for the purposes of this Act—

Exceptions.

1. The Magdalen Islands, in the Gulf of St. Lawrence, shall not be held to be within the County of Gaspé; and the settlements of Ste. Anne des Monts and Cap-Chat, as they are now bounded as a separate Municipality, shall not be held to be within the County of Gaspé;

Magdalen Islands, Ste Anne des Monts and Cap Chat.

- Quebec. 2. The City of Quebec and the Electoral County of Quebec shall form one Registration Division, shall be dealt with as one Registration County, and shall be known as the Registration Division of Quebec; and the Registry Office for the said Division shall be at the City of Quebec;
- Montreal. 3. The City of Montreal and the Electoral Counties of Jacques Cartier and Hochelaga shall form one Registration Division, shall be dealt with as one Registration County, and shall be known as the Registration Division of Montreal; and the Registry Office for the said Division shall be at the City of Montreal;
- Three-Rivers. 4. The City of Three-Rivers and the Electoral County of St. Maurice shall form one Registration Division, shall be dealt with as one Registration County, and shall be known as the Registration Division of Three-Rivers; and the Registry Office for the said Division shall be at the Town of Three-Rivers;
- Sherbrooke. 5. The Town of Sherbrooke, as described in the said Chapter of these Consolidated Statutes (16 V. c. 152,) including the Townships of Ascot and Orford, shall, with the Township of Compton, form one Registration Division, shall be dealt with as one Registration County, and shall be known as the Registration Division of Sherbrooke; and the Registry Office of the said Division shall be at the Town of Sherbrooke;
- Compton. 6. The County of Compton shall not, for the purposes of this Act, include the Township of Compton, and the remaining part of the said County shall, for the said purposes, be dealt with as an Electoral County;
- Island of Orleans. 7. The Island of Orleans shall, for the purposes of this Act, be dealt with as a separate Electoral County, and shall be known as the Registration Division of the Island of Orleans;
- Montmorency. 8. That part of the County of Montmorency which lies on the north Shore of the River St. Lawrence shall, for the purposes of this Act, be dealt with as a separate Electoral County, and shall be known as the Registration Division of the County of Montmorency;
- The Magdalen Islands to be a separate Registration Division. 9. The Magdalen Islands, in the Gulf of St. Lawrence, shall, for the purposes of this Act only, be considered and dealt with as if they formed an Electoral County and the Port of Amherst had been appointed the place for holding the sittings of the Municipal Council of the County; and for the purposes of this Act other than that of appointing the said place of sitting, the Municipal Council of the said Magdalen Islands shall be substituted for the County Council, with the same powers and obligations; and so soon as the Governor shall be satisfied that a proper Metal Safe or Vault has been provided by

by the said Municipal Council for the safe keeping of the books and papers of a Registry Office, a Proclamation may issue reciting the fact and declaring the said Magdalen Islands a Registration Division under this Act, and a Registrar may be appointed therefor, to keep his Office at the place so provided at the Port of Amherst aforesaid ;

10. The settlements of Ste. Anne des Monts and Cap-Chat, bounded as aforesaid, shall, for the purposes of this Act only, be considered and dealt with as if they formed an Electoral County and the Village of Ste. Anne des Monts had been appointed the place for holding the Sittings of the Municipal Council thereof; and for the purposes of this Act other than that of appointing the said place of sitting, the Municipal Council of the said settlement shall be substituted for the County Council with the same powers and obligations; and so soon as the Governor shall be satisfied that a proper Metal Safe or Vault has been provided by the said Municipal Council for the safe keeping of the books and Papers of a Registry Office, a Proclamation may issue reciting the fact and declaring the said settlements a Registration Division under this Act, and a Registrar may be appointed therefor to keep his Office at the Village of *Ste. Anne des Monts* aforesaid ;

The settlements of Ste. Anne des Monts and Cap Chat to form a Registration Division.

11. The expression "Electoral County" or "Registration County," when used in this Act as signifying a Registration Division, shall include and apply to any Registration Division under this Act, whether formed of more than one County or of only part of a County, or otherwise; and the Municipal Council or Councils of such Registration Division shall be held to be included when the Municipal Council of an Electoral or Registration County is mentioned, unless there is something in the context inconsistent with such interpretation; and if in any case it be doubtful where the Registry Office of any Registration Division is to be kept, the Governor shall fix the place by the Proclamation establishing such Division. 18 V. c. 99, ss. 11, 12, 13.

Application of expression "Electoral County" or "Registration Division."

In case of doubt as to where Registry Office to be kept.

REGISTRARS AND THEIR DEPUTIES.

29. Each Registrar shall, within twenty days after he has taken the oath of office, appoint a deputy, and upon the death, resignation or removal of any Registrar, his Deputy shall execute the office of Registrar, until another person is appointed and takes upon himself the said office. 4 V. c. 30, s. 6.

Registrar to appoint a Deputy.

30. Any Deputy Registrar may resign, or be removed from office by his Principal, and in the event of his death, resignation or removal, such Principal shall appoint another Deputy within twenty days thereafter such resignation or removal. 12 V. c. 48, s. 3, part.

Upon removal of Deputy, another to be appointed within 20 days.

Penalty on Registrar neglecting to appoint Deputy.

**31.** If any Registrar neglects to appoint a Deputy Registrar as aforesaid, he shall forfeit twenty dollars, for each day during which such neglect continues; which penalty may be recovered in any Court of Record, and one half thereof shall go and be paid to Her Majesty, and the other half to the informer. 12 V. c. 48, s. 3, part.

Notification of death of Registrar, and appointment of his successor.

**32.** It shall be the duty of the Sheriff of the district, or if there be no such Sheriff, then of the Warden of the County, in which any Registrar dies, to notify the death of such Registrar forthwith to the Secretary of the Province, for the information of the Governor, who shall, within one month after any such death, appoint a fit person to fill the vacancy. 4 V. c. 30, s. 7.

*Their Oaths of Office, and Security, Residence, &c.*

Oath of allegiance, and office to be taken by Registrar and his Deputy.

**33.** Every Registrar or Deputy Registrar, before he enters upon his office, shall take and subscribe, before one of the Justices of the Court of Queen's Bench or of the Superior Court, the oath of allegiance and oath of office contained in the Schedule number one to this Act subjoined; which oaths shall be written on parchment, and, after being sworn, shall be transmitted to the Clerk of the Peace for the District within the limits of which is situate the Office to which such Registrar or Deputy has been appointed, which Clerk shall file the same among the records of his Office, for which service he shall have from such Registrar or Deputy one dollar: 4 V. c. 30, s. 8.

Security to be given by Registrar on appointment.

2. Every such Registrar shall, within one month after notice of appointment, if then within this Province, or within three months if he be then absent from the Province (unless he sooner arrive in the Province, and then within one month after such arrival), enter into a bond in duplicate to Her Majesty, with two or more, and not more than four, sureties, to be approved by the Governor, jointly and severally, in the following sums: 4, 5 V. c. 91, ss. 2. and 14.

Amounts of such securities.

3. Every Registrar for any County or Registration Division, other than the Registration Divisions of Quebec, Montreal, Three-Rivers and Sherbrooke, in the penal sum of four thousand dollars; the Registrars for the Registration Division of Quebec or of Montreal, in the penal sum of sixteen thousand dollars; the Registrars for the Registration Division of Three-Rivers or of Sherbrooke, in the penal sum of eight thousand dollars; upon the condition contained in the Schedule number two to this Act subjoined; 14, 15 V. c. 93 s. 2, and 19, 20 V. c. 102, s. 1.

Bonds to be recorded and one duplicate deposited in the office of the

4. Such bond, written on parchment, shall be so entered into before one of the Justices of the Court of Queen's Bench, or of the Superior Court, and the Registrar shall cause one part of such duplicate bond to be recorded at full length at the Office of

of the Registrar of the Province, and shall forthwith after such registration deposit the same at the office of the Minister of Finance ; 4, 5 V. c. 91, s. 3.

Minister of Finance.

5. The other part of such bond shall remain of record in the said Court of Queen's Bench, or Superior Court, and either part shall avail and be a security as well to Her Majesty as to all other persons aggrieved by the breach of the said condition, and recovering judgment against any such Registrar, or his representatives, by reason of any misconduct or default of such Registrar, or his Deputy. 4 V. c. 30, s. 8.

Other duplicate to remain of record in the Court.

34. Every Registrar shall reside within five leagues of his Office ; Provided, that this provision shall not apply to the Registrar of the County of Megantic, Division No. 2. 14, 15 V. c. 93, s. 3. *But Megantic is now a Registration County.*

Residence of Registrar.

Exception.

35. If within three years after the death, resignation or removal of any Registrar, no misconduct appears to have been committed by him, or his deputy, the recognizance entered into by such Registrar shall, after that period, be void. 4 V. c. 30, s. 9.

When recognizance of Registrar shall be void.

REGISTRATION BY MEMORIAL HOW EFFECTED.

36. When Registration is made by memorial, the memorial shall be in writing, attested by two witnesses, and executed by and registered at the instance of any person having interest, direct or indirect, therein, or by the debtor or party charged with the incumbrance to be registered. 4 V. c. 30, s. 10, *part, as amended by 8 V. c. 27.*

How memorial shall be executed.

37. The memorial of a deed, conveyance, contract in writing, or will, must express the day, month and year of the date thereof, and the names, abode and additions of the parties thereto, and the name of the testator of such will, and of all the witnesses to such deed, conveyance, contract in writing, or will, and their abode, or the name of the notary before whom the same was executed, having custody of the original, and must describe the real estate conveyed, devised, charged or affected according to the description therein contained, in such deed, conveyance, contract in writing, or will, or to the same effect, and also the nature and general character of such deed, conveyance, contract in writing, or will :

What must be specially expressed and set forth in the memorial of a deed or will.

2. The memorial of a notarial obligation must specify the date thereof, and the name of the notary before whom the same was executed, having the custody of the original, and the names, abode and additions of the obligor and obligee therein named, and for what sum of money the same is made ; and must describe the real estate, hypothecated, charged or affected by such notarial obligation, according to the description contained in such notarial obligation, or to the same effect ;

In the memorial of a notarial obligation.

In the memorial of a judgment or judicial Act.

3. The memorial of a judgment, judicial act or proceeding, recognizance, or privileged right or claim, must express, in case of such judgment, judicial act or proceeding, the names, abode and additions of the parties, the sum of money thereby recovered, and the time of the recovering of such judgment, or of the completion of such judicial act or proceeding ; and in the case of a recognizance, the date thereof, the names, abode and additions of the cognizers and cognizees therein, and for what sum of money, and before whom the same was acknowledged, and a description of the real estate charged or affected by such recognizance ; and in case of privileged and hypothecary rights and claims, the names, abode and additions of the creditors and debtors respectively, the amount of the debt, the nature and general purpose of the written security or document, evidence of the privilege or hypothec, and a description of the lands and tenements charged or affected with such privilege or hypothec, and the date of such within security ;

In the memorial of the appointment of a tutor or curator.

4. The memorial of the appointment of a tutor to minors, and of a curator to persons interdicted, must express the name, abode and addition of the tutor or curator, and the names of each of the minors, or interdicted persons, and the name and description of the judge under whose authority such appointment has been made, and must also express whether such memorial is to be registered, in respect of all the real estate of such tutor or curator, or of a part only, and if a part, of what part ; and if such memorial be made by any other person than the tutor or curator himself, it must also express the name, place of abode, and addition of the person by whom it is made. 4 V. c. 30, s. 10, *remaining part*.

How a memorial may be signed.

38. The signature to any memorial may be written by any person when the person requiring the registration of such memorial does not know how to write, provided his name be accompanied by his ordinary mark, which he must make in the presence of the witnesses to the memorial. 19, 20 V. c. 15, s. 4.

Formalities to be observed in the registration of a memorial.

39. For the registration of memorials, every memorial executed in the manner required, shall be delivered to the Registrar or his deputy, at the Registry Office, for the County or Registration Division in which the real estate affected by the Deed, Act, or Will whereof registration is required is situate, and shall be acknowledged by the persons by whom the same has been executed, or one of them, or shall be proved by one of the witnesses to the execution thereof, on oath before the said Registrar or his deputy, or before any Notary Public or Justice of the Peace in Lower Canada, or before any Commissioner for taking affidavits to be used in the Superior Court ;

Deed will &c. the memorial of which is to be

2. And with every memorial there shall be produced to the Registrar, the deed, contract in writing, the will, or the probate  
or

or office copy of such will, the notarial obligation, instrument in writing, judgment, recognizance, appointment of a tutor or guardian or of a curator, judicial act or proceeding, privileged or hypothecary right or claim, of which the memorial is to be registered, or a notarial copy of any such document, if the original be in notarial form, and be in the custody of a notary, or an office copy of any such document or writing as proceeds from a court of justice, or the judge of any court ;

registered, to be produced.

3. The said registrar or his deputy shall mark "Registered by Memorial" on every such deed, conveyance, will, probate or office copy of a will, notarial obligation, instrument in writing, judgment, recognizance, appointment of a tutor or curator, judicial act or proceeding, privileged or hypothecary right or claim, or notarial or office copy thereof, and mention the day, hour and time at which such memorial is entered and registered, also, in what book and page, and under what number the same is entered ; and the said registrar or his deputy shall certify the same, and for such certificate shall have thirty cents ;

Certificate of registration.

Charge therefor.

4. All certificates, so given, shall be evidence of such registries, and all memorials shall remain of record in the hands of the registrar. 4 V. c. 30 s. 11.

Certificates to be evidence of registration.

40. Any memorial executed at any place within Lower Canada, not being within the Registration division wherein the real estate therein mentioned lies, shall be registered on the delivery to the registrar of such division, of an affidavit sworn before one of the judges of the court of Queen's Bench, or of the Superior Court, or before any commissioner for taking affidavits to be used in the Superior Court, by which the execution of such memorial is proved by one of the witnesses to the same :

How memorial not executed within Division in which the real estate lies shall be proved

2. And any memorial executed in Great Britain or Ireland, or in any part of the colonies or possessions belonging to Her Majesty, shall be registered, upon delivery, to the registrar, of an affidavit sworn before the mayor or chief magistrate of any city, borough or town corporate in Great Britain or Ireland, or the chief justice or a judge of the Supreme Court of any such colony or possession, by which the execution of such memorial is proved by one of the witnesses to the same ;

How a memorial executed in any of Her Majesty's possessions shall be proved.

3. And any memorial, made in any foreign state, shall be registered upon delivery to the registrar, of an affidavit, sworn before any minister or *chargé d'affaires*, or any consul of Her Majesty, resident and accredited with such foreign state, by which the execution of such memorial is proved by one of the witnesses to the same. 4 V. c. 30, s. 12.

How if executed in any foreign State.

41. Proof of the execution of any deed, will or probate thereof or memorial of the same in Upper Canada, may, for purposes

Proof may also be made before

Commissioners under Con. Stat. Can. Cap 79.

purposes of registration in Lower Canada, be made likewise before any Commissioner appointed under Chapter *seventy-nine* of the Consolidated Statutes of Canada. 19, 20 V. c. 88, s. 2.

What shall be a sufficient memorial and register when there are more writings than one by which the same real estate is affected.

42. Where there are more writings than one, for making any conveyance or security, which name or affect the same real estate, it shall be a sufficient memorial and register thereof, if the real estate, and the place wherein the same lies be only once named in the memorial, registry and certificates of any one of the instruments made for such conveyance or security, and that the dates of the rest of the said instruments relating to such conveyance or security, with the names and additions of the parties and witnesses, and their abodes, be only set down in the memorials, registries and certificates, with a reference to the instrument whereof the memorial is so registered, that expresses the parcels mentioned in all the said instruments. 4 V. c. 30, s. 13.

Periods within which memorials of wills must be registered.

43. All memorials of wills registered within six months after the death of the testator dying within this Province of Canada, or within three years after the death of any testator dying beyond the limits of the Province, shall be as valid against subsequent purchasers, grantees, judgments, judicial acts and proceedings, recognizances, privileged and hypothecary claims, as if the same had been registered immediately after the death of such testator :

If devise be unable to exhibit a memorial within time so limited, a memorial setting forth the reason may be entered, and the will may be registered within six months after removal of impediment.

2. And in case the devisee or person interested in the real estate devised by any such will, by reason of the concealment or suppression, or the contesting of such will, or other inevitable difficulty, without his wilful neglect, is disabled from exhibiting a memorial for registry within the time hereinbefore limited, and a memorial is entered in the proper Registry Office, of such contestation or other impediment, within six months after the decease of such testator dying within the Province of Canada, or within three years next after the decease of such testator dying beyond the limits of the Province, then the registry of the memorial of such will, within the space of six months next after his or their attainment of such will or a probate thereof, or the removal of the impediment whereby he or they have been disabled or hindered from exhibiting such memorial, shall be a sufficient registry ;

Proviso: will must be registered within five years.

3. Provided nevertheless, that in case of any concealment or suppression of any will, no purchaser for valuable consideration shall be disturbed in his purchase, nor shall any plaintiff in any judgment, nor any hypothecary or privileged creditor, be defeated of his debt by any title made by such will, unless the will be actually registered within five years after the death of the testator. 4 V. c. 30, s. 14.

## CLAIMS FOR INTEREST.

44. No creditor shall be entitled, by reason of the registration of a hypothec or privilege, to a preference before others, for more than two years' arrears of interest and the interest for the current year, reckoning from the date of the document under which the same may arise, unless his claim for arrears of interest to a specific amount, beyond the arrears of two years, has been separately registered as being due under such hypothec or privilege, nor (except as mentioned in the next mentioned section,) unless such creditor, do, at the time of making such Registration, make oath before the Registrar that the said specific amount of interest remains due, or unless an affidavit to the same effect be sworn to before one of the Judges of the Court of Queen's Bench or Superior Court, and delivered to the Registrar. 4 V. c. 30, s. 16, and 7 V. c. 22, s. 10.

Limitation of preference claim for arrears of interest.

Separate memorial must be registered for arrears beyond that period.

45. The hypothec preserved by the registration of any claim to interest or arrears not preserved by the original registration, shall date only from the registration of such claim, and such claim may be registered without its being attested upon oath, when founded upon any authentic deed or document:

Registration for arrears to give hypothec only from its date.

2. And the interest and arrears mentioned in the next preceding section shall not include alimentary pensions; life rents; rent due for any property leased, interest on the price of any real property sold for a sum payable at any fixed term, arrears on any real estate sold for an irredeemable ground rent, or for a perpetual but redeemable rent commonly called a *rente constituée*; and the registration of the creditors' title in any of these cases shall save his hypothec or privilege for five years' interest or arrears, and those for the then current year, reckoning from the date of the said title, but not for more. 7 V. c. 22, s. 10.

Exception as to certain privileged claims.

## REGISTRAR'S BOOKS AND RECORDS.

46. Every register for registration under this Act, shall, before the making of any entries, be authenticated by a *memorandum*, on the first page thereof, signed by the prothonotary of the Superior Court in the district within which such register is to be used; by which *memorandum* shall be certified the purpose for which the register is intended, the number of leaves therein, and the day, month and year on which such *memorandum* is made; and such register shall also be authenticated by the numbering of each of the said leaves in words at full length, with the initial letters of the name of the said prothonotary subscribed thereto. 4 V. c. 30, s. 19.

Authentication of registers by Prothonotary.

47. Every memorial (or *document*.) entered in any such register shall be numbered, and the day, month, year, and hour when

How memorials shall be entered.

when *the same* is registered, shall be entered in the margin of the register ; and the Registrar shall file all memorials, and enter them (*and documents presented for Registration at full length*) consecutively, in the order in which they come to his hand, leaving no blank between the memorials (or *documents*) so registered. 4 V. c. 30, s. 19.

Registrar to keep an alphabetical index. What it shall contain.

48. Every Registrar shall keep in his office an index, in a proper book, wherein he shall enter in alphabetical order, the names of the persons mentioned in the memorials (*or documents*;) by and to whom any real estate therein mentioned has been alienated, hypothecated or charged, and by or against whom any judgment, (as mentioned in such memorials, or *documents*;) has been recovered, and by and against whom, (as also mentioned in *the same*;) any legal or tacit hypothec, or any privileged or hypothecary right or claim, is registered, with reference to the entries of the memorials (*or documents*) as registered, of and concerning the real estate alienated, hypothecated or charged by and to such persons respectively, and the numbers of such entries, and the pages of the register containing such entries, and the name of the Parish, Township, Seigniority, City, Town, Village or extra parochial place where the said real estate is situate. 4 V. c. 30, s. 20, part.

Registrar also to keep an alphabetical list of parishes, townships, towns, &c., in his division.

49. Every Registrar shall keep in his office an alphabetical list of all Parishes, Townships, Seigniorities, Cities, Towns, Villages, and extra-parochial places within the division for which he is Registrar, with references, under the respective heads of such local divisions, to all the entries of registered memorials (*or documents*) relating to real estate comprised within such division respectively, and the numbers of such entries, and with a designation of the names of the parties mentioned in such entries, and of the estates to which the same may relate, so as to afford, by means of an Index to Estates, as far as may be practicable, a ready reference to every memorial (*document*.) 4 V. c. 30, s. 20, part.

Also a minute book—certain matters to be entered therein.

50. Every such Registrar shall also keep a minute or day-book, in which shall be entered the year, month, day and hour, when any memorial (*or document*) is brought for registration, the names of the parties *to the same*, and of the person by whom *the same* is so brought, the nature of the instrument, right or claim, whereof registration is thereby required, and a general designation of the real estate intended to be affected by such registration. 4 V. c. 30, s. 20, part.

Duty of Registrar as regards such minute book.

51. The Minute or Day-Book last mentioned shall be authenticated in the manner required with regard to the registers, and the Registrar shall make the entries in the said Minute or Day-Book, in the numerical order of the documents delivered to him for registration, and shall state in each entry the number given to the document to which it relates ; and shall give to any person requiring

requiring the same on delivering any document for registration, and without demanding any fee therefor, an acknowledgment stating the number under which such delivery is entered in the said Minute or Day-Book. 19, 20 V. c. 15, s. 1.

**52.** The Registrars of the Registration Divisions of Quebec and Montreal, may keep separate books and registers (authenticated as prescribed for those in which memorials are to be registered,) for the registration at full length of:

Registrars of Quebec and Montreal may keep separate books for registration at length of certain instruments.

*First.* Bonds, recognizances and other securities and obligations in favor of the Crown, Wills and Testaments, and probates or office copies of Wills and Testaments ;

*Second.* Marriage contracts and donations ;

*Third.* Appointments of tutors and curators, judgments and judicial acts and proceedings ;

*Fourth.* Deeds of alienation and conveyance (*titres translatifs de propriété*;) not being of any of the classes hereinbefore mentioned, including exchanges and leases for nine years or upwards, and deeds of partition ;

*Fifth.* Deeds, instruments and writings creating mortgages, privileges, hypothecs or charges, and not being of any of the classes hereinbefore mentioned ;

*Sixth.* All other deeds, instruments and writings not being of any of the classes hereinbefore mentioned ;

And the registration thereof at full length in such books respectively, shall be valid to all intents ; and the registration of any deed, instrument or writing at full length in any book, except in that kept for the registration of memorials, shall not affect the validity of such registration, although the Registrar may have mistaken the class to which such deed, instrument or writing properly belongs. 12 V. c. 48, s. 2.

Such registration to be valid.

**53.** Nothing herein contained shall affect the validity of any registration effected, or any certificate granted under the provisions of sections five and six of the Act 8 V. c. 27, for facilitating the registration of deeds, instruments and documents which required to be registered on or before the first day of November, 1844.

Registration under 8 V. c. 27, ss. 5 and 6, not affected.

**54.** The Secretary of this Province, under such directions as he may receive from the Governor, shall provide for and transmit to each registry office on its being first established, a uniform set of books, to be used as a register, indexes, and minute or day-book ; the cost shall be defrayed out of any unappropriated moneys in the hands of the Receiver General ;

Secretary of Province to provide necessary books for offices newly established.

and like books, when required afterwards, shall be provided by the Registrars, for their offices, at their own expense. 4 V. c. 30, s. 54.

REGISTRATION OF HYPOTHECS ON PROPERTY OF HUSBANDS,  
TUTORS, CURATORS, &C., AS SUCH.

Married men, tutors and curators to register the hypothecs resulting from their quality as such.

**55.** Married men, and the tutors of minors, and curators of interdicted persons, shall cause to be registered, by memorial thereof, or at full length, without delay, the hypothecs to which their real estate is subject in respect of their wives, and of such minors and interdicted persons, respectively :

Penalty for contravention.

2. And if any married man, tutor or curator, fails to cause such registration to be made, whereby any such hypothec becomes postponed to a subsequent registered hypothec, or consents to any subsequent hypothec or privilege on his real estate, without declaring in the instrument establishing such subsequent hypothec or privilege, that the same premises have already become subject to the hypothec of such married woman, minors or interdicted persons, and without the reservation of priority in favor of the hypothecs last mentioned, such married man, tutor or curator shall be held guilty of a misdemeanor and shall also be liable for all damages and costs sustained by the party injured, and shall be subject to execution against his person, and to be kept in prison until the damages and costs adjudged against him be paid. 4 V. c. 30, s. 21, *as amended*.

Duty of subrogé tutor, as regards registration of the hypothec of the minor on tutor's estate.

**56.** Every subrogate (*subrogé*) tutor to a minor, shall ascertain that registration has been made by memorial, or at full length, of the hypothecs of such minor on the real estate of the said tutor, as required by this Act, and in default of such registration, shall procure the said hypothecs to be registered without delay; and if any subrogate tutor fails to execute this duty, he shall be liable for all damages that may be sustained by the said minor. 4 V. c. 30, s. 22.

Relations or friends of parties may, in certain cases, cause registration to be made.

**57.** If any married man, tutor, curator or subrogate tutor, fails to procure registration to be made as in this Act prescribed, any relation or friend of any such married man, or of his wife, or of any such minor or interdicted person, or any such wife or minor, may cause such registration to be made. 4 V. c. 30, s. 23.

Registration of marriage contract or appointment as tutor indispensable in certain actions.

**58.** No action shall be maintainable by any husband, or any cause of action derived from his contract of marriage, whereof the registration is required by this Act, or by any tutor to a minor, or by any curator to a person interdicted, until after registration by memorial, or at full length, of such contract of marriage, or of the appointment of such tutor or curator. 4 V. c. 30, s. 24, *as amended*.

**59.** Whenever a minor contracts marriage, the father, mother, tutor or guardian, of such minor, by and with whose consent the marriage is contracted, shall cause the hypothecs established by the contract of marriage of such minor to be registered by memorial, or by registration at full length of the contract of marriage, and in default thereof, they shall be jointly and severally liable for all damages sustained by such minor, by reason of such omission to register. 4 V. c. 30, s. 25, *as amended.*

Duty of father and tutor, &c., on marriage of a minor with respect to hypothecs created thereby.

**60.** Any judge, by whom any appointment of a tutor or curator is made, by and with the advice and consent of the relations and friends assembled for the election of such tutor or curator, may restrict the hypothec resulting from such appointment to certain specific real estate of such tutor or curator; in which case, all other real estate of such tutor or curator shall be exonerated from such hypothec; and the tutor or curator or subrogate tutor shall cause to be registered hypothecs on such specified real estate only. 4 V. c. 30, s. 26.

Hypothec created by appointment as tutor may be restricted to certain specific real estate.

**61.** Where the hypothec resulting from the appointment of a tutor to minors, or of a curator to interdicted persons, has not been restricted as aforesaid, and where the general legal hypothec thereby established notoriously exceeds a sufficient security for the administration of such tutor or curator, the Judge in whom the power of appointing tutors or curators in such cases resides,---by and with the consent of the subrogate tutor, and with the advice of the relations and friends of any such interdicted person, to be assembled for that purpose,---may restrict the hypothec to such specific real estate as will afford full security to such minor, or interdicted person; and thereupon, and after the registration of such restricted hypothec, all other the real estate of any such tutor or curator shall be exonerated from hypothec by reason of the appointment of such tutor or curator. 4 V. c. 30, s. 27.

Such hypothec may, in certain cases, be subsequently restricted.

CONVENTIONAL HYPOTHECS MUST BE SPECIAL, AND CERTAIN IN AMOUNT.

**62.** No general hypothec shall be stipulated in or result from any deed, contract or obligation in writing made after the Thirty-first day of December, one thousand eight hundred and forty-one :

General hypothecs abolished.

2. No conventional hypothec, charge or incumbrance on real estate shall be constituted or acquired in or by any deed, contract, obligation in writing or act executed after the said day, unless the real estate intended to be hypothecated, charged or incumbered by such act or deed, contract or obligation in writing, be therein specially described; nor unless the sum of money intended to be secured by such hypothec, charge or incumbrance be, in the same act, deed, contract or obligation

In conventional hypothecs, real estate charged must be specially described.

Object of such hypothecs limited.

in writing, specified ; and no such hypothec shall be constituted for any other purpose than for securing the payment of a sum of money specially mentioned as aforesaid ; 4 V. c. 30, s. 28.

Effect of registration of donations *inter vivos* subject to life rents.

3. Provided that the registration of donations *inter vivos* subject to life rents, payable in kind and appreciable in money, or to any charges and obligations appreciable in money, shall preserve to persons interested therein, all hypothecary claims, privileges and rights to the extent of the sum equivalent to the life rents, charges and obligations appreciable in money, stipulated in such donations, as if such life rents, charges and obligations were estimated in money in such donations at their value in money. 16 V. c 206, s. 7.

#### LEGAL OR TACIT HYPOTHECS LIMITED.

Objects for which legal or tacit hypothecs may subsist.

63. No legal or tacit hypothec shall, for any cause, be constituted or subsist on real estate, except in the cases following, that is to say :

On estate of husbands for dotal claims of wives.

Upon the real estate of married men, to and in respect of their wives, for securing the restitution and payment of all dotal sums of money, claims and demands, which they have on their husbands, for or by reason of any succession or inheritance devolving upon and accruing to such married women, and of any donation made to them during their marriage, which hypothec shall be accounted from the respective periods at which such succession or inheritance so devolves and accrues, or such donation receives execution ;

Of tutors for their administration.

Upon the real estate of tutors or guardians to minors and curators to interdicted persons, to and in respect of such minors and interdicted persons, as a security for the due administration of such tutors and curators, and the payment of all money which they owe at the close of their administration ;

Of persons indebted to the Crown.

Upon the lands and real estates of persons who have contracted any debt or liability to the Crown, for and in respect of which an hypothec is allowed by the laws of Lower Canada. 4 V. c. 30, s. 29.

Respecting hypothecs derived from judgments and judicial Acts.

64. No hypothec shall be constituted by or derived from any judgment, judicial act or proceeding, on any real estate of the defendant or debtor against whom such judgment, judicial act or proceeding is rendered, made or had, other than those whereof any such defendant or debtor is seized at the time of the rendering of such judgment, or the accomplishment and completion of such judicial act or proceeding ; nor shall any hypothec be derived from any judgment, judicial act or proceeding, which does not award a specific sum of money, and such hypothec shall be for such sum only ; except judgments containing an adjudication of interest or costs, which adjudication

adjudication may be made without the express mention of the amount of interest or costs in the judgment, and shall nevertheless carry an hypothec. 4 V. c. 30, s. 30.

10. REGISTRATION OF PRIVILEGED CLAIMS.

65. The privileged creditors whose claims shall be registered, are the following :

What privileged claims shall be registered :

1. The vendor, upon and in respect of the real estate sold by him, for the recovery of the price thereof ; subject to the provisions of section *eleven* of this Act ;

Of vendor for purchase money ;

2. The person by whom money to be applied to the purchase of real estate has been lent, provided it be ascertained by the instrument or writing evidencing the loan, that it was intended to be so applied, and by the acquittance of the vendor, that the payment of the price was made with the money so lent ;

Of lender of purchase money ;

3. Co-heirs and co-partitioners, upon and in respect of the real estate of the succession, and real estate held by them as tenants in common, for the execution of the warranty incident to the partition, and for the difference and return in money (*soulte et retour*), to make up for the inequality of lots included in any such partition ;

Of co-heirs and co-partitioners ;

4. Architects, builders or other workmen employed in the building, re-building or repair of buildings, canals, or other erections or works ; provided that by an *expert* named by any judge of the court of Queen's Bench, or of the Superior Court in the district within which the buildings or premises aforesaid are situate, there has been previously made a *procès-verbal*, establishing the state of the premises, in respect of the works about to be made ; and provided also, that within six months after the completion of such works, the same have been accepted and received by an *expert*, in like manner named ; and provided further, that the privilege in such cases shall in no instance extend beyond the value ascertained by such second *procès-verbal*, and shall be reducible to the amount of increased value given to the premises by such works, at the period of the alienation of the real estate on which the said works have been erected or made ;

Of architects, builders and workmen.

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Limitation of privilege.

5. The lenders of money applied to the payment of the workmen, in such cases as last aforesaid, provided that such intended application of the money lent, be ascertained by the instrument or writing evidencing the loan, and it be ascertained by the acquittance of such workmen, that they were paid with the money so loaned. 4 V. c. 30, s. 31.

Lenders of money to pay workmen.

66. In the cases hereinbefore mentioned of partitions between co-heirs or co-partitioners, and also of sales by licitation at

Respecting the preservation of

at

the privilege of co-heirs or co-partitioners for the difference or return in money.

at their instance, the privilege of such co-heirs or co-partitioners, for the difference or return in money as aforesaid, and of the price of the sale by licitation, shall be preserved from the period of the partition or of the sale by licitation, provided the same be registered within thirty days from those periods respectively, during which no hypothec shall be established or acquired on the estate charged with the pecuniary demands now mentioned, or either of them, to the prejudice of the creditor of such difference or return in money, or of such price :

Of the privilege of architects, lenders, &c.

2. In cases where the privilege of architects, builders and workmen, and the lenders of money applied to the payment of such workmen, obtains as aforesaid, the said privilege shall be from the registration of the first *procès-verbal*, establishing the state of the premises, provided the second *procès-verbal*, establishing the acceptance of the work, has been registered within thirty days from the date of such second *procès-verbal* ;

Rights of creditors and legatees to the estates of debtors or testators.

3. And in case of creditors or legatees who demand, or are entitled to demand the separation of the estates of their deceased debtor, or deceased testator, from those of his heir or legal representative, the hypothec, rights and interest of such creditors and legatees, in and to the estates of every such debtor or testator, shall be preserved in their full force, provided such their rights be registered, in respect of each and every of the said estates, within six months after the death of the debtor or testator ; and during the said period of six months, no hypothec shall be established by the heir or legal representative of such debtor or testator, on any such estate, or be acquired thereupon, to the prejudice of such creditors or legatees ;

Rights of third persons in respect of such debts.

4. The privileged debts hereinbefore mentioned, not registered within the time aforesaid, shall, nevertheless, retain their hypothecary character, in respect of third persons, from the period at which they shall be registered. 4 V. c. 30, s. 32.

#### REGISTRATION OF DONATIONS, AND OF INSTRUMENTS CREATING SUBSTITUTIONS.

How donations *inter vivos* shall be registered.

§7. Every donation *inter vivos* of goods and chattels, liable to insinuation, or of real estate property in Lower Canada, shall be held to be duly registered and *insinué*, provided it be registered by memorial or at full length in the Registry Office of the County, or Registration Division, in which the real estate thereby given may be situate,—or if no real estate be thereby given, then in the Registry Office in and for the County or Registration Division in which the Donor is described in such donation, as being resident at the time of the execution thereof ;—or if the real estate thereby given be situate in two or more Counties, or Registration Divisions, then in the Registry Office of each of such Counties, or Registration Divisions ; Provided always, that in this latter case the registration of any such

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such donation in the Registry Office or Offices in, of, and for any one or more of such Counties or Registration Divisions, shall be valid, so far as respects any real estate thereby given which may be situate in such County or Registration Division, although the same be null for want of registration, as to real estate situate in another County or Registration Division; but no such donation *inter vivos*, so registered as aforesaid, shall be null for want of having been also registered at the place and in the manner required by the laws in force in Lower Canada at the time of the passing of the Ordinance, 4 Vict. c. 30; Provided that nothing in this section shall prejudice the rights of third parties acquired before the time when its enactments became law. 14, 15 V. c. 93, s. 4.

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**68.** Registration of Acts, Donations and Wills containing substitutions, in the Registry Offices for the locality within the limits of which the real estate substituted is situate, (and in case of substitution created by Donation *à cause de mort*, if the domicile of the testator be within the limits of a Registration Division other than that in which the property substituted is situate, the additional registration in the Registry Office for the locality within the limits of which the domicile of the said Testator was situate,) shall be equivalent to insinuation in the Registers of the Courts accompanied by reading and publication in open Court :

Registration of Acts containing substitutions to be equivalent to insinuation in the registers of the Courts.

2. The delays for registration shall be the same as those established for insinuation and publication in Court, immediately before the passing of the Act 18 V. c. 101. 18 V. c. 101, s. 2.

Delays for Registration.

PROPERTY OF MARRIED WOMEN, AND DOWER.

**69.** Sales or conveyances of real estate belonging to any married woman as *propres*, consented to by her, either before or since the coming into force of the Registry Ordinance, (4 V. c. 30,) shall avail and have effect as if the thirty-fourth section of the said Ordinance had never been law. 12 V. c. 48, s. 1.

Conveyances of real estate *propres* by a married woman.

**70.** Any married woman, of the age of twenty-one years or upwards, may join with her husband in the sale, alienation, mortgage or hypothecation of real estate, held in free and common socage, or *en fief*, or *à titre de cens*, or *en franc-alleu*, or under any other tenure, subject or liable to or for her legal or customary dower or prefix dower,—and in any deed of such sale, alienation, mortgage or hypothecation, or in any separate deed, may release her dower and right to dower, in and upon the lands and real estate, so sold, alienated, mortgaged or hypothecated :

Married woman may join in sale of real estate by her husband and release her dower therein.

2. And such release shall be a bar to any right or claim to dower of such married woman, in or upon any such premises;

Effect of such release of dower.

premises; and no hypothec shall attach or subsist, on any other real estate of the husband, for any indemnity to or for such married woman, on account of such sale, alienation, hypothecation or mortgage, nor shall any right to such indemnity, or any recourse of any kind, vest in her heirs or representatives, by reason of any such release of dower. 4 V. c. 30, s. 35, as amended by 8 V. c. 27, ss. 3 & 4, and 16 V. c. 206, s. 9.

Liability of wife as regards her husband's debts incurred before or during marriage.

**71.** No married woman shall become security or incur any liability otherwise than as *commune en biens* with her husband, for debts or obligations entered into by her husband before their marriage, or which may be entered into by her husband during their marriage; and all suretyships by any married woman, in violation of this enactment, shall be absolutely null. 4 V. c. 30, s. 36.

On what property the legal and customary dower of children shall be exercised.

**72.** The legal or customary dower, or the right to legal and customary dower, of the children of any marriage, shall be exercised exclusively upon and in respect of real estate subject to the dower of their mother, whereof their father was seized and possessed at his death, and upon and in respect of which the dower of their mother has not been by her barred during her marriage. 4 V. c. 30, s. 37.

#### CONVEYANCES AND MORTGAGES OF SOCCAGE LANDS.

What shall constitute a valid conveyance of lands held in free and common socage.

**73.** A deed of bargain and sale of real estate held in free and common socage, made, sealed and delivered before two witnesses, or made before one notary and two witnesses, or before two notaries, whereby the intention of the bargainer to sell, and of the bargainee to purchase, an estate of inheritance or freehold is manifest, shall be a valid conveyance for transferring and assuring to the bargainee, his heirs and assigns, not only the use of the same, but also the seizin, estate, freehold and possession of the bargainer, of and in all such real estate, without any livery of seizin or other formality whatsoever; and every such deed of bargain and sale may be in the form in the Schedule number three to this Act subjoined, or to the same effect, and shall be susceptible of all the covenants which might be introduced into a conveyance by feoffment, or lease and release. 4 V. c. 30, s. 38.

What the words "grant, bargain and sell" shall be held to express in a deed of bargain and sale of lands in free and common socage.

**74.** In all deeds of bargain and sale made as aforesaid, whereby an estate of inheritance in fee simple is limited to the bargainee and his heirs, the words "grant, bargain and sell," shall express covenants to the bargainee, his heirs and assigns, from the bargainer, for himself, his heirs, executors, curators and administrators,—that the bargainer was, at the date of such deed, seized of the real estate granted, bargained and sold, as of an indefeasible estate in fee simple, free from all incumbrances (rents and services due to the lord of the fee only excepted), and for quiet enjoyment thereof, against the bargainer, his

his heirs and assigns, and all claiming under him, and also for further assurance thereof, to be made by the bargainor, his heirs and assigns, and all claiming under him, unless the same be restrained by particular words in such deed; and the bargainee, his heirs, executors, curators, administrators or assigns, may, in any action, assign a breach thereupon, as if such covenants were expressly inserted in such deed. 4 V. c. 30, s. 39.

**75.** For securing the payment of moneys upon real estate held in free and common soccage in any part of Lower Canada, or within the Counties of Missisquoi, Shefford, Stanstead, Sherbrooke and Drummond (*as bounded at the time of the passing of the Act 7 V. c. 22*), by the said tenure or any other, a simple acknowledgment of indebtedness, executed before two witnesses, whereby intention to hypothecate is manifest, shall be a valid hypothecation of the real estate therein described, of which the party hypothecating is at the time thereof seized as owner, and the said hypothecation shall give the party in whose favor it shall be made, the same claim and privilege as if executed before notaries according to the laws of Lower Canada; And the said hypothecation may be in the following or like words:

What shall be a valid hypothecation of lands held in free and common soccage.

“ I, R. M., of \_\_\_\_\_, hereby acknowledge myself to Form.  
 “ be indebted to R. J., of \_\_\_\_\_, in the sum of \_\_\_\_\_  
 “ payable (*here describe the terms of payment*), and for  
 “ securing the payment of the same, I hypothecate all that  
 “ (piece or lot of land) lying and being in the (*here describe the*  
 “ *property*), with all appurtenances thereon, or thereunto belong-  
 “ ing (*as the case may be*), unto the said R. J., his heirs and  
 “ assigns. In testimony whereof I have hereunto set my hand  
 “ and seal, at \_\_\_\_\_ of \_\_\_\_\_, in the \_\_\_\_\_ of \_\_\_\_\_,  
 “ the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_.

“ A. B. [L.S.]

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

“ C. D.,

“ G. H.” 7 V. c. 22, s. 11.

REGISTRATION AT FULL LENGTH OF DEEDS BEFORE WITNESSES  
 AND ITS EFFECT.

**76.** And for the better preservation of titles to real estate, executed before witnesses:

Any person having or claiming title to any real estate in Lower Canada, may register at full length the deeds, conveyances, wills or writings, executed before witnesses, by or under which such title is claimed, and the Registrars are hereby authorized to register such deeds, conveyances, wills and

Titles to lands may be registered at full length.

and writings as shall be so brought to be registered, by engrossing them in books; and the said Registrars shall, in the margin of every such entry, mention the time of every such entry and registration, and shall sign a certificate on such deed, conveyance, will or writing, and shall safely keep the books wherein such entries and registrations shall be made, in their offices; and all copies of such entries and enrolments of such deeds, conveyances, wills and writings, so registered, certified by the said Registrars respectively, shall be sufficient evidence of such deeds, conveyances, wills and writings, so registered, if the originals be destroyed by fire or other accident. 4 V. c. 30, s. 40.

On deed being so registered, a witness to make oath to its due execution.

**77.** When any deed, conveyance, will or writing is brought to the Registrar's Office to be registered at full length as aforesaid, one of the witnesses to the execution of such deed, conveyance or writing, or to the signing and publishing of such will, shall make oath before the said Registrar, that such deed, conveyance or writing was duly executed by the grantor, or that such will was signed by the testator. 4 V. c. 30, s. 41.

Certain affidavit necessary if such deed be not executed in Registration Division where registered.

**78.** Such deeds, conveyances, wills and writings, if executed or published in any place in *this Province*, not being within the Registration Division in which the lands therein mentioned lie, may be registered at full length, if an affidavit sworn before one of the Judges of the Court of Queen's Bench or Superior Court, or before any Commissioner for taking affidavits to be used in the Superior Court, be brought with such deed, conveyance, will or writing, to the Registrar, wherein one of the witnesses to the execution of such deed, conveyance or writing, or to the signing and publishing of such will, shall swear that he saw the said deed, conveyance or writing executed, or such will signed and published by the testator. 4 V. c. 30, s. 42.

In case such deed be executed out of the Province.

**79.** Such deeds, conveyances, wills and writings, if made and executed or published in any part of Great Britain or Ireland, or in any colony or possession belonging to Her Majesty, may be registered at full length by any Registrar, if a like affidavit, sworn before the Mayor or Chief Magistrate of any city, borough, or town corporate in Great Britain or Ireland, or the Chief Justice, or a Judge of the Supreme Court of any such colony or possession, is brought with such deed, conveyance, will or writing to the said Registrar :

If they have been executed in any foreign state.

2. And such deeds, conveyances, wills and writings, if executed or published in any foreign state, may be registered at full length, if a like affidavit, sworn before any Minister Plenipotentiary, or Minister Extraordinary, or a *chargé d'affaires*, or any Consul of Her Majesty resident and accredited within such foreign state, is brought with such deed, conveyance, will or writing, to the Registrar. 4 V. c. 30, s. 43.

**80.** Every such registration at full length of such deeds, conveyances, wills, and writings, shall be adjudged to be the entry of a memorial thereof pursuant to this Act, and shall have the same effect upon the real estate therein mentioned, as if a memorial of such deed, conveyance, will or writing, had been registered in the same registry office; and the certificate on such deeds, conveyances, wills and writings, shall be evidence of such registration. 4 V. c. 30, s. 44.

Such registration at length to be equivalent to entry of a memorial.

ENTRY OF DISCHARGES,—RADIATION OF HYPOTHECS.

**81.** When any mortgage, notarial obligation, judgment, judicial act or proceeding, recognizance, privilege and hypothecary right or claim is registered, if afterwards there be deposited with the Registrar a copy of any notarial act or of a judgment proving the total or partial discharge of such mortgage, privileged or hypothecary right or claim, or if a certificate be brought to the said Registrar, signed by the mortgagee, the creditor, the plaintiff, the cognizee, or the hypothecary or privileged creditor named in such judicial act or proceeding, privileged right or claim, their heirs, administrators, or assigns, and attested by two witnesses, whereby it appears that the money due on such mortgage, notarial obligation, judgment, judicial act or proceeding, recognizance, privileged or hypothecary right or claim, has been paid in whole or part, which witnesses shall, upon their oath before any one of the judges of the court of Queen's Bench or Superior Court, or before the Registrar, prove such moneys to be paid or in part paid, and that they saw such certificate signed by the party granting it,—then the registrar shall make an entry in the margin of the register, against the registry of such mortgage, notarial obligation, judgment, judicial act or proceeding, recognizance, privileged right or claim, that such mortgage, notarial obligation, judgment, judicial act or proceeding, recognizance, privileged right or claim, has been wholly or in part satisfied, according to such certificate. 4 V. c. 30, s. 45, and 7 V. c. 22.

Proceedings to obtain the entry of the discharge of a mortgage, &c.

**82.** Memorials and certificates of discharge may be in the forms in the schedule number four, hereunto subjoined, or in any other form by which the requirements of this Act are fulfilled. 4 V. c. 30, s. 46.

Forms of certificates of discharge.

**83.** Any person having discharged or partly discharged any registered incumbrance, may demand from the incumbrancer such a Notarial Act or certificate proving such discharge or partial discharge as can be validly registered, and shall have an action for the same if refused, and for all damages arising from such refusal; and by the judgment in such action the total or partial discharge of the incumbrance may be declared. 7 V. c. 22, s. 8.

On discharge of an incumbrance, a proper certificate thereof may be demanded.

**84.** Whenever a person, claiming to be creditor has registered against the property of his alleged debtor, any right,

Of the action for the cancelling of the re-

gistration of hypothecs.

right, privilege or hypothec which he claims, and the deed upon which the right, privilege or hypothec is based, does not legally confer such privilege or hypothec, or is invalid, or acquitted, or such privilege or hypothec has been removed by legal proceedings, and such creditor, having been duly required thereto, refuses to consent to the cancelling of the registration thereof against the property of such debtor, the latter may by action demand that the claim so registered be, either declared null and to confer no privilege or hypothec on the property of the plaintiff, or null and paid, or removed by legal proceedings, and that the registration relating thereto be cancelled in the registers; and upon proof of the allegations in the declaration, the Court shall grant the prayer of the plaintiff with costs against the defendant, as well those incurred in the action as to effect such cancellation :

Proviso.— Judgment to be served on Defendant.

2. An authentic copy of the judgment ordering the cancellation shall be served in the usual manner upon the defendant at his domicile. 16 V. c. 206, s. 1.

Duty of Registrar on production of judicial order for cancellation.

85. The Registrar in whose office such registration is made, upon production to him of an authentic copy of the judgment ordering the cancellation of the said registration, and a certificate that the delay to appeal from the judgment has expired, shall proceed to the cancellation thereof in the manner provided for the cancellation of hypothecs discharged or paid, subject to the penalties imposed by this Act. 16 V. c. 206, s. 2.

#### FEES TO REGISTRARS.

Fees allowed to Registrars.

86. Every Registrar shall be allowed for the filing, entry and registration of every memorial to be registered, fifty cents, in case the words therein do not exceed four hundred words, but if such memorial exceed four hundred words, then after the rate of ten cents for every hundred words contained in such memorial, over and above the first four hundred words, and the like fees for the like number of words contained in every deed, conveyance, will and writing, registered at full length, and in every certificate or copy; and for every search in the said office, if the names of the parties to the deed or instrument to be searched for, be given, twenty cents, and when the names are not given, forty cents. 4 V. c. 30, s. 48.

#### OBLIGATIONS OF REGISTRARS AND HOW ENFORCED.

Registrar to attend his office during certain hours.

87. Every Registrar shall give attendance at his office, every day in the week, excepting Sundays and holidays, between the hours of nine in the forenoon and three in the afternoon, for the despatch of business, and every such Registrar shall make searches concerning any memorials, deeds, conveyances, wills and writings registered, and give certificates concerning the same if required. 4 V. c. 30, s. 49.

**88.** If any Registrar, in the execution of office, commits or suffers to be committed any fraudulent practice, in the execution of the said office, such Registrar shall forfeit his office, and pay treble damages, with costs of suit, to every person thereby injured, to be recovered by action in any Court of record. 4 V. c. 30, s. 50. Penalty for fraud.

**89.** Every Registrar shall comply with the requirements of this Act, under a penalty not exceeding forty dollars for every contravention of such requirements, without prejudice to damages payable to any party, which may be recovered as well as the penalty (with costs) before any Court having jurisdiction in civil matters to the amount, by the party aggrieved. 19, 20 V. c. 15, s. 3. Penalty for contravention of this Act.

**BOOKS AND RECORDS OF REGISTRAR TO BE DELIVERED TO HIS SUCCESSOR.**

**90.** Whenever a Registrar ceases to be Registrar, in consequence of resignation or removal from office, and when any such Registrar dies, every such Registrar ceasing to hold the said office, and the heirs, executors, or legal representatives of every such Registrar dying, shall deliver to the successor of every such Registrar on his demand, all the books, memorials, and papers appertaining to the office; and in case the Registrar so resigning or removed from office, or the heirs, executors, or other legal representatives of any deceased Registrar, refuse or neglect to deliver to the successor of such Registrar, all such books, memorials, and papers, as aforesaid, they, and every of them so refusing or neglecting, shall be held guilty of a misdemeanor, and shall besides be liable to make satisfaction to the parties injured, for all damages and costs sustained by such refusal or neglect. 4 V. c. 30, s. 37. Registrar ceasing to hold office to deliver the books, &c., of his office to his successor.  
  
Penalty.

**INSPECTION OF REGISTRY OFFICES.**

**91.** The Governor, by warrant under his hand and seal, when he deems it necessary, may require the attorney or solicitor general, or other law officer of the Crown, or some fit person to visit any of the registry offices, and to enquire into the condition of such offices, and the registers, books, indexes, memorials, documents and the papers therein, appertaining to such offices, respectively, and to ascertain whether the provisions of this Act be executed; of which visit a report in writing shall be made to the Governor, and laid before the Legislature at its then next Session. 4 V. c. 30, s. 55. Registry Offices and the books and papers therein may be inspected by direction of the Governor.

**PENALTIES FOR CERTAIN OFFENCES.**

**92.** If any person, at any time, forswears himself before any Registrar, Judge, Court, or person authorized to administer an oath in any of the cases hereinbefore mentioned, and Forswearing to be felony.

Punishment. and is thereof lawfully convicted, he shall be guilty of felony, and upon conviction, shall be liable to be imprisoned at hard labor in any Penitentiary, for any term not less than four years nor more than ten. 4 V. c. 30, s. 51, *part*; that *part relating to forging being repealed, except as to offences committed before 1st January, 1848.*

Fraudulent sale of property.

**93.** Any person knowing the existence of any unregistered prior sale, grant, mortgage, hypothec, privilege or incumbrance, of or upon any real estate, who fraudulently makes any subsequent sale of the same, or of any part thereof, shall be guilty of a misdemeanor, and be liable to imprisonment, not exceeding twelve months, and to fine not exceeding two thousand dollars. 4 V. c. 30, s. 1, *part.*

Fraudulent hypothecation.

**94.** Whoever pretends to hypothecate any real estate to which he has no legal title, shall be guilty of a misdemeanor, and being convicted, shall be imprisoned for a period not exceeding twelve months, and to a fine not exceeding one hundred dollars, and the proof of the ownership of the real estate shall rest with the person so pretending to hypothecate the same. 16 V. c. 206, s. 8.

#### THE CROWN TO BE BOUND BY THIS ACT.

How registration shall be effected for the Crown.

**95.** This Act shall be binding on the Crown in all particulars; and where registration is effected for the Crown by memorial, such memorial may be executed by the Receiver General, or by any other person holding office under the Crown in this Province, and having in his custody or hands the title, deed, will, notarial obligation, judgment, instrument or writing, or a notarial or office copy thereof, or probate of such will, whereof a memorial is to be registered:

What Memorials on behalf of the Crown shall express.

2. And every memorial on behalf of the Crown shall express the name, office and abode of the person by whom such memorial is executed, the name, abode, and addition of the person against whom such memorial is to be registered, the date and nature of the title, conveyance, instrument, written security document or writing, to which such memorial shall relate and the nature (and the amount if the amount be ascertained) of the debt, right, claim, demand or liability, in respect of which such memorial is to be registered. 4 V. c. 30, s. 52.

#### REGISTRATION UNDER FORMER ACTS TO REMAIN VALID.

Registration under former Acts.

**96.** Every Registration effected under the former Acts of L. C., 10, 11 G. 4, c. 8,---1 W. 4, c. 3,---4 W. 4, c. 5---or any of them, shall remain valid;---and every certificate of the Registration of any document under the said Acts or any of them, given by the Registrar having the custody of the Registrars in which such Registration was made or of an official copy thereof

thereof deposited in his office under any Act in that behalf, shall be evidence of such Registration.

## SCHEDULES.

### SCHEDULE NUMBER ONE.

#### *Oaths to be taken by Registrars and Deputy Registrars.*

##### ONE—OATH OF ALLEGIANCE.

I, A. B., do sincerely promise and swear, that I will be faithful, and bear true allegiance to Her Majesty, Queen Victoria : So help me God.

##### TWO—OATH OF OFFICE TO BE TAKEN BY REGISTRARS AND DEPUTY REGISTRARS.

I, A. B., Registrar (*or* Deputy Registrar, *as the case may be*), for the \_\_\_\_\_ of \_\_\_\_\_, do solemnly swear, that I will truly, honestly and faithfully perform and execute the office of Registrar (*or* Deputy Registrar) for the \_\_\_\_\_ of \_\_\_\_\_, and all and every the duties enjoined and required to be done and performed by me as such Registrar (*or* Deputy Registrar) by the law, so long as I shall continue in the said office ; and that I have not given or promised, directly or indirectly, nor authorized any person to give or promise, any money, gratuity or reward whatsoever, for procuring or obtaining the said office for me : So help me God.

##### SCHEDULE NUMBER TWO.

#### *Condition of recognizance to be entered into by Registrars.*

Whereas the said A. B., hath been appointed Registrar for the \_\_\_\_\_ of \_\_\_\_\_ : Now, the condition of this recognizance is such, that if the said A. B. do always well and truly, honestly and faithfully, execute the said office, and perform and fulfil all and every the said duties enjoined and required to be done and performed by him as such Registrar by law in all things, then this recognizance shall be void and of no effect ; otherwise it shall be and remain in full force and virtue.

## SCHEDULE NUMBER THREE.

*Form of a deed of bargain and sale executed before witnesses.*

This deed, made the            day of            , &c., between A. B., of            , &c., of the one part, and C. D., of            , &c., of the other part, witnesseth : That, for and in consideration of the sum of            to the said A. B. in hand paid by the said C. D., at or before the execution of these presents, (the receipt whereof is hereby acknowledged by the said A. B.) he, the said A. B., doth hereby grant, bargain, sell and confirm unto the said C. D., his heirs and assigns for ever, all that certain lot of land, &c. (*insert here a description of the property sold*) : To have and to hold the said lot of land and premises hereinbefore granted, bargained and sold, or intended so to be, with their and every of their appurtenances, unto the said C. D., his heirs and assigns for ever. In witness, &c.

A. B.     [L.S.]  
C. D.     [L.S.]

Signed, sealed and delivered  
in the presence of  
E. F.,  
G. H.

## SCHEDULE NUMBER FOUR.

*Forms of memorials and certificates of discharge.*

## ONE---MEMORIAL OF A DEED OF BARGAIN AND SALE EXECUTED BEFORE WITNESSES.

A memorial to be registered of a deed of bargain and sale, bearing date the            day of            , in the year of Our Lord            , made between A. B., of            , Esquire, of the one part, and C. D., of            , &c., of the other part (*a full description of the parties to be inserted, as in the deed*), by which said deed the said A. B., for the considerations therein expressed, did grant, bargain, sell and confirm unto the said C. D., his heirs and assigns, all that, &c., (*insert a description of the property sold*) : To hold to the said C. D., his heirs and assigns for ever : Which said deed is witnessed, &c., (*specify here the names of the witnesses to the execution of the deed*) ; and the said deed is required to be registered by the said C. D. As witness his hand, this day of            , &c.

Signed in the presence of  
J. K.,  
L. M.

C. D.

## TWO---MEMORIAL OF A DEED OF BARGAIN AND SALE, BY WAY OF MORTGAGE, BEFORE WITNESSES.

A memorial to be registered of a deed of bargain and sale, bearing date the            day of           , in the year of Our Lord           , made between A. B. of, &c., of the one part, and C. D. of, &c., of the other part, by which said deed, the said A. B., did grant, bargain, sell and confirm unto the said C. D., his heirs and assigns, all that &c., (*Here insert a description of the mortgaged premises*;) To hold to the said C. D., his heirs and assigns for ever; subject, nevertheless, to redemption, upon payment to the said C. D., his heirs, executors, curators, administrators, or assigns, of the sum of            dollars, and lawful interest, as in the said deed is expressed; which said deed is witnessed,---(*specify here the names of the witnesses as in form one*;) And the same deed is hereby required to be registered by the said C. D. As witness his hand, this day of, &c.

C. D.

Signed in the presence of

E. F.,  
G. H.

## THREE---MEMORIAL OF AN ONEROUS DEED OF GIFT INTER VIVOS.

A memorial to be registered of a notarial copy of a deed of gift *inter vivos*, bearing date at            day of            in the year of Our Lord            made between A. B. of, &c., (and C. D., his wife by him in this behalf duly authorized,) of the one part, and E. F. of, &c., of the other part, (*A full description of the parties to be inserted, as in the deed*;) before G. H., public notary and witnesses, (*or before J. K., and another, public notaries, as the case may be,*) by which said deed or gift, the said A. B. and C. D., his wife, did give, grant and confirm unto the said E. F., his heirs and assigns, all that, &c., (*Insert a description of the property conveyed by the deed of gift*); to hold to the said E. F., his heirs and assigns for ever; subject, nevertheless to a certain life-rent, consisting of, &c., (*Here insert the particulars of which the life-rent is composed*;) which said life-rent is payable by the said E. F., to the said A. B. and C. D., his wife, each and every year during the term of their natural lives, as in the said deed of gift *inter vivos*, is expressed: And the said deed of gift is hereby required to be registered by (the said E. F.). As witness his hand, this            day of            &c.

E.F.

Signed in the presence of

L. M.  
N. P.

FOUR—MEMORIAL OF A WILL, OR OF A PROBATE, OR AN OFFICE COPY, OR A NOTARIAL COPY THEREOF.

A memorial to be registered of the probate (*or, of the original will, or an office or notarial copy, as the case may be,*) of the last will and testament of G. H., late of \_\_\_\_\_ bearing date, &c., by which will the said testator did give and devise unto, &c. (*as in the will,*) to hold, &c.; which said will was executed by the said testator, in the presence of A. B. of, &c., C. D. of, &c., and E. F. of &c.: And the probate of the said will, (*or, the original, or an office or notarial copy, as the case may be,*) is hereby required to be registered by (O. P., one of the devisees therein named). As witness his hand, this day of \_\_\_\_\_

O. P.

Signed in the presence of

R. S.

T. V.

FIVE—MEMORIAL OF A NOTARIAL OBLIGATION.

A memorial to be registered of a notarial copy of a notarial obligation (*or of the original, if it be the original,*) bearing date the \_\_\_\_\_ day of \_\_\_\_\_, in the year of Our Lord \_\_\_\_\_, made and entered into by A. B. of \_\_\_\_\_, &c., before E. F., public notary and witnesses, (*or before G. H. and another, public notaries, if the case be so,*) whereby the said A. B. owned himself to be indebted to C. D. of \_\_\_\_\_, &c., in the sum of \_\_\_\_\_ dollars, to be paid, &c.,— and for securing the payment of the said sum of money and interest, hypothecated all that, &c., (*Insert the description of the hypothecated premises, as contained in the notarial obligation:*) Which said notarial copy of the said notarial obligation is hereby required to be registered by the said C. D. As witness his hand, this \_\_\_\_\_ day of \_\_\_\_\_, &c.

C. D.

Signed in the presence of

J. K.

L. M.

SIX—MEMORIAL OF THE APPOINTMENT OF A TUTOR TO MINORS FOR THE PRESERVATION OF THE LEGAL OR TACIT HYPOTHEC RESULTING FROM SUCH APPOINTMENT.

A memorial to be registered of the appointment of A. B. of, &c., (*Insert the place of abode and addition of the tutor;*) to be tutor to C. D., E. F., &c., minors under the age of twenty-one years, issue of the marriage of the late G. H., (*the name of the father*) deceased, with the late J. K., (*the name of the mother,*) also deceased, which appointment was made by and under the authority of L. M., (*Insert the name and description of the Judge by whom the appointment has been made;*) at, &c., (*the place where the*

*the appointment was made,*) on the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_ : And the said appointment is hereby required to be registered, for the preservation of the legal or tacit hypothec resulting therefrom, on all the real estate of the said A. B., situate in the \_\_\_\_\_ of *(the name of the Registration county or division within which the registration is to be made,*) by N. O., of, &c., *(Insert the name and description of the person requiring the registration.)* As witness his hand, this \_\_\_\_\_ day of \_\_\_\_\_, &c.

N. O.

Signed in the presence of

O. P.

R. S.

SEVEN—MEMORIAL OF A JUDGMENT.

A memorial to be registered of a judgment in Her Majesty's court of \_\_\_\_\_, of the term of \_\_\_\_\_, at \_\_\_\_\_, in the year of Our Lord \_\_\_\_\_, between A. B., of \_\_\_\_\_, &c., plaintiff, and C. D. of \_\_\_\_\_, &c., defendant for \_\_\_\_\_ dollars, with interest from, &c., and costs taxed at \_\_\_\_\_ dollars; which said judgment was rendered on the \_\_\_\_\_ day of the said month of \_\_\_\_\_, and is hereby required to be registered by *(the said A. B.)* As witness his hand, this \_\_\_\_\_ day of \_\_\_\_\_, &c.

A. B.

Signed in the presence of

J. F.

T. P.

EIGHT—CERTIFICATE OF DISCHARGE FROM A JUDGMENT WHEREOF A MEMORIAL HAS BEEN REGISTERED.

To the Registrar of \_\_\_\_\_

I, A. B. of, &c., do hereby certify that C. D. of, &c., hath paid me the sum of money due upon a judgment recovered in Her Majesty's Court of \_\_\_\_\_ at \_\_\_\_\_ of the term of \_\_\_\_\_ in the year of Our Lord \_\_\_\_\_ by me the said A. B., against the said C. D., for \_\_\_\_\_ dollars, debt, and \_\_\_\_\_ dollars, costs, a memorial whereof was registered on the \_\_\_\_\_ day of \_\_\_\_\_ in the year of Our Lord \_\_\_\_\_; And I do hereby require an entry of such payment to be made, in the Register wherein the same is registered, pursuant to law. As witness my hand, this \_\_\_\_\_ day of \_\_\_\_\_ in the year of Our Lord, &c.

A. B.

Signed in the presence of

J. K. of \_\_\_\_\_, &c.

L. M. of \_\_\_\_\_, &c.

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## NINE—A CERTIFICATE TO DISCHARGE A MORTGAGE.

To the Registrar of

I, A. B. of, &c., (*the mortgagee in the deed or his heirs, executors, curators or administrators,*) do hereby certify that C. D. of &c., hath paid the sum of money due upon a deed or mortgage, bearing date the                    day of                    in the year of Our Lord                    made between the said C. D., of the one part; and me the said A. B., of the other part; a memorial whereof was registered on the day of                    in the year of Our Lord                    ; And I hereby require an entry of such payment to be made in the register wherein the same is registered, pursuant to law. As witness my hand, this                    day of                    in the year of Our Lord

A. B.

Signed in the presence of  
O. P. of, &c.  
R. S. of, &c.

## TEN—A CERTIFICATE TO DISCHARGE A NOTARIAL OBLIGATION, AND EXTINGUISH THE HYPOTHEC THEREBY CONSTITUTED.

To the Registrar of

I, A. B. of &c., (*the hypothecary creditor, his heirs, executors, curators, or administrators,*) do hereby certify that C. D. of, &c., hath paid the sum of money due upon a notarial obligation, bearing date the                    day of                    in the year of Our Lord                    , made by the said C. D., to me and in my favor, as the obligee therein named, before E. F., public notary and witnesses, (*or before E. F. and another, public notaries, as the case may be*) whereof a memorial was registered on the                    day of                    in the year of Our Lord                    ; And I do hereby require an entry of such payment to be made in the Register wherein the same is registered, pursuant to law. As witness my hand, this                    day of                    in the year of Our Lord

G. B.

Signed in the presence of  
J. K. of &c.  
L. M. of, &c.

## CAP. XXXVIII.

## An Act respecting Titles to property in Gaspé.

**W**HEREAS it is expedient to render valid and to confirm Preamble.  
the validity of certain informal acts or agreements in writing, and contracts of marriage, (*contrats de mariage*) *sous seing privé*, made and executed in the district of Gaspé, (in which no public notaries have at certain periods resided,) and by the parties, *bonâ fide*, intended to be binding and to affect their property and estate, real and personal: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

**1.** All deeds, wills, *actes* and instruments in writing *sous seing privé*, duly proved and registered under the Act of the Parliament of Lower Canada, 4 G. 4, cap. 15, and all copies thereof duly certified by the Officer having the custody of the Register containing the same, shall continue to have full effect as if such deeds, wills, *actes* and instruments had been passed before Notaries according and subject to the provisions of the said Act. 4 G. 4, c. 15, *generally*. Certain instruments *sous seing privé* and certified copies thereof to have effect as though notarial.

**2.** Any person being a party, or representing by inheritance, succession or otherwise, any party to any will, act or agreement in writing, of any nature, inventory, *partage*, donation or contract of marriage (*contrat de mariage*) *sous seing privé*, made and executed, *bonâ fide*, before the ninth day of March, 1824, in the inferior district of Gaspé, and by which it may have been intended by the parties having signed the same, or having made their mark thereto, to bind and affect their property and real estate, at the time of the making thereof,—on making oath to that effect before a Judge of the Superior Court in the district of Gaspé, upon petition to him presented to that effect, may cause the same to be entered at full length, and recorded in a book to be kept for the purpose by the officer having the custody of the records of the former Provincial Court for the inferior district of Gaspé, among the records of his office, such book being duly marked (*paraphé*) throughout on every leaf, with the initials of the christian and surname of the provincial judge of the said inferior district of Gaspé, or with those of a Judge of the Superior Court in the district of Gaspé. 4 G. 4, c. 15, s. 1. Parties to certain *actes* *sous seing privé* may cause the same to be registered.

**3.** A certified copy from such book, under the hands of the prothonotary of the said provincial court, or of the officer having the custody of the records of the said Court, of the entry and record made in pursuance of the said Act or of this Act, of any such will, act or agreement in writing, inventory, *partage*, donation, or contract of marriage, (*contrat de mariage*) *sous seing privé*, shall be of the same force in every Court of law, as if the same were an authentic copy of any instrument to the like effect, executed before a notary. 4 G. 4, c. 15, s. 2. Duly certified copies thereof to be authentic.

Formalities to authenticate such *actes* before their registration.

4. Before any such will, act or agreement in writing, inventory, *partage*, donation or contract of marriage, (*contrat de mariage*) *sous seing privé*, shall be entered and recorded as hereinabove mentioned, the Judge of the Superior Court may require the attendance of the several parties to the same, or in case the parties, or any of them, having executed the same are dead, of such witnesses as were present at the time of signing or executing the same, or in default of witnesses, or in case of their death or absence, of such persons not being witnesses as have had a knowledge of the facts and circumstances in question, and them severally to examine on oath; and if, on full enquiry, it appears to such judge, that the will, act or agreement in writing, inventory, *partage*, donation or contract of marriage, (*contrat de mariage*) *sous seing privé* produced, was by the parties thereto *bonâ fide* made and executed at the time when the same purports to have been made and executed, such Judge shall authorize and order the same to be entered and recorded as hereinabove mentioned; but if he has cause to believe that the same was not *bonâ fide* made and executed at the time when it purports to have been made and executed, or that the same was made collusively, or for any illegal purpose, then the Judge shall reject and return the same to the party producing it, without entering or recording the same. 4 G. 4, c. 15, s. 3.

Appeal from judgment declaring such instrument not to have been *bonâ fide* executed.

5. Whenever such will, act or agreement in writing, inventory, *partage*, donation, contract of marriage, (*contrat de mariage*) *sous seing privé*, has been rejected and returned by such Judge, in the manner herein last mentioned, the party producing the same may appeal from the judgment or decision of the said Judge in that behalf, to the Court of *Queen's Bench* in the district of Quebec, which Court shall examine and revise such judgment or decision, and may affirm or reverse the same; but no such appeal shall lie nor be granted, unless the same be notified and applied for to the said Judge, within ten days after such judgment or decision has been made or rendered. 4 G. 4, c. 15, s. 4.

Duty of Judge in the case of an appeal from his judgment in the matter.

6. Whenever any person declares his intention to appeal from any decision by which any such will, act or agreement in writing, inventory, *partage*, donation, or contract of marriage, (*contrat de mariage*) *sous seing privé*, has been rejected or refused to be entered as aforesaid, the judge shall cause to be reduced to writing the proceedings had before him, and all the testimony and evidence offered or adduced respecting such will, act or agreement in writing, inventory, *partage*, donation or contract of marriage, (*contrat de mariage*) *sous seing privé*, which has been so rejected or refused to be entered as aforesaid;—and a certified copy of the said proceedings, testimony and evidence, together with the petition of the party or parties who presented such will, act or agreement in writing, inventory, *partage*, donation, contract of marriage, (*contrat*

(*contrat de mariage*) *sous seing privé*, and a statement of the reasons of the judgment by which the judge rejected or refused to enter the same, shall, at the instance and request of the party declaring his intention to appeal, be immediately transmitted by the judge at Gaspé to the Court of *Queen's Bench* at Quebec. 4 G. 4, c. 15.-s. 5.

7. If upon any such appeal the judgment by which such will, act or agreement, inventory, *partage*, donation or contract of marriage, (*contrat de mariage*) *sous seing privé*, has been rejected or refused by the said judge in Gaspé is reversed by the said Court of *Queen's Bench*, the said Court by which such appeal has been determined, shall make an order that the said will, act or agreement, inventory, *partage*, donation, contract of marriage (*contrat de mariage*) *sous seing privé*, shall be entered and recorded in the manner herein first before-mentioned, and shall cause the said order, together with the said will, act or agreement, inventory, *partage*, donation, contract of marriage, (*contrat de mariage*) *sous seing privé*, and with all the proceedings, evidence and testimony relating thereto, to be remitted to the said judge in Gaspé, who shall cause the said will, act or agreement in writing, inventory, *partage*, donation, contract of marriage, (*contrat de mariage*) *sous seing privé*, to be entered and recorded accordingly. 4 G. 4, c. 15, s. 6.

If judgment reversed, the Court above to make an order for the entering of the instrument and remit all proceedings to Judge of the Court below.

8. Nothing in this Act shall be construed to render valid any act or contract *sous seing privé* which is found to be false or fraudulent, or which is contrary to good morals, or in any wise prohibited by law. 4 G. 4, c. 15, s. 8.

False or immoral acts or contracts.

9. Nothing in this Act shall in any wise prejudice the rights of any person purporting to be a party or concerned in any such act or agreement in writing *sous seing privé*, who did not appear and admit or affirm the same before the proper judge in Gaspé, at the time when the same was attested, nor to prevent such person from taking his legal recourse against such act or agreement in writing *sous seing privé*, enrolled as above mentioned, by an *inscription en faux*, or otherwise according to law. 4 G. 4, c. 15, s. 9.

Recourse of parties not appearing before Judge not prejudiced.

10. Any will, act or agreement in writing, inventory, *partage*, donation, or contract of marriage, (*contrat de mariage*), executed during the three years next after the said *ninth* day of March, 1824, before any justice of the peace, or minister, or *curé*, or missionary, and two subscribing witnesses, or before the prothonotary of the provincial court of the said inferior district, and two subscribing witnesses, shall bear mortgage (*portera hypothèque*) from the day of its execution, and shall, as well as the copies thereof duly certified, be received as valid and authentic in all Courts of law in this Province, as if the same had been executed before notaries; and the originals or minutes of such Act as aforesaid, transmitted to the prothonotary of the said

Certain instruments executed with certain formalities to have effect from day of execution.

said provincial Court under the Act of the Parliament of Lower Canada, 4 G. 4, Cap. 15, shall be preserved by the Officer having the custody of the records of the said Court, among the records of his Office, for such legal purposes as the same may serve pursuant to the said Act. 4 G. 4, c. 15, s. 10.

Fees to prothonotary for enrolling such instruments.

**11.** The prothonotary, for enrolling every such will, act or agreement in writing, inventory, *partage*, donation, contract of marriage, (*contrat de mariage*) *sous seing privé*, if the same do not exceed one hundred words, shall be entitled to demand and receive the sum of fifty cents,—and for every hundred words exceeding one hundred, at the rate of ten cents,—and for every certified copy of any entry from such book or register, at the rate of twenty cents, for the first hundred words, and ten cents for every hundred words exceeding the first hundred words. 4 G. 4, c. 15, s. 7.

Legal effect of certain instruments executed between 9th March, 1824, and 1st May, 1840.

**12.** Any will, act or agreement in writing, inventory, *partage*, donation, or contract of marriage, *contrat de mariage*, executed within the inferior district of Gaspé, between the ninth day of March, one thousand eight hundred and twenty-four, (being the day of the passing of the Act of the Parliament of Lower Canada, 4 G. 4, cap. 15,) and the first day of May, one thousand eight hundred and forty, in the manner prescribed by the tenth section of the Act last mentioned, and with regard to which all the requirements of the said section have been complied with, has borne and shall bear hypothec, and has had and shall have the same legal effect according to its tenor, as if it had been executed before Notaries, and shall, as well as the copies thereof duly certified, be taken and received as valid and authentic in all Courts of Law in this Province, as if executed before Notaries. 3, 4 V. c. 5, s. 1.

Legal effect of certain instruments executed after 1st May, 1840, as prescribed by last section.

**13.** Any will, act or agreement in writing, inventory, *partage*, donation, or contract of marriage, executed within the said inferior district of Gaspé, after the said first day of May, one thousand eight hundred and forty, in the manner prescribed by the *tenth* section of the Act last mentioned, and with regard to which all the requirements of the said section have been complied with, shall bear hypothec, and shall have the same legal effect as if it had been executed before notaries, and shall, as well as the copies thereof, duly certified, be taken and received as valid and authentic in all courts of law in this Province as if executed before notaries :

Exception as regards instruments so executed if there were two notaries practising in County.

2. Except, that this section shall have no effect with regard to any will, act or agreement in writing, inventory, *partage*, donation or contract of marriage so executed, if there were two notaries resident and practising in the county in which the same was executed at the time of the execution thereof, and during two months before that time ; but the proof that

that there were two notaries so residing and practising shall, in all cases, lie upon the party disputing the validity of any such act or instrument as aforesaid, and if such proofs be not adduced, it shall be held that there were not two notaries so resident and practising at the time such act or instrument was executed. 3, 4 V. c. 5, s. 2.

**14.** All adjudications entered in the proper registers under the Act of the Parliament of Lower Canada, 59 G. 3, cap. 3, and officially certified copies thereof, made or certified under the authority of the Act of the Parliament of Lower Canada, or under the authority of the Act of the said Parliament, 1 Will. 4, cap. 23, shall, to all intents and purposes in law, have the effect of grants from His Majesty, of each and every tract, lot or parcel of land mentioned and set forth in the same, and of which possession has been taken or maintained by virtue of any entry in such register, and shall vest in the person and persons, respectively, holding, by virtue of such adjudication, the fee simple of such tract, lot or parcel of land, and shall be so held by the Judges of all Courts in this Province. 6 W. 4, c. 53, s. 2.

Adjudications under 59 G. 3, c. 3, duly entered to have the effect of grants from the Crown.

**15.** A duplicate of the registers kept by the Commissioners appointed under the authority of the said Act passed in the fifty-ninth year of the reign of King George the Third, shall be deposited by the officer or person in whose possession the same then are, in the office of the clerk in whose hands the Registers of the provincial Court of the said inferior district of Gaspé then are; and the said clerk shall deliver duly certified copies of all adjudications entered in the said registers, to any party interested therein who shall demand the same; and the copies so certified, and no others, shall be held in all Courts of law in which they are produced in evidence, as being authentic copies of such adjudications; and for each such copy the said clerk shall be entitled to demand and receive the sum of fifty cents, and no more. 6 W. 4, c. 53, s. 3.

Duplicate of registers of Commissioners under 59 G. 3, c. 3, to be deposited in the office of the Clerk of the Provincial Court.

**16.** The original Register kept by the said Commissioners which by the said last mentioned Act was required to be deposited in the office of His Majesty's Executive Council for Lower Canada, shall be and remain in the office of the Executive Council for this Province; and all persons may, as often as they require, have access to the same and obtain copies or extracts therefrom, in the manner and on payment of the fees established and allowed therefor by the said Act, to the clerk of the Executive Council. 6 W. 4, c. 53, s. 4.

Original register to be deposited in the office of the Executive Council.

**17.** All titles to real property in the district of Gaspé, founded on free grants made under the provisions of the Act of the Parliament of this Province, 10, 11 Vic. cap. 30, and within the periods thereby limited shall remain valid. 10, 11 V. c. 30.

Free grants under 10, 11 V. c. 30, to remain valid.

## C A P . X X X I X .

## An Act respecting Letters Patent for Lands.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Letters Patent for lands to be delivered to parties entitled thereto.

**1.** All Letters Patent of the Crown, whereby any grant of the waste or other public lands in Lower Canada is made, shall be delivered to the person thereto entitled, a copy thereof only being previously recorded in a register to be kept for the purpose by the Registrar of the Province or his Deputy, without any other entry or enrolment. 14, 15 V. c. 16, s. 1.

After having been registered by Provincial Registrar.

**2.** The Provincial Secretary shall deliver all such Letters Patent as aforesaid, forthwith, or as soon as conveniently may be, to the Registrar of the Province or his Deputy, for enregistration as above provided, and such Registrar or his Deputy shall register the same with the least possible delay, endorsing and signing, as by law provided, a certificate of such enregistration on the Letters Patent, and shall transmit the same to the Commissioner of Crown Lands, to be by him forwarded to the proper person. 14, 15 V. c. 16, s. 2.

How they shall be registered.

**3.** The said registrar shall register all such letters patent at full length, by engrossing them separately in one or more properly bound books, and shall in the margin of every such registry insert the time of such registry ; and the said registrar shall indorse and sign a certificate of such registry on such letters patent, and shall safely keep all and every the books wherein such registries are made in his said office, there to remain of public record. 36 G. 3, c. 3, s. 3, *as amended by subsequent Acts.*

Registrar to deliver copies when required.

**4.** The registrar shall furnish and deliver copies of all such letters patent and of all such registries and enrolments thereof, and such certificates under their hands and signatures concerning the same as are hereinbefore mentioned, to all persons requiring the same, and paying the fees hereinafter mentioned. 36 G. 3, c. 3, s. 4.

Such copies duly certified to be deemed authentic.

**5.** All copies of the Registry made at full length of any such Letters Patent in the Register hereby required to be kept for the purpose, duly certified under the hand and signature of the Registrar or of his Deputy shall be deemed authentic and shall be evidence of such Letters Patent so registered, and shall have the same effect as the production of the said Letters Patent in Court. 14, 15 V. c. 16, s. 3.

Custody of Letters Patent

**6.** The custody and safe keeping of all Letters Patent, whereby any public lands of the Crown in Lower Canada

were

were at any time granted, before the second day of August 1851, (the day of the passing of the Act 14, 15 V. c. 16) shall belong to the office of the Registrar of the Province; and all copies of such Letters Patent, or of the record of such Letters Patent, duly certified under the signature of the said Registrar or of his Deputy, shall be deemed authentic and shall be evidence of such Letters Patent, or Record thereof, and of the contents thereof, and shall have the same effect as the production of the said Letters Patent, whereof they are certified copies in Court. 14, 15 V. c. 16, s. 4.

granted for lands before 2nd August, 1851, to belong to the Registrar of the Province.

7. All copies of Letters Patent deposited as then by law required, and of record in the office of the Secretary of the Province, duly certified as such before the day last aforesaid, under the hand and signature of the Secretary of this Province, or of the Province of Lower Canada, for the time being, or his Deputy lawfully appointed, shall be deemed authentic, and as such shall be evidence of such letters patent and of the contents thereof, in all courts and places. 9 G. 4, c. 56.

Copies duly certified of such Letters Patent to be deemed authentic.

8. The registrar shall be entitled to demand from the grantees in any letters patent named, for the registry of such letters patent, the sum of two dollars, provided the said letters patent do not contain more than two thousand words, and if they contain more than two thousand words, then the said registrar shall be entitled to demand ten cents for each and every one hundred words contained in the said letters patent,—and the registrar for each and every copy of such letters patent and of the registries and enrolments thereof, which he is required to deliver, shall be entitled to demand the sum of two dollars, for each such copy which shall not contain more than two thousand words, but in case the same shall contain more than two thousand words, then the registrar shall be entitled to demand ten cents for each hundred words contained in such copy; and no higher fees shall be demanded for the services aforesaid allowed by the present Act. 57 G. 3, c. 28.

Fees to registrar.

9. If any registrar neglects to perform his duty according to this Act, or commits or suffers to be committed any undue or fraudulent practice in the execution of his said duty, then such registrar shall be liable to pay treble damages and full costs of suit, to any person who shall be injured thereby, to be recovered with costs of suit, by action in any Court of law within this Province, wherein either party shall and may obtain a trial by jury, by whose verdict the truth of the matter in issue, and the quantum of damages sustained by the plaintiff, shall be found and assessed. 36 G. 3, c. 3, s. 5.

Registrar neglecting his duty liable in treble damages.

10. In all cases where any error as to the name of any intended grantee or purchaser of any public land in Lower Canada, or with respect to the number, designation or description of the lot of Land purchased or intended to be granted or conveyed,

Defective Letters Patent may be cancelled and new ones issued.

conveyed, or any other essential error is discovered in any Letters Patent whereby any such land is intended to be granted or conveyed by the Crown to any grantee or purchaser, the Governor in Council, on a representation to him made by or on behalf of the person interested, may direct the defective Letters Patent to be cancelled, and issue in their stead new Letters Patent, which shall supersede and take the place of the former, and be as effectual thenceforward, as it was intended the former should be and would be, had not such error occurred therein. 14, 15 V. c. 16, s. 6. *And see Public Lands Acts.*

C A P . X L .

An Act respecting Lessors and Lessees.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

RIGHTS OF LESSOR.

1. The Lessor or Proprietor shall have a right of action under this Act :
  - 1. To rescind the lease, when the tenant fails to garnish the house, tenement, farm or premises leased with sufficient furniture or stock to secure the rent as required by law ; Lessor has an action to rescind lease, when.  
Tenant fails to garnish ;
  - 2. To rescind the lease, when the tenant commits waste upon the premises leased ; Or commits waste ;
  - 3. To rescind the lease, when the tenant uses the premises leased for illegal purposes, or contrary to the evident intent for which they are leased ; Or uses premises for illegal purposes.
  - 4. To recover possession of the property leased in all cases when there is a cause for rescision of the lease, and when the tenant continues in possession of the premises leased, against the will of the proprietor or lessor after the expiration of the lease, or without paying the rent according to the stipulations of the lease, when a lease exists, or according to the *sixteenth* section of this Act when there is no lease ; Lessor may bring an action to recover possession.
  - 5. To recover damages arising from a violation of an agreement of lease, or of the legal obligations arising from the relation of lessor and lessee ; For damages on contravention of lease or law.
  - 6. To join with any action to enforce the aforesaid remedies, a *demande* for rent due, or to which the lessor or proprietor is entitled, with or without attachment (*saisie gagerie*), and to exercise the *droit de suite* when necessary. 18 V. c. 108, s. 2. Recovery of rent.

RIGHTS OF LESSEE.

2. The Lessee shall have the right of action—
  - 1. To compel the proprietor or lessor to make the repairs and ameliorations stipulated in the lease, or incumbent upon him by law, of the property leased, and to obtain power to make such repairs at the expense of such proprietor, or (if such lessee so declares his option) to have a rescision of the lease in default of such repairs and ameliorations being made ; Right of action of lessee as regards—  
Repairs.

Damages for  
contravening  
lease or law.

2. For the recovery of damages arising out of an agreement of lease, or of the relation of lessor and lessee ;

Rescission of  
lease for breach  
of contract.

3. For the rescission of a lease for a breach of the contract on the part of the lessor, or a failure to perform the obligations devolving upon him by law. *Ib.* s. 3.

PROCEDURE UNDER THIS ACT.

Defence by  
tenant.

3. Any tenant, sued under this Act, may urge any matters in defence, which he could urge, if sued under the ordinary process of law. *Ib.* s. 4.

Where actions  
may be brought.

4. Actions under this Act shall be instituted in the usual manner in the Superior or Circuit Court ; and the annual value or rent of the property leased shall determine the jurisdiction of the Court, whatever be the amount of damages and rent sued for. *Ib.* s. 5.

Powers of  
Judge in vaca-  
tion.

5. Any judge of the Superior Court in vacation shall have and exercise, on any juridical day, all the powers of the Superior Court in term, in all suits instituted in such Court under this Act. *Ib.* s. 6.

In the Circuit  
Court.

6. Any judge of the Superior or Circuit Court shall have the same power in vacation as in term of the Circuit Court, to hear and determine suits under this Act. *Ib.* s. 7.

To what such  
powers shall  
extend.

7. It shall be competent for the Court or Judge, as the case may be, to hear and determine all cases arising under this Act, or growing out of the relation of lessor or lessee, and award costs and every process necessary to enforce Judgment. *Ib.* s. 8.

By whom writs  
shall be exe-  
cuted.

8. Writs of summons, attachment and execution, shall be directed to and executed by the officers to whom the like writs in other cases in the Superior and Circuit Court are directed and executed, except writs of possession issuing in the Circuit Court in any suit under this Act, which last mentioned writs shall be directed to and executed by a Bailiff of the Superior Court. *Ib.* s. 9.

*Arrêt simple*  
may be sued  
out in suits for  
rent.

9. It shall be lawful in any action brought under this Act, with which a *demande* for rent is joined, to sue out a writ of *saisie arrêt* or *arrêt simple* founded upon affidavit according to law, and any moveables seized under such writs which have been used to furnish the property leased, if seized upon the premises leased, or after their removal, but within eight days thereafter, shall be sold subject to the privilege of rent, in the same manner as if seized by *saisie gagerie*. *Ib.* s. 10.

Delay between  
service and  
summons.

10. One clear day between service of summons and the return thereof in any suit under this Act, shall be sufficient when the

the place of service is within five leagues from that of the sitting of the Court, and an additional delay of one day for every additional five leagues. *Ib.* s. 11.

**11.** If the Defendant does not appear on the day of the return of the writ of summons, and before noon of the said day, default shall be recorded against him, and the Plaintiff shall be permitted to proceed *ex parte*; if the Defendant appears, he shall be held to plead in writing before noon of the next juridical day following the return day of the writ, and in default thereof, the Plaintiff may, upon filing certificate of such default to plead, proceed *ex parte*. *Ib.* s. 12.

In case of default.

**12.** The Plaintiff shall be held to answer the plea of the Defendant on or before noon of the juridical day next after the filing thereof, and in default thereof the Defendant may obtain from the Prothonotary or Clerk of the Court, *acte* of foreclosure of the Plaintiff from the right of filing such answer, upon application therefor founded upon mere lapse of time and such default to answer, without any demand of plea or service thereof; and every subsequent pleading rendered necessary shall be made and filed before noon of the next juridical day after the filing of the Plaintiff's answer, and in default thereof foreclosure shall be granted to the Plaintiff, and he shall be permitted to proceed to trial and judgment without further completion of the issues in such cause. *Ib.* s. 13.

Delay for answering plea.

For subsequent pleadings.

**13.** In causes under this Act, when the issues are complete or either party has obtained foreclosure or right to proceed *ex parte*, the plaintiff or defendant may inscribe the cause upon the roll *des enquêtes* for any juridical day subsequent to the day of the filing of such inscription, and proof shall be adduced on such day, and continued from day to day till closed by both parties:

*Enquêtes.*

2. And whenever on any *enquête* day the party whose *enquête* is proceeding shall cease to adduce further evidence, his *enquête*, on the application of the opposite party, shall be declared closed; and upon the *enquête* of both parties being closed, either plaintiff or defendant may inscribe the cause for final hearing on the next juridical day after the closing of such *enquête*, without notice to the opposite party, but if such cause is inscribed upon any day subsequent to such last mentioned day, notice thereof shall be served upon the opposite party. *Ib.* s. 14.

Closing *enquêtes*.

Final hearing.

**14.** *Enquêtes* in suits or actions instituted under this Act in the Circuit or Superior Court, shall be taken in writing, unless the parties agree to take them otherwise; and if in any case the *enquête* is not taken in writing, by consent of parties, the Court or Judge before whom such case proceeds, shall take minutes of the evidence, which minutes shall be deposited of record,

*Enquêtes* to be in writing unless by consent, in which case the Judge shall take notes.

record, and in the event of such case being appealed, such minutes of evidence shall, for the purposes of such appeal, be treated as the evidence adduced in such case. *Ib.* s. 17.

Appeals and to what Courts.

**15.** An appeal shall be allowed from any judgment rendered in a suit under this Act instituted in the Circuit Court, to the Superior Court, and in suits instituted in the Superior Court, to the Court of Queen's Bench, under the same rules and subject to the same conditions as other appeals are instituted from judgments of the said Courts, as well if such judgments are rendered in vacation as in term. *Ib.* s. 15.

Persons holding by permission to be held to be lessees.

**16.** Persons holding real property by permission of the proprietor, without lease, shall be held to be lessees and bound to pay to the proprietor the annual value of such property, and their term of holding shall expire on the first day of May of each year, and such holding shall be treated for the purposes of this Act, as an annual hiring or lease, subject to *tacite reconduction* and all rules of law applicable to leases, and the person so in occupation shall be liable to ejectment for holding over, for allowing more than three months' rent to remain unpaid, or for any of the causes mentioned in this Act. *Ib.* s. 16.

Defendant not to be guardian under *saisie gagerie* unless by consent or on giving security.

**17.** Whenever a writ of *saisie gagerie* issues either under this Act or under the law, to seize the effects of a tenant, the same shall not be left in the guardianship of the defendant without the consent of the plaintiff, or unless he offers sureties to be approved by the Sheriff or bailiff as the case may be, for the production of the said effects, which sureties shall be liable to the same penalties and obligations therefor as guardians now are in the case of ordinary writs of execution. *Ib.* s. 18.

Holding over for three days to give right of action.

**18.** The proprietor or lessor may proceed to recover possession of the property leased, if the lessee holds over at any time after the expiration of three days after the lease has expired, or after the term of holding has expired. *Ib.* s. 19.

Costs in suits under this Act.

**19.** The Court or Judge, in cases under this Act, may award and tax costs according to the tariff of the Superior Court in actions instituted in the Circuit Court wherein the amount of all the matters in contestation exceed two hundred dollars and in all cases the costs shall be taxed according to the amount in contestation; Provided that in no case shall the costs be less than are allowed in an appealable case of the lowest class in the Circuit Court. *Ib.* s. 20.

Suits pending on 30th May, 1855, not affected.

**20.** Nothing in this Act shall affect any cause or proceeding instituted or commenced before the Thirtieth day of May, one thousand eight hundred and fifty-five; but all proceedings of such nature shall be continued and finally determined and enforced in the same manner as if this Act had not been passed. *Ib.* s. 21.

C A P . X L I .

An Act respecting General Abolition of Feudal Rights and Duties.

**W**HEREAS it is expedient to abolish all Feudal Rights and Duties in Lower Canada, whether bearing upon the *Censitaire* or upon the Seigneur, and to secure fair compensation to the latter for every lucrative right which is now legally his, and which he will lose by such abolition; And whereas in consideration of the great advantages which must result to the Province from the abolition of the said Feudal Rights and Duties and the substitution of a free tenure for that under which the property subject thereto hath heretofore been held, it is expedient to aid the *Censitaire* in the redemption of the said charges, more especially as regards those which, while they press most heavily on industry and enterprise, cannot, from their very nature, be otherwise made immediately redeemable without grievous hardship and injustice in many cases: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

Preamble.

1. The Act passed in the eighth year of Her Majesty's Reign, intituled: *An Act the better to facilitate optional commutation of the tenure of lands en roture in the Seignories and Fiefs in Lower Canada, into that of franc-alleu roturier*, and the Act passed in the twelfth year of Her Majesty's Reign, and intituled: *An Act to amend the Act passed in the eighth year of Her Majesty's Reign, intituled: 'An Act the better to facilitate optional commutation of the tenure of lands en roture in the Seignories and Fiefs in Lower Canada, into that of franc-alleu roturier,'* are repealed in so far as regards the Seignories to which this Act applies; but deeds of commutation granted or other things done under them shall remain in full force and have the same effect as if the said Acts had not been repealed.

Acts 8 V. c. 42—

and 12 V. c. 49.

Repealed as regards Seignories to which this Act extends.

2. The power of granting *des lettres de Terrier*, within Lower Canada, in cases where such *lettres* can by law be granted, is vested in the Governor, or person administering the Government of this Province, for the time being, as representing the Queen's Most Excellent Majesty: 48 G. 3, c. 6, s. 1.

Granting of *lettres de terrier* vested in the Governor.

2. But the right of Seigniors in Lower Canada to obtain *Lettres de Terrier* in or for any Seignior to which this Act extends, is abolished, and the Act of the Legislature of Lower Canada, passed in the forty-eighth year of the Reign of King George the Third, and intituled: *An Act which declares in whom is vested the power of granting des Lettres de Terrier in this Province*, in so far as regards every such Seignior, is repealed.

Right of Seigniors to obtain them abolished.

48 Geo. 3, c. 6, repealed.

18 V. c. 103, s. 2.

1.—DETERMINATION OF THE PRICE TO BE PAID BY SEIGNIOR AND CENSITAIRE FOR THE COMMUTATION OF THE TENURE OF THEIR PROPERTY.

Governor to appoint Commissioners.

3. The Governor may appoint Commissioners under this Act, and from time to time remove them, and appoint others in the place of any so removed, or dying or resigning office ; and each of the said Commissioners shall, before entering upon the duties of his office, take and subscribe, before a Judge of the Superior Court, the following oath :

Their oath of office.

“ I, \_\_\_\_\_, swear that I will faithfully and without partiality, fear, favor or affection, perform my duty as Commissioner under the Seigniorial Act.” 18 V. c. 3, s. 2.

Their remuneration.

4. The said Commissioners shall receive for their services and for their necessary expenses and disbursements, such compensation as shall be allowed to them respectively by the Governor, and no other fees or emoluments. 18 V. c. 3, s. 3.

Governor to assign Seigniories in which each shall act.

5. Each of the said Commissioners shall and may act as such in any part of Lower Canada, and they shall be aiding to each other, so that any one of them, if need be, may continue and complete the work begun by any other of them ; but subject to this provision the Governor may, from time to time, assign the Seigniorie or Seigniories in and for which each of them shall act. 18 V. c. 3, s. 4.

Certain powers of the Commissioners defined.

6. Any one of the said Commissioners may give any notice required by any part of this Act, with respect to any Seigniorie or Seigniories, and another or others of them may afterwards act in any way under this Act with respect to such Seigniorie or Seigniories ; and generally, each Commissioner acting with respect to any Seigniorie, shall be held to be the Commissioner assigned to act in and for the same under the next preceding section, unless the Governor has then otherwise directed and ordered. 18 V. c. 103, s. 6.

Commissioners to make a Schedule of each Seigniorie shewing—

7. It shall be the duty of each of the said Commissioners to value the several rights hereinafter mentioned, with regard to each Seigniorie assigned to him by the Governor, and to draw up in tabular form in triplicate, a Schedule of such Seigniorie, shewing : 22 V. c. 48, s. 2.

The total value of the Seigniorie ;

1. The total value of the Seigniorie, that is to say of all the property and lucrative rights which the Seignior holds as such, whether as Seignior *dominant* of any fief held of him as such Seignior, or otherwise, including in such total value, the value of the rights of the Crown ;

The value of the rights of the Crown therein ;

2. The value of the rights of the Crown in the Seigniorie, including the value of the *droit de quint*, and all other valuable rights

rights of the Crown therein as Seignior *dominant*, or by reason of any reservation in the original grant of the Seignior, and any difference between the absolute value in *franc-alleu roturier* of all unconceded land, waters and water powers in the Seignior, and appertaining thereto, and the value of the Seignior's rights therein, as they have been ascertained by the decisions of the Judges, under the Seignorial Act of 1854 ;

3. The value of the lucrative rights of the Seignior *dominant*, of whom the Seignior for which the Schedule is made may be held, if the Seignior be an *arrière-fief* ; And of those of the Seignior *dominant* ;

4. The yearly value of the Seignorial rights upon each land, that is to say, each parcel of land originally conceded as a separate lot, or actually owned at the time of making the Schedule by a separate person ; entering severally—the yearly value of the *lods et ventes*,—the yearly value (if any) of the *droit de banalité*, and of the exclusive right to build mills in the Seignior, as distinguished from the right to the water powers, *so far as such rights are* recognized by the decision of the Judges under the Seignorial Act of 1854, but not otherwise,—the yearly value of the *cens et rentes* and other fixed rights, and of any other legal charges to which the land is subject ; but the *droit de retrait* shall not be deemed a lucrative right ; The yearly value of the Seignorial rights on each separate lot ;

5. The extent of such land according to the title of the owner, if produced, and whether it is held for agricultural purposes, or is a mere emplacement or building lot ; The extent of each lot.

6. In determining the Seignorial charges to which each land is subject, the Commissioner shall be guided by the title of the owner from the Seignior, subject to the decision of the Judges under the said Seignorial Act of 1854, if such decision in any way limits the rights of the Seignior under the said title ; and in the absence of the title of the owner, the Commissioner shall determine the extent of the land and the Seignorial charges to which it is subject by such Books, Plans, *procès-verbaux*, or other secondary evidence as he is able to procure ; How the charges on each lot shall be determined.

7. Each land shall be described in the Schedule by the number, and concession, under which it stands in the land-roll of the Seignior, (or if it bear no such description therein, then by the best brief designation the Commissioner can assign to it,) and the name of the owner as it appears on the land-roll, and in default of information on any of the said points, the Commissioner may describe it in such manner as he thinks most convenient, provided he assigns to each land a separate and distinct number ; How lots to be described in the Schedule.

Entry of com-  
muted lands.

8. The Commissioner shall also include in the Schedule all lands in regard to which the Seigniorial Rights have been commuted, and write opposite thereto the word "Committed" only. 18 V. c. 3, s. 5.

Occupier to be  
deemed pro-  
prietor for the  
purposes of  
this Act.

8. For the purposes of this Act, every person occupying or possessing any land in any Seigniority with the permission of the Seignior, or from whom the Seignior has received *rentes* or other Seigniorial dues in respect of such land, shall be held to be the proprietor thereof as *censitaires*. 18 V. c. 103, s. 11.

What shall be  
deemed to be  
the boundaries.

9. For the purpose of making the Schedule of any Seigniority, the boundaries thereof shall be deemed to be those actually possessed by the Seignior, although all or any part thereof may be in dispute. 19, 20 V. c. 53, s. 16.

Rules for va-  
luation.

10. In order to determine the value of the Seigniorial rights on lands held *en roture*, the Commissioner shall observe the following rules, namely :

*Cens et rentes*  
and annual  
charges.

1. The amount of the *cens et rentes* and annual charges shall be taken as the yearly value thereof ; and if any of such rents or charges be payable in grain, fowls or other provisions or fruits of the earth, their average value shall be computed according to the average price of articles of the same kind, taken from the books of the merchants nearest to the place, or ascertained in any other manner the Commissioner thinks most equitable ;—to establish such average year, the fourteen years immediately preceding the period at which the valuation is made, shall be taken, the two highest and the two lowest shall be struck out, and the average year shall be established on the ten remaining years ; the value of personal labour (*corvées*) shall be estimated in the same manner ;

Average year.

Casual rights.

2. Except in the case hereinafter mentioned,—in order to establish the yearly value of the casual rights, an average year of their value shall be computed for each of the two classes of lands hereinafter mentioned, upon the ten years immediately preceding the eighteenth day of December, one thousand eight hundred and fifty-four, and the amount of the valuation of the said average year shall be the yearly value of the said casual rights for all the lands in the Seigniority of the same class ; And the Commissioner in estimating the yearly value of the *lods et ventes* in any Seigniority, shall distinguish those accruing on lands held as *emplacements* or building lots or for other than agricultural purposes, which shall form one class, from those on lands held for agricultural purposes, which shall form another class ; and the Commissioner shall apportion the yearly value of the *lods et ventes* on each class, upon the lands belonging to that class, charging each land with a portion thereof proportionate to its value with regard to lands held as *emplacements* or building

Value of *lods*  
*et ventes* on  
agricultural  
lands and on  
building lots to  
be distinguish-  
ed.

building lots, or for other than agricultural purposes, and proportionate to its extent with regard to lands held for agricultural purposes; and any *rente* expressly charged in any Deed of partial commutation under the Acts hereby repealed, as an indemnity to be paid by the *Censitaire* instead of *lods et ventes*, shall be held to represent the value of the right to *lods et ventes* on the land referred to, and shall be entered and dealt with in all respects accordingly; Provided always that whenever the rule prescribed by this sub-section for determining the yearly value of any casual rights cannot be applied in any Seignior, the Commissioner shall himself adopt some other equitable mode of estimating such yearly value; *This Proviso is 19, 20 V. c. 53, s. 1.*

Discretionary power to Commissioner.

3. In order to establish the yearly value of the *droit de bana-*  
*lité* and the exclusive right of having mills in the Seignior, (independently of the right to the water power,) so far as such rights have been recognized by the Judges under the Seigniorial Act of 1854, the Commissioner shall estimate the probable decrease (if any) in the net yearly income of the Seignior from his mills, to arise from the loss of such right, and the said sum shall be deemed the yearly value of such right, and shall be apportioned upon the lands subject to the said right in proportion to their extent;

*Droit de bana-*  
*lité.*

4. Any other rights shall be valued according to the revenue or profits which may have accrued therefrom, to be ascertained by the Commissioner in such manner as he deems most equitable, and shall be charged upon the lands subject thereto respectively;

Other rights.

5. The yearly value of each class of rights upon each land shall become a *rente constituée* charged upon the same as the compensation payable to the Seignior thereof, and the total amount of such *rentes constituées* on any land, after the deduction to be made therefrom as hereinafter provided, shall be payable to the Seignior yearly, at the time and place where the *cens et rentes* on such land were payable at the time of the passing of the said Seigniorial Act of 1854, unless it be otherwise agreed between the Seignior and the *Censitaire*, and shall accrue from the day on which notice of the deposit of the Schedule of the Seignior shall be given in the *Canada Gazette*, on which day the present *cens et rentes* and other annual charges upon the land shall cease to accrue; and both they and the *rentes constituées* under this Act shall accrue rateably for any broken period less than a year, during which they exist;

Yearly value of rights to become a *rente constituée* on each land.

6. The value of the rights of the Seignior *Dominant* in any *arrière-fief*, shall form the capital of a *rente constituée* payable yearly by the Seignior of the *arrière-fief*, on the day of the date of the publication in the *Canada Gazette* of the notice of the deposit of the Schedule of such *arrière-fief*, and accruing from the

Value of rights of Seignior dominant to be the capital of a *rente constituée.*

the day of such publication ; but out of the moneys coming to the Seignior of the *arrière-fief*, from the Provincial aid hereinafter mentioned, a sum bearing the same proportion to the whole of such moneys as the value of the rights of the Seignior *Dominant* in such *arrière-fief* bears to the value set upon the Seigniorial rights of the Seignior *servant* in such *arrière-fief*, shall belong to the Seignior *Dominant*, and his said *rente constituée* shall be diminished by the amount of the yearly interest at six per cent per annum, of the sum so coming to him out of the said Provincial aid. 18 V. c. 3, s. 6, *except sub-section 7.*

Casual rights of the Crown how to be estimated.

**11.** In estimating the casual rights of the Crown in the several Seigniories in Lower Canada, the Commissioners shall establish the average yearly revenue of the Crown arising from these rights throughout Lower Canada, and such average yearly revenue shall be taken as representing the interest at six per cent. of a capital sum to be apportioned among all the Seigniories liable to the payment of *Quint*, in proportion to their value ; the amount apportioned to each Seignior shall represent the rights of the Crown therein, and shall be deducted from the amount to be paid by the *Censitaires* for the redemption of the casual rights of the Seignior. 19, 20 V. c. 53, s. 3.

PROCEEDINGS OF AND BEFORE THE COMMISSIONERS AND THEIR POWERS FOR MAKING THE SCHEDULES.

Notice of commencement of Schedule to be given by the Commissioner.

**12.** Before beginning to prepare the Schedule for any Seignior, some one of the Commissioners shall give public notice of the place, day and hour, at which the inquiry will be commenced ; and such notice shall be made by placards and publications in the English and French languages, at the door of every parish Church in such Seignior, during four consecutive Sundays at the conclusion of divine service in the forenoon, or by placards in both languages, posted during four consecutive weeks, in the most frequented place in any Seignior in which there is no Church. 18 V. c. 3, s. 7, *as amended by 18 V. c. 103, s. 6.*

He may enter on all lands for purposes of inquiry.

**13.** The Commissioner may enter upon all lands situate in the Seignior the Schedule whereof is to be made *in whole or in part* by him, in order to make such examination thereof as may be necessary, without his being subject in respect thereof to any obstruction or prosecution, and with the right to command the assistance of all Justices, Peace Officers and others, in order to enter and make such examination, in case of opposition. 18 V. c. 3, s. 8.

Powers of Commissioners for obtaining information.

**14.** The said Commissioners, and each of them separately, shall have full power and authority to examine on oath any person who appears before them, or any of them, either as a party interested or as a witness, and to summon before them, or any of them, all persons whom they or any of them deem it expedient to examine

examine upon the matters subject to their consideration, and the facts which they may require to ascertain in order to carry this Act into effect, and to require any such person to bring with him and produce before them, or any of them, any Book, Paper, Plan, Instrument, Document or thing mentioned in such summons, and necessary for the purposes of this Act :

2. And if any person so summoned refuses or neglects to appear before them, or before the Commissioner who has summoned him, or appearing, refuses to answer any lawful question put to him, or to produce any such Book, Paper, Plan, Instrument, Document or thing whatsoever which is in his possession, and which he has been required by such summons to bring with him or to produce, such person shall for every such refusal or neglect incur a penalty of not less than forty nor more than two hundred dollars, payable to Her Majesty, to be recovered with costs upon summary plaint by such Commissioner before any Judge of the Superior or Circuit Court, and in default of immediate payment shall, by warrant of such Judge, be apprehended and committed to the Common Gaol of the District for a period not exceeding one month. 18 V. c. 3, s. 9.

Persons refusing to appear or answer.

15. The Commissioner making the Schedule of any Seignior shall have full power either by himself or by any person authorized by him, to inspect the Repertory of any Notary, whenever he thinks such inspection desirable for obtaining information to ensure the greater correctness of the Schedule, such inspection being demanded and made at reasonable hours and on juridical days ; and any Notary refusing to allow such inspection shall thereby incur a penalty of four hundred dollars ; and for each such inspection the Notary shall be entitled to one dollar for each hour it shall continue ; Provided that whenever any such inspection is demanded by any Seignior, it shall be made at his expense. 19, 20 V. c. 53, s. 15.

Commissioner may inspect Repertory of any Notary.

16. Any person who in any manner interrupts, obstructs, impedes or molests a Commissioner under this Act, or any person acting under his instructions, in the execution of his duty in any manner connected with the carrying into effect of this Act or in any manner deters, prevents or hinders by force, threats or otherwise, any such Commissioner or person acting under his instructions from performing any duties assigned to him, shall be liable to be imprisoned for every such offence for a period not exceeding two months ; and it shall be lawful for any one Justice of the Peace to commit any person convicted before him on the oath of one credible witness of any such offence ; and no conviction, order, warrant or other matter made or purporting to be made under this Act, shall be quashed for want of form, or be removed, by *certiorari* or otherwise, into any of Her Majesty's Courts of record for want of such form. 18 V. c. 103, s. 12.

Penalty on persons obstructing Commissioner.

Provisions relative to *Experts* repealed.

**17.** All the provisions relative to the appointment of *Experts*, contained in the tenth Section of the Seignorial Act of 1854, or in any other Section of the said Act, were repealed by the Act 19, 20 V. c. 53; and in all Seigniories in which there have been requisitions for or appointments of *Experts*, the Commissioners shall act in every respect as though there had been no such requisition for or appointment of *Experts*. 19, 20 V. c. 53, s. 4.

Notice that Schedule is ready for inspection.

**18.** The Commissioners, immediately after the making of the Schedule of a Seigniorie, shall give eight days' public notice in the manner prescribed by the *twelfth* Section of this Act, that such Schedule will remain open for the inspection of the Seignior and the *Censitaires* of the Seigniorie during the thirty days following the said notice, in some convenient place in the Seigniorie in charge of some fit and proper person, and the name of such person and the place of deposit shall be indicated in such notice; and any person interested in the Schedule may point out in writing, addressed to the Commissioner and left with the person in charge of the Schedule, any error or omission therein, and require that the same be corrected or supplied; and at the expiration of the said thirty days it shall be the duty of the Commissioner to be present at the place indicated in such Notice, and to examine into and decide upon the objections made in writing as aforesaid. 18 V. c. 3, s. 11, as amended by 19, 20 V. c. 53, s. 5.

Correction of errors.

#### REVISION OF THE SCHEDULES.

Four Commissioners appointed to revise Schedules.

**19.** The Governor may, by letter under the signature of the provincial Secretary, select from the commissioners so appointed as aforesaid, four of their number, of whom any three shall form a Court for the revision of Schedules made under this Act, and may in like manner from time to time remove them and appoint others in the place of any so removed, dying, resigning office or being incapacitated to act:

Two may decide.

2. The decision of any two of the Commissioners so selected, whether the others be present or not, on any matter relating to the revision of any Schedule made under this Act, shall be final;

They may require evidence.

3. In making such revision the Commissioners shall proceed summarily, but they may order any evidence to be adduced which they think requisite to enable them to pronounce a correct decision, and for that purpose shall have the same powers as in making a Schedule.

No Commissioner to revise his own Schedule.

**20.** No Commissioner so selected shall sit in revision of any Schedule finally completed by him, but this provision shall not apply to the Commissioner or Commissioners who have taken any of the proceedings preliminary to the completion of the

the Schedule. 18 V. c. 3, s. 11, *par. 4*, as amended by 19, 20 V. c. 53, s. 6.

**21.** No revision of any Schedule shall be allowed, unless application be made for the same within fifteen days after the Commissioner has given his decision, as provided for by the *eighteenth* section of this Act; and every such application shall be made by a petition presented on behalf of the party interested, to the Revising Commissioners or any one of them, specifying the objections made to such Schedule. 19, 20 V. c. 53, s. 8.

When only a revision shall be allowed.

**22.** Upon the receipt of any such petition, it shall be the duty of the Revising Commissioners, after having given eight days' notice to the parties interested, in the manner prescribed by the *twelfth* section of this Act, to proceed to revise the Schedule therein mentioned, and for that purpose, to hear, try and determine the matters alleged in the said petition; The proceedings upon such revision shall be kept of record, and if the Commissioners find any error, they shall correct the same. 19, 20 V. c. 53, s. 8.

Upon petition and notice the revision to be made.

**23.** The said Court of Revision may award and tax costs against any party who in their opinion has demanded or opposed the revision of the Schedule without reasonable cause, and such costs may be recovered on the certificate of any one of the said Commissioners as a debt due by the party against whom they have been awarded, to the party in whose favour they have been taxed. 18 V. c. 3, s. 12, *par. 7*.

Costs against parties unreasonably demanding revision.

**24.** The Commissioners selected to form a Court for the revision of the Schedules shall sit at Montreal for the Seigniories in the Districts of Montreal and Ottawa; at Three-Rivers for those in the District of Three-Rivers; at Quebec for those in the District of Quebec; at Kamouraska for those in the District of Kamouraska; and at New Carlisle for those in the District of Gaspé; but any petition for the revision of a Schedule may be presented to the Revising Commissioners, or any one of them, in any District: 19, 20 V. c. 53, s. 9.

Where revising Commissioners shall perform their duties.

2. For the purposes of this Act, the Districts of Montreal, Ottawa, Three-Rivers, Quebec, Kamouraska and Gaspé, therein referred to, shall be the said Districts as constituted and bounded when the said Seigniorial Act of 1854 was passed, notwithstanding any subsequent redivision of Lower Canada into Districts;—and the word "District," in the Seigniorial Act of 1854, and the Acts amending it and this Act, shall always be understood as meaning one of the said Districts as so constituted and bounded. 22 V. (1859,) c. 48, s. 24.

Districts—how constituted for the purposes of this Act.

## 4. DEPOSIT OF THE SCHEDULES AND ITS EFFECT.

Schedules may be deposited altogether, or any number at once,—as the Commissioners see fit.

**25.** As soon as the Schedule or Schedules of any Seigniority or Seigniories is or are respectively completed, the Commissioners or any one or more of them shall make one full and complete duplicate of each such Schedule, and shall deposit the same in the office of the Prothonotary of the Superior Court of the district of Montreal, Three-Rivers, Quebec, Gaspé, Ottawa, or Kamouraska, according as the Seigniority to which each such Schedule relates is situate within either of the above mentioned districts, as they existed at the time of the said Seignioral Act of 1854,—or if such Seigniority is situate in two Districts, then in the office of the Prothonotary of the said Court for that District in which the greater part of such Seigniority is situate, and the other duplicate of each such Schedule shall remain in the hands of the Commissioners until otherwise disposed of by order of the Governor in Council :

2. And any one or more or all the said Schedules may be deposited at the same time, and the deposit thereof may be notified at the same time, as the Commissioners see fit. 22 V. (1859,) c. 48, s. 2.

Abridged Schedules to be made in triplicate for certain purposes.

**26** The said Commissioners or any one or more of them shall also make triplicate abridged Schedules, containing true and faithful extracts from the Schedules so deposited in the offices of the said Prothonotaries, under the following columns or headings, that is to say :

What they shall contain.

1st. Number of reference in the Schedule ;

2nd. Name of the *Censitaire* ;

3rd. Extent or contents of each land or emplacement ;

4th. *Rentes constituées* to be paid by each *Censitaire* under the provisions of this Act, that is to say, the amount established under this Act to be paid in lieu of all Seigniorial rights or dues, entering the *rentes constituées* representing *lods et ventes* and casual dues, and those representing *cens et rentes*, in two separate columns. *ibid*, s. 3.

How the said triplicates shall be disposed of, and their effect.

**27.** One of such triplicate abridged Schedules shall be delivered on demand to the Seignior of the Seigniority to which the abridged Schedule so demanded relates, (in lieu of the copy of the Schedule which, under the Seignioral Act of 1854, was to have been furnished him by the Prothonotary,)—another shall be deposited with the Receiver General of this Province,—and the third shall be deposited in the office of the Prothonotary with whom the Schedule is deposited, who may deliver extracts from the Schedule or from the abridged Schedule, or copies of either, which shall be *primâ facie* evidence of

Copies and extracts from them.

of the facts therein stated;—and the Commissioners or any one or more of them may also deliver any number of certified copies of the abridged Schedules, so long as one of the said triplicates remains in their hands. *ibid*, s. 4.

**28.** So soon as and whenever the said Commissioners or one or more of them has made and deposited in the office of the Prothonotary of the Superior Court of any one or more of the above mentioned districts of Montreal, Three-Rivers, Quebec, Ottawa, Kamouraska and Gaspé, as above provided, one full and complete duplicate of the Schedule of any Seigniory or Seigniories,—the said Commissioners or any one or more of them shall give public notice of the deposit thereof, in the terms of the Form A, annexed to this Act, or in other terms of the like import, in the English and French languages, in the *Canada Gazette*, or other newspaper recognized as the Official Gazette of this Province. *ibid*, s. 5.

Notice of deposit of Schedules.

Form.

**29.** The Prothonotary of the Superior Court shall furnish copies or extracts from each such Schedule or abridged Schedule, duly certified in the usual form, to any person applying for the same, upon the payment of five cents for every hundred words or figures in any such copy or extract; and all such copies or extracts, whether in words or figures, and also the triplicate of the abridged Schedule directed by this Act to be furnished to each Seigneur by the Commissioners, shall be deemed authentic, and shall serve as *prima facie* evidence of all matters therein set forth. *ibid*, s. 6.

Prothonotaries to furnish copies of extracts;—*see*.

Copies or extracts to be evidence.

**30.** After any Schedule has been completed and deposited under this Act, it shall not be impeached or its effect impaired for any informality, error or defect in any prior proceeding in relation to it, or in any thing required by this or any other Act to be done before it was so completed and deposited, but all such prior proceedings and things shall be held to have been rightly and formally had and done, unless the contrary expressly appear on the face of such Schedule; and the same rule shall apply to all proceedings of the Commissioners under this Act, so that no one of them, when completed shall be impeached or questioned for any informality, error or defect in any previous proceeding, or in any thing theretofore done or omitted to be done by the Commissioners or any of them. 18 V. c. 103, s. 10.

Schedules when completed and deposited not to be afterwards impeached for any error or defect.

5. ABOLITION OF FEUDAL RIGHTS AND DUTIES.

**31.** Upon, from and after the date of the publication in the *Canada Gazette*, or other Official Gazette, of a notice of the deposit of the Schedule of any Seigniory as aforesaid, every *Censitaire* in such Seigniory shall, by virtue thereof, hold his land in *franc-alleu roturier*, free and clear of all *Cens*, *Droit de bana-lité*, *Droit de Retrait* and other feudal and Seigniorial duties and

Upon publication of notice of deposit of the Schedule of a Seigniory, all lands therein to be held in *franc-alleu*.

and charges whatever, except the *Rente constituée* which will be substituted for all Seignorial duties and charges :

2. And every Seignior shall thereafter hold his domain and the unconceded lands in his Seignior, and all water powers and real estate now belonging to him, in *franc-alleu roturier*, by virtue of this Act, and the same and the *Rentes constituées* payable to him under this Act by his *Censitaires*, or by any Seignior of whose Fief or Seignior he is the Seignior *Dominant*, shall be held and enjoyed by him free and clear of all feudal dues or duties to the Crown or to any Seignior *Dominant* of whom his Fief or Seignior is now held ; subject always, both as regards Seignior and *Censitaire*, to the provisions of this Act ;

3. Nor shall the Seignior as such after the said time be subject to any onerous obligation towards his *Censitaires*, or be entitled to any honorary rights, nor shall any land be thereafter granted by any Seignior to be held by any other tenure than *franc-alleu roturier*, or subject to any mutation fines or other feudal dues. 18 V. c. 3, s. 14, as amended by 18, V. c. 103, s. 3, and 19, 20, V. c. 17.

Certain powers as to taking land for mills to remain if made subsequent to deed of concession.

**32.** But no right which any Seignior has acquired by any legal stipulation entered into before the eighteenth day of December, one thousand eight hundred and fifty-four, by any deed subsequent to the deed of concession, to take any land for the purpose of using the water power adjoining the same and belonging to such Seignior, on paying for such land the full value thereof and of all improvements thereon, shall cease by reason of this Act or of the Seignorial Act of 1854, but the same shall remain in full force :

But owner of land adjoining water-power may demand it in certain cases.

2. Provided always, that if the owner of any land adjoining any water power so acquired by the Seignior, and not then used by him, did, at any time after the expiration of one year from the said eighteenth of December, one thousand eight hundred and fifty-four, demand the right to use such water power from the Seignior on paying him the full value of such right, and such value, if not agreed upon, has been fixed by Arbitrators in the manner provided by the said Seignorial Act of 1854, the award of any two of them shall be conclusive ; and upon payment or tender to the Seignior of the value awarded, the owner of such land shall have the right to use such water power in the manner mentioned in the demand thereof and in the said award. 18 V. c. 3, s. 5, corrected as to time.

Unconceded lands not theretofore commuted shall be held by the Seignior in

**33.** All unconceded lands in any Seignior the tenure of which has not been theretofore commuted, shall be held by the Seignior *en franc-alleu roturier*, and may be dealt with by him in like manner as land held by other persons under the same tenure may be dealt with ; except that if the Seignior

be entailed (*substituée*) or held by any party otherwise than as absolute owner thereof, then the price of such lands shall form the capital of a *rente constituée*, which capital shall not be paid except to some party holding the Seigniorly as absolute owner thereof; but any party whose title would, before the passing of the Seigniorial Act of 1854, have authorized him to concede such unconceded lands, may sell the same for such *rente constituée* as aforesaid, and not otherwise. 19, 20, V. c. 53, s. 17.

*franc-alleu  
roturier.*

#### 6. DECISIONS OF THE SEIGNORIAL COURT—THEIR EFFECT.

**34.** The decision pronounced by the Judges of the Court of Queen's Bench and Superior Court for Lower Canada on each of the questions and propositions submitted to them under the provisions of the sixteenth section of the Seigniorial Act of 1854, shall guide the Commissioners and the Attorney General, and shall in any actual case arising be held to have been a judgment in appeal *en dernier ressort* on the point raised by such question, in a like case, though between other parties. 18 V. c. 3, s. 16, par. 9, *corrected for time*.

Decisions of the Seigniorial Court to guide the commissioners.

**35.** In any case in which, by reason of an equal division, no judgment was rendered by the said Judges on any question to them submitted under the provisions of the sixteenth section of the Seigniorial Act of 1854, the Commissioner making the Schedule shall, in any case to which such question refers, decide it in such manner as he shall think most equitable under the circumstances, saving the right of the Court for the revision of Schedules, to pronounce a final decision on such question or questions, and to amend such Schedule according to such decision, if need shall be. 19, 20 V. c. 53, s. 14.

In cases in which no judgment was rendered Commissioner to decide according to equity.

#### 7. PROVINCIAL APPROPRIATION FOR RELIEF OF CENSITAIRES AND EXPENSES UNDER THIS ACT.

**36.** The emoluments and disbursements of the said Commissioners, with the expenses to be incurred under this Act and the Seigniorial Acts of 1854, 1855, 1856 and 1859, shall be paid out of the Consolidated Revenue Fund of this Province, by Warrant of the Governor; and a sum not exceeding in the whole what will remain of the amount hereinafter limited after deducting therefrom the said emoluments, disbursements and expenses, may likewise be paid out of the said Fund for the purposes of this Act and the Acts aforesaid; and the Governor in Council may, under this section, cause any sum or sums not exceeding in the whole (with any sums already raised under the said Act of 1854) the sum hereinafter limited, to be raised by Debentures to be issued on the credit of the said Consolidated Revenue Fund, in such form, bearing such rate of interest, and the principal and interest whereof shall be payable out of the said Fund at such times and places as the Governor in Council thinks

Expenses under this Act, how paid.

Money may be raised by debentures.

thinks most advantageous for the public interest ; and the moneys so raised as aforesaid shall make part of the said Consolidated Revenue Fund of this Province :

Proviso: total amount limited.

2. Provided always, that the total amount of moneys to be paid, whether in money or debentures under this section and the Acts aforesaid, shall not exceed by more than six hundred thousand dollars, the sum of which the average yearly proceeds of the other sources of Revenue hereinafter mentioned (upon an average of the five years next preceding the eighteenth of December, 1854,) would be the yearly interest at six per cent. per annum, added to the value of the Crown's rights in the Seigniories affected by this Act. 18 V. c. 3, s. 17.

Moneys from certain sources specially appropriated.

**37.** The moneys arising from the following sources of Revenue, shall be specially appropriated to make good to the said Consolidated Revenue Fund, the amount taken out of the same for the purpose of paying the sums charged upon it under the next preceding section, that is to say :

Crown rights in Seigniories.

All moneys arising from the value of the rights of the Crown, from *droits de Quint* and other dues, in or upon the Seigniories of which the Crown is Seignior *Dominant*, and which are to be commuted by this Act, as such value shall be fixed by the Schedules of the said Seigniories respectively, and all arrears of such dues ;

Lauzon.

All moneys arising from the Revenues of the Seignior of Lauzon, or from the sale of any part of the said Seignior sold after the eighteenth day of December, one thousand eight hundred and fifty-four, and all arrears of such Revenues ;

Auction duties.

All moneys arising from Auction Duties and Auctioneers' Licenses in Lower Canada ;

Shop licenses.

All moneys arising in Lower Canada from Licenses to sell spirituous, vinous or fermented liquors by retail in places other than places of Public Entertainment, commonly called Shop or Store Licenses ;

Tavern licenses in certain cases.

All moneys arising from Tavern Licenses in Lower Canada, after the present charges on that Fund have been paid off, except however such portions of that Fund as are levied in the Townships ;

Separate accounts to be kept, that an equal sum may be appropriated for Upper Canada.

And separate accounts shall be kept of all moneys arising from the sources of Revenue aforesaid, and of the moneys disbursed under this Act, allowing interest on both sides at the then current rate on Provincial Debentures, to the end that if the sums payable out of the Consolidated Revenue Fund under the next preceding section, exceed in the whole the total amount of the sums arising from the sources of Revenue so specially appropriated

appropriated and any interest allowed thereon as aforesaid, a sum equal to such excess shall be set apart, to be appropriated by Parliament for some local purpose or purposes in Upper Canada. 18 V. c. 3, s. 18.

**38.** The Special Fund constituted as aforesaid, shall, after deducting the expenses incurred under this Act, and the Seigniorial Acts of 1854, 1855, 1853 and 1859, be appropriated in aid of the *Censitaires* in the several Seigniories, in the following manner :

How the Special Fund is to be applied in aid of the *Censitaires*.

2. The sum to be established as the value of the rights of the Crown in each Seigniorie as aforesaid, and the difference between the absolute value in *franc-alleu roturier* of all unconceded lands, waters and water powers in the Seigniories and the value of the Seigniors' rights therein, shall be appropriated in aid of the *Censitaires* of such Seigniorie in reduction of the *rentes constituées* representing the *lods et ventes* or other mutation fines therein, by an equal percentage of reduction on each such *rente* ;

Value of Crown rights in each Seigniorie to be given to *Censitaires* in reduction of commutation for *lods et ventes*.

3. The remainder of the said Special Fund shall be apportioned by the Receiver General amongst the several Seigniories to which this Act extends, (*not being Crown Seigniories, or Seigniories belonging to the Ecclesiastics of the Seminary of Montreal,*) giving to each an equal percentage on the total amount of the constituted rents established by the Schedule of each such Seigniorie, after deducting the value of the Crown's rights therein ; And the sum as apportioned to each Seigniorie shall be applied by the Receiver General in the following order, which shall be the order of charges thereon :

Remainder among all the Seigniories in proportion to charges thereon.

How applied.

1st. To the redemption of so much of the said *rentes constituées* representing the *lods et ventes* or other mutation fines in the Seigniorie as may remain after the reduction made by the application of the value of the Crown's rights as aforesaid, by an equal per centage of reduction on such remaining *rentes* in each case ;

To redemption of commutation money of *lods et ventes*.

2dly. To the redemption of the *rentes constituées* representing the Banality in the Seigniorie, by an equal per centage of reduction on each such *rente* ;

Of banality.

3dly. To the redemption of the *rentes constituées* representing the *cens et rentes* and other charges on lands held for Agricultural purposes in the Seigniorie, by an equal percentage of reduction on each such *rente constituée*, exceeding the rate of one penny half penny per annum, per *arpent* ;

Of *cens et rentes* exceeding one penny half penny per arpent.

4. The reduction of such *rentes constituées* shall always be in proportion to the capital sum applied to effect such reduction, the reduction being equal to the legal interest of such capital ;

Reduction of *rentes* in any case.

Sum apportioned to belong to Seigneur.

5. The sums so apportioned for each Seigniori shall belong to the Seigneur thereof, subject always to the right of the Seigneur *Dominant*, and shall be dealt with in every respect as moneys paid in redemption of the *rentes constituées* mentioned in the Schedule of such Seigniori, subject to the special provisions hereinafter made. 18 V. c. 3, s. 19.

FURTHER AID TO THE CENSITAIRES FOR THE REDEMPTION OF THE CASUAL RIGHTS.

Balance of rents representing casual rights assumed by the Province.

39. So much of the constituted rents representing the *lods et ventes* and other casual rights, as will not be redeemed out of the Fund appropriated for the Relief of the *Censitaires* by sections *thirty-six and thirty-seven*, shall be assumed by the Province and paid by the Receiver General out of the Consolidated Revenue Fund, to the Seigniors or parties respectively entitled to such rents, half-yearly, on the First of January and July, and the *Censitaires* shall be discharged from the payment thereof :

Capital may be paid at a certain rate.

2. With the consent of the Provincial Government and of the Seigneur or other party entitled absolutely to any such constituted rents, a sum of money equal to seventy-five per cent. of the Capital representing the same at six per cent. per annum, may be paid out of the Consolidated Revenue Fund to such Seigneur or party, in full satisfaction of such rents for ever ;

Moneys to be liable to oppositions, &c.

3. The constituted rents or sum of money to be so paid shall be liable to the claims and oppositions of third parties in like manner as the sum payable to any Seigneur out of the said Fund for the Relief of the *Censitaires*, under sections *thirty-six and thirty-seven* ;

Assumption not to prevent applications for revision of Schedules.

4. The assumption by the Province of the payment of the said constituted Rents, shall not interrupt or prevent any application or petition for the revision of any Schedule presented by the *Censitaires* or by the Seigneur, of any Seigniori, concerning the amount of the said rents or the *lods et ventes* and casual rights they represent,—but Her Majesty's Attorney General for Lower Canada may institute, contest or continue any such application or petition for the revision of any Schedule, in the name of the Crown or of the *Censitaires* or any of them. 22 V. (1859) c. 48, ss. 7, 8, 9, 10.

8. APPLICATION OF MONEYS ARISING FROM THE REDEMPTION OF SEIGNORIAL RIGHTS, &c.

Oppositions to be filed by persons having claims on Seigniories.

40. Every proprietor of a Seigniori having within his *mouvance* another or several fiefs, (unless the value of his rights has been entered in the Schedule thereof,) and every person having an hypothecary claim on any Seigniori the Schedule relative to which has been deposited in the Office of the

the Prothonotary of the Superior Court in the District in which such Seignior or part thereof is situate, must, for the preservation of his privileges, within six months from the date of the notice in the *Canada Gazette* of the deposit of the Schedule of such Seignior, file an opposition to the distribution of all moneys arising or which may arise from the redemption of the Seigniorial rights in such Seignior :

2. Every such opposition shall be filed in the said office and have effect for thirty years, unless sooner withdrawn, or by judgment of the Court dismissed ; and if any such opposition be renewed within a less time than thirty years, the opposant shall only be entitled to the costs of one single opposition ; and while such opposition remains in force, any *Censitaire* who pays the capital or redemption money of the *rente constituée* to the Seignior, shall do so at his peril, and on pain of being liable, to any such opposant for any loss he thereby sustains. 18 V. c. 3, s. 20.

Effect and duration of opposition.

41. All minors, interdicted persons and married women, even in the case of dower not yet open (*non encore ouvert*), and all who have entailed or contingent rights, by themselves or their tutors, curators, husbands or others who may act for them, are also required, for the preservation of their privileges, to file their opposition to the distribution of all such moneys in the manner provided in the next preceding section ; but tutors, curators, husbands or others neglecting to file such oppositions shall, nevertheless, continue to be responsible towards the persons under their charge or authority for any loss resulting from their negligence in the said behalf. 18 V. c. 3, s. 21.

What parties must file oppositions to preserve their privileges.

42. If, after the expiration of six months, from the date of the first publication in the *Canada Gazette* of the Notice of the Deposit of the Schedule of the Seignior in which such land is situate, the possessor of such Seignior produces to the Receiver General a certificate, granted by the Clerk of the Superior Court for the District in which the Schedule relative to such Seignior, or a triplicate thereof, is deposited, stating that there is no opposition to the payment of the redemption moneys in such Seignior, the said Receiver General shall pay to the said Seignior, on his giving a duplicate receipt therefor, the amount of any moneys coming to such Seignior out of the Special Fund hereinbefore mentioned, allowing interest at six per cent per annum, to be computed from the date of the said notice, and thereafter the Seignior shall have full right to receive the price of the *rentes constituées* in his Seignior directly from the *Censitaires*, and to deal with such *rentes* as he sees fit. 18 V. c. 3, s. 22.

In default of opposition, Seignior may receive his share of the fund.

43. Whenever the Receiver General has ascertained the amount of money coming to any Seignior out of the Special Fund

How the money shall be

dealt with in case of oppositions.

Fund hereby appropriated in aid of the *Censitaires*, and there is an opposition filed as aforesaid to the distribution of such money, the Receiver General shall deposit a certificate of the said amount in the hands of the Clerk of the Superior Court in the District wherein the Schedule relative to the said Seignior, has been deposited; and the said Court shall make the distribution of the said moneys among the opposants, according to the order of their hypothecs, and the preference of their respective privileges; and the Receiver General shall pay the same to the Clerk of the Court to be distributed according to such order, but the interest on any sum coming to a Seignior, and in the Receiver General's hands, shall always be payable to such Seignior: 18 V. c. 3, s. 23.

Proviso: if Seignior indebted to the Crown.

2. Provided, that in the event of any Seignior or Seignior *dominant* being indebted to the Crown in any sum of money for any right arising from any Seignior held by such Seignior or Seignior *dominant*, the Receiver General shall retain the amount so due to the Crown from the amount payable to such Seignior or Seignior *dominant* under the provisions of this Act, and the amount (if any) due to the Crown by each Seignior, shall be ascertained by the Commissioner making the Schedule of each Seignior and certified by him to the Receiver General. 19, 20 V. c. 53. s. 13.

IMMEDIATE ABOLITION OF MUTATION FINES; AND COMPENSATION THEREFOR.

No mutation fines to accrue after 30th May, 1855, in any Seignior to which this Act applies.

1. No *lods et ventes*, *quint*, *relief* or other mutation fine, shall accrue upon any mutation which has taken place after the thirtieth day of May, one thousand eight hundred and fifty-five, in any Fief or Seignior to which this Act extends or applies, (*except those belonging to the Seminary of St. Sulpice which are hereinafter provided for*;) but instead thereof the Receiver General shall credit the Fund appropriated in aid of the *censitaires*, with interest from the day last named on the total amount of the appropriation, and the *rente constituée* payable by any Seignior to his Seignior Dominant shall accrue from the said day:

Commissioners to prepare a statement of annual average revenue from mutation fines.

The Commissioners, or any one or more of them, shall make a separate statement for each Seignior, shewing, as nearly as can then be ascertained, and subject to correction thereafter:

1. The average yearly revenue from *lods et ventes*;
  2. The average yearly revenue from *quint*;
  3. The average yearly revenue from *relief*;—and
  4. The average yearly revenue from other casual rights (if any) which ceased to be payable after the thirtieth day of May,
- one

one thousand eight hundred and fifty-five under the Seigniorial Amendment Act of 1855 ;

5. Such statement shall be made separately for each Seignior, and so soon as the Commissioners are able to make it, and shall be sent to the Receiver General ; and the amount of such yearly revenue in each Seignior as shewn by such statement, from the thirtieth day of May, one thousand eight hundred and fifty-five, up to the first day of January or July last past at the time the statement shall come to the Receiver General, shall be then paid by the Receiver General to the Seignior or Seignior *dominant* of such Seignior ; and thereafter one half of the average yearly revenue mentioned in each such statement respectively, shall be paid to the Seignior or Seignior *dominant* entitled to it, on the first day of January and the first day of July, until the Schedules are finally deposited ; and the amount so paid to each Seignior shall be debited to him, as so much received by him on account of the portion of the Provincial appropriation for the relief of *Censitaires* payable to him and of the interest on such portion ; but in computing the amount to be deducted on account of the said Provincial aid, from the total value of the Seigniorial rights in any Seignior as shewn by the Schedule thereof, in order to ascertain the amount remaining chargeable upon the *Censitaires*, the correct value of such casual rights (as finally ascertained by the Schedule) from the said thirtieth of May, one thousand eight hundred and fifty-five, to the publication of the notice of deposit of the Schedule, shall (as representing the average sum saved by the *Censitaires* during the same period, by the non-payment of the said casual rights or any compensation therefor,) be deducted from the total amount of principal and interest payable to the Seignior from the said Provincial Aid, and the remainder shall be the sum to be deducted from the total value of the Seigniorial Rights as shewn by the Schedule, in order to ascertain the amount payable by the *Censitaires* ;

Amount of such yearly revenue to be paid to Seignior by Receiver General and debited to him.

How Provincial aid to be deducted from the value of the Seigniorial charges shall be computed.

6. Provided, first, that the whole sum to be paid by the Receiver General to any Seignior *dominant*, shall be also deducted from that which would be otherwise payable by the *Censitaires* of the Seignior *servant* ; And secondly, that if the approximate sum paid to any Seignior *dominant* under this section by the Receiver General, shall be more or less than the true value of his rights for the time, the difference shall be deducted or added (as the case may require) from or to the sum to be paid by the Receiver General to such Seignior *dominant*, under the *sixth* sub-section of section *ten* of this Act ; 18 V. c. 103, s. 3, as amended by 19, 20 V. c. 53, s. 12.

Proviso : as to amount paid to Seignior *dominant*.

7. The foregoing provisions of this section apply only so far as they have not been complied with before the passing of this Act.

Application of foregoing provisions.

*Retrait conventionnel* abolished.

45. The right of *retrait conventionnel* which the Seignior was allowed to stipulate solely for the purpose of securing to him the payment of mutation fines is abolished. 18 V. c. 103, s. 4.

#### INVESTMENT OF SUCH MONEYS.

Receiver General may invest any part of the Special Fund not immediately required.

46. The Receiver General shall, from time to time, place any moneys in his hands as part of the Fund in aid of the *Censitaires*, and not then required for the purposes thereof, at interest in any Chartered Bank, or invest the same in Provincial Debentures or Debentures guaranteed by the Province, and shall apply the interest thereon towards making good that allowed under this Act. 18 V. c. 103, s. 5.

Corporations, tutors, &c., may pay off the capital of the *rentes constituées* under this Act.

47. All persons holding in mortmain, corporations, tutors, curators and administrators possessing lands held *en roturè*, or persons holding entailed lands the *rentes constituées* upon which can be redeemed with advantage to those whom they represent, may effect the redemption of any *rente constituée* under the provisions of this Act by paying the price of redemption out of the moneys of those whom they represent; Provided that tutors, curators and usufructuary proprietors (*usufruitiers*) and holders of entailed lands, observe the formalities required by law in the alienation of the property of the persons whose rights shall be represented by them; but persons holding in mortmain and corporations shall not be required to observe any other formality in or before the redemption of any such *rente constituée* than those prescribed by this Act. 18 V. c. 3, s. 24.

Religious communities holding Seigniories may invest commutation money in real estate.

48. And it shall be lawful for the several religious or ecclesiastical communities, holding in mortmain Fiefs or Seigniories in Lower Canada, to invest from time to time, as they shall see fit, in any lands or tenements in this Province, or in any public or private securities in this Province, which they shall deem the most advisable or advantageous to their respective communities, any sums of money that may accrue to them from the redemption of any *rente constituée* created under this Act, or out of the Special Funds appropriated in aid of the *Censitaires*. 18 V. c. 3, s. 25.

#### DESTINATION AND LEGAL CHARACTER OF PROPERTIES AND RIGHTS HEREAFTER TO REPRESENT SEIGNIORIES.

As respects claims existing before the notice of the deposit of the Schedule and for which oppositions are filed, the *rentes constituées*, &c. shall be dealt

49. In respect of all rights acquired in, to or upon any Seigniorly before the publication in the *Canada Gazette* of the notice of the deposit of the Schedule of any Seigniorly and for the preservation whereof an opposition is filed within six months from the date of the said publication, all lands and real rights which at and immediately before the eighteenth day of December, one thousand eight hundred and fifty-four, were held by the Seignior as part of his Seigniorly, all rights secured to him

him under the Schedule thereof, all *rentes* under this Act to be created, all moneys to arise from the redemption of any such *rentes*, or to be received by the Seignior out of the aid granted to the *Censitaires* towards the redemption of Seigniorial rights, duties and dues, and all properties and rights so by such Seignior acquired as to represent such moneys, shall be held and taken as though attached to the *domaine* of such Seignior, and as representing such Seignior; but in respect of all rights thereafter to accrue, or for the preservation whereof no opposition is filed within the delay aforesaid, all such lands, rights, *rentes* and moneys shall be held and taken to be, and shall be to all intents separate and independent properties and rights; and it shall not be requisite that any person, in order to the holding, recovery or enforcement of any thereof, should qualify himself as being, or as ever having been, a Seignior. 18 V. c. 3, s. 26.

with as representing the Seignior.

As regards other claims the said *rentes* shall be independent properties and rights.

50. All *rentes constituées* created under this Act, shall have the same privileges *ex causâ* as the right of the *Bailleur de fonds*, and the like preference over all other hypothecary claims affecting the land, as any Seigniorial dues upon or arising out of such land would have had previous to the redemption of the said dues, without any registration in any Registry office to that end; but the creditor shall not have the right to recover more than five years arrears of any such rent; and in default of moveables out of which the amount of any judgment for such arrears, though amounting to less than forty dollars, may be levied, execution may issue against such land after a delay of one year from the date of such judgment, and not sooner. 18 V. c. 3, s. 27.

Privileges for securing such *rentes*.

Only five years arrears to be recoverable.

51. Every *rente constituée* established by virtue of this Act, shall always be redeemable, but if the Seignior be entailed (*substituée*) or held by a tutor, curator or usufructuary proprietor (*usufruitier*), and an opposition be filed and then in force, the *rente* and arrears only shall be received, subject always to the exception in the next following section, which shall apply to all cases of redemption of such *rentes*. 18 V. c. 3, s. 28, as amended by 18 V. c. 103, s. 1.

*Rentes constituées* under this Act to be redeemable.

52. Any such constituted rent (*rente constituée*) in any Seignior, in relation to which an opposition has been filed under any of the provisions of this Act, may, at any time be redeemed by payment to the Receiver General of the capital thereof with interest computed up to the date of such redemption:

*Rentes constituées* in respect of which oppositions are filed may be redeemed.

2. And the Receiver General shall dispose of all such moneys as follows:

If they accrue in a Seignior in relation to which opposition has been made on the ground that such Seignior is entailed (*substituée*) or held by a curator, tutor or other person holding in

If the opposition be founded on a substitution.

in trust for others, and not as absolute proprietor (*jure proprietario*;) the Receiver General shall, on the day in each year on which the *rente* would have become due if it had not been redeemed, and so long as such entail (*substitution*) or tenancy in trust (*fidéicommis*) subsists pay to the person entitled to the revenue of the Seignior, interest upon the capital of all such *rentes* at the rate of six *per centum per annum*, and he shall pay the capital thereof at the expiration of the substitution, or tenancy in trust, to such person as shall be designated by the Judgment of the Court before which such opposition has been made; Provided always, that the said Court may, on petition of such curator, tutor or other person holding in trust for others, at any time before the expiration of the substitution or tenancy in trust, order that such capital, or any portion thereof, shall be by such curator, tutor or other person, laid out and invested in real or immoveable property to be designated in the order, and thereupon the Receiver General may pay the sum mentioned in such order to the person or party therein designated as the vendor of such real or immoveable property or as otherwise entitled to receive the price thereof, and thereafter such real or immoveable property shall be subject to all such and the same trusts (*fidéicommis*) or entails (*substitutions*) as the Seignior in respect to which the same was so ordered to be acquired as aforesaid;

Proviso: Court may order the money to be laid out in real estate.

If upon hypothecary claims.

And if they accrue in a Seignior in relation to which such opposition has been made by reason of hypothecary claims thereon, and not upon the ground of the same being entailed or held in trust as aforesaid, the Receiver General shall deal with such moneys in the same manner as with money accruing to the Seignior out of the Special Funds appropriated by this Act in aid of the *Censitaires*;

In other Seignories *Censitaires* to have eight days in each year in which to redeem.

3. And in every Seignior the Seignior whereof shall have the right to receive the capital of the *rentes constituées* to be established under the said Act, such *rentes* may be redeemed without the consent of the Seignior by payment of the capital thereof to the Seignior or to his Agent either on the day on which such *rente* shall annually become due or on any one of the seven days immediately following; and whenever the capital of any such *rente* has been duly tendered to any such Seignior, or to his Agent, on any one of the said days, and the same or a receipt therefor, has been refused, such *rente* shall become redeemable at any time thereafter. 18 V. c. 103, s. 1.

*Censitaires* may redeem *rentes constituées* in one payment and may raise money on the credit of the

**53.** The *Censitaires* in any Seignior may at any time redeem by one payment all the said *rentes constituées* then remaining in the Seignior, and in such case the redemption money shall be paid to the Seignior, if there be then no opposition filed as aforesaid and in force; and if there be such opposition, then it shall be paid to the Receiver General, and shall be dealt

dealt with in all respects as money paid to him under the next preceding section ; and the paying of such redemption money shall always be one of the purposes for which money may be raised on the credit of the Consolidated Municipal Loan Fund for Lower Canada, under any law in force for raising money on the credit of such Fund ; and the redemption money under this Section shall always be the capital sum of which the *rentes* redeemed shall be equal to the legal interest, unless another rate be agreed upon by the *Censitaires* and a Seignior having the right to such redemption money, for his own use. 18 V. c. 3, s. 29, as amended by 18 V. c. 103, s. 1.

Municipal Loan Fund for that purpose.

MISCELLANEOUS PROVISIONS.

**54.** No sale under Writ of Execution (*par décret*) shall have the effect of liberating any immoveable property then or theretofore held *à titre de cens*, and so sold, from any of the rights, charges, conditions or reservations established in respect of such immoveable property in favor of the Seignior, due before the completion of the Schedule of the Seigniori in which such property lies, or from any *rente constituée* payable thereon under such Schedule, but every such immoveable property shall be considered as having been sold subject thereafter to all such rights, charges, conditions or reservations, without its being necessary for the Seignior to make an opposition for the said purpose before the sale. 18 V. c. 3, s. 30.

*Décret* not to purge Seigniorial rights or any *rente constituée* representing them.

**55.** If any opposition *afin de charge* be made for the preservation of any of the rights, charges, conditions or reservations mentioned in the next preceding section of this Act, such opposition shall not have the effect of staying the sale, and the Opposant shall not be entitled to any costs thereon, but it shall be returned into Court by the Sheriff after the sale, to be dealt with as to law may appertain. 18 V. c. 3, s. 31.

Opposition for such rights or *rente* to be null.

**56.** The Seignior of whom any land the tenure of which has been commuted under this Act, was held, shall be maintained in his privileges and hypothees on the land, for the payment of all arrears of Seigniorial rights lawfully due at the time of such commutation. 18 V. c. 3, s. 32.

Seignior's privilege for arrears before commutation, maintained.

CERTAIN LANDS DECLARED TO BE AND TO HAVE BEEN HOLDEN IN FRANC-ALLEU ROTURIER.

**57.** All lands which any Seignior has, by any Act (*Acte*) or Deed in writing heretofore executed, released or agreed to release from all Seigniorial rights in consideration of the payment of any sum of money or of any annual rent, are hereby declared to be and to have been from the day of the date of every such Act (*Acte*) or Deed, free from all such Seigniorial rights and holden in *franc-allevu roturier* ; but the Commissioners, for the purpose of making the Schedules of Seigniories in

Lands heretofore commuted to be held in *franc-allevu*.

in which any such lands are situate, shall deal with all such lands as if held *en roture*, and when the same are liable to an annual rent, shall establish and specify in the Schedule the capital of every such rent, in order that the same may be redeemed by the person liable therefor, in the same manner as any *rente constituée* established by this Act. 18 V. c. 3, s. 33.

Certain lands upon which mortmain dues have been paid to be held in *franc-alleu*.

**58.** All lands upon which mortmain dues (*des droits d'indemnité*) have been paid to any Seignior, and which have not been sold or conceded since such payment to parties holding otherwise than in mortmain, are hereby declared to be and to have been from the day of the date of such payment or of any Act (*Acte*) or Deed in writing, binding the owner to pay the same, released from all Seigniorial dues and duties and held *en franc-alleu roturier*, but subject to the payment of a *rente constituée* equal to the *cens* and rent legally due thereon. 18 V. 3, s. 34.

NO GROUND RENT ON LANDS HELD BY A FREE TENURE TO BE IRREDEEMABLE.

Lands in soccage or *franc-alleu* not to be charged with irredeemable rents.

**59.** No lands held in Free and Common Soccage or *en franc-alleu roturier*, shall be charged with any perpetual irredeemable rent; and whenever any such rent is so stipulated, the capital thereof may be at any time redeemed at the option of the holder of the land charged therewith, on payment of the capital of such rent calculated at the legal rate of interest; and any stipulation in any deed of conveyance (*translatif de propriété*) of any such land, tending to charge the same with any mutation fine or any payment in labor, or tending to entail upon the holder of any such land, the duty of carrying his grain to any particular mill, or any other feudal duty, servitude or burden whatsoever, shall be null and void. 19, 20 V. c. 53, s. 18.

EXTENT OF THIS ACT.

Act not to extend to certain Seigniories.

**60.** None of the provisions of this Act shall extend to the wild and unconceded lands in Seigniories held by the Crown in trust for the Indians, nor to either of the Fiefs Nazareth, Saint Augustin, Saint Joseph, Closse and Lagauchetière, in the city and county of Montreal, nor to any other *arrière-fief* depending upon (*relevant de*) any of the said Seigniories,—nor shall they apply to the Seigniories of the late Order of Jesuits or other Seigniories held by the Crown and not above mentioned, nor to the Seigniories formerly held by the Principal Officers of Her Majesty's Ordnance, except only in so far as hereinafter provided. 18 V. c. 3, s. 35, *as amended by* 18 V. c. 103, s. 7, and 19, 20 V. c. 53, ss. 11, 12, 13, and 22 V. 1859, ss. 11 to 18, &c.

AS TO CROWN SEIGNIORIES.

**61.** Schedules may, if the Governor see fit so to direct, be made for the Seigniories held by the Crown and the revenues whereof belong to the Province, including the Seigniories of the late Order of Jesuits, in like manner and under the same provisions as for other Seigniories (omitting such particulars as cannot apply to Crown Seigniories), and with like powers to the Commissioners :

Schedules may be made for Crown Seigniories held for Provincial purposes.

2. Provided that no part of the appropriation in aid of the *Censitaires*, shall be applied towards the redemption of Seigniorial rights in such Crown Seigniories, nor shall any such Schedule be deposited in the manner provided in the *twenty-fifth* section of this Act, or operate any compulsory commutation of tenure, or substitution of any *rente constituée* for the Seigniorial rights and dues in such Seigniorie; but the Governor in Council may, if he see fit, allow to the *Censitaires*, in the said Seigniories, upon commutation of their lands, equal advantages and relief with those which the *Censitaires* in other Seigniories are found to obtain under this Act, and the Schedules made under this section shall serve as the basis for calculating the extent of such advantages and relief to be so allowed to the *Censitaires* in the said Crown Seigniories; 18 V. c. 103, s. 8.

Use of such Schedules.

3. All Seigniories transferred to the Province under the Act nineteenth and twentieth Victoria, chapter forty-five, as part of the Ordnance property, shall be dealt with as Crown Seigniories, under this Act. 22 V. (1859,) c. 48, s. 22.

Ordnance Seigniories to be dealt with as Crown Seigniories.

**62.** No *Lods et Ventés* shall be demanded from purchasers in the said Seigniories held by the Crown, upon purchases made since the thirtieth day of May, one thousand eight hundred and fifty-five :

*Lods et ventes* not payable by purchasers after 30th May, 1855.

2. The Crown Agents for the said Seigniories shall, in the collection of the revenue of the Crown therefrom, and in regard of all other rights of the Crown as Seignior of such Seigniories, take notice of and be guided by the answers and decisions of the Special Court under the Seigniorial Act of 1854, upon the questions of Her Majesty's Attorney General for Lower Canada, except in so far as such rights may have been reduced or modified by any order or orders of the Governor in Council;

How Crown Agents shall be guided in the collection of the Revenue.

3. All unconceded lands and waters in the said Seigniories shall be held by the Crown in absolute property, and may be sold or otherwise disposed of accordingly, and when granted shall be granted in *franc-alleu roturier*. 19, 20 V. c. 53, s. 11.

Unconceded lands.

**63.** A sum of money equal to the constituted rents representing *lods et ventes* and casual rights in the Seigniories forming part

Payment of L. C. Education Fund.

part of the Jesuits' Estates, to be calculated in the manner prescribed by this Act, and reckoned from the time when the said casual rights were abolished, shall be paid yearly out of the Consolidated Revenue Fund, to the Lower Canada Superior Education Fund. 22 V. (1859,) s. 23.

CERTAIN LANDS IN SHERRINGTON.

This Act to apply to certain lands in Sherrington.

**64.** This Act shall apply to any lands held *en franc-alleu noble*, and granted under and by virtue of the Act of the Parliament of the late Province of Lower Canada passed in the third year of the Reign of His late Majesty King George the Fourth, and intituled: *An Act for the relief of certain Censitaires or Grantees of La Salle and others therein mentioned possessing lands within the Township of Sherrington*; but inasmuch as the decision of the Special Court constituted under the sixteenth section of the said Seigniorial Act of 1854, cannot affect the said lands, therefore the Schedule relating thereto shall be valid although completed and deposited without waiting for the decision of the said Special Court. 18 V. c. 103, s. 7, *last part effete?*—

UNSETTLED SEIGNIORIES.

Tenure of certain unsettled Seigniories changed to that of *franc-alleu roturier*.

**65.** And inasmuch as the following Fiefs and Seigniories, namely: Perthuis, Hubert, Mille Vaches, Mingan and the Island of Anticosti, are not settled, the tenure under which the said Seigniories are now held by the present proprietors of the same respectively, shall be and is changed into the tenure of *franc-alleu roturier*; The difference in value between each of the said Seigniories as heretofore held and the same Seigniority when held in *franc-alleu roturier*, and also the value of the casual and other rights of the Crown in the said Seigniories, shall be ascertained and entered in the Schedule of the Seigniority, and the amount of the whole shall, upon the filing of the said Schedule, become due and payable by the Seignior to the Crown, and shall form part of the fund appropriated in aid of the *Censitaires*; And whenever the Governor in Council is satisfied that any other Fief or Seigniority is wholly unceded, the Governor may issue a Proclamation declaring that such Fief or Seigniority shall thenceforth be subject to the operation of this section; and from and after the date of the publication of any such Proclamation in the *Canada Gazette*, the tenure under which the *fief* or Seigniority or Fiefs and Seigniories therein mentioned are held, shall be changed into the tenure of *franc-alleu roturier*; and in making the Schedules thereof, the Commissioners shall deal with such Fiefs or Seigniories in every respect as if they had been specially mentioned in this section. 19, 20 V. c. 53, s. 10.

ABOLITION OF THE SEIGNORIAL TENURE IN THE SEIGNIORIES  
BELONGING TO THE SEMINARY OF ST. SULPICE.

66. In order to provide for the commutation of the Seigniorial Tenure, in the Seigniories of St. Sulpice and the Lake of Two Mountains belonging to the Corporation of the Ecclesiastics of the Seminary of St. Sulpice of Montreal, (hereinafter called the Seminary,) and those parts of the Seigniorie of the Island of Montreal, belonging to the same, which are not within the Parish and City of Montreal,—no *lods et ventes* or mutation fine shall accrue on any mutation in the ownership of any property in the said Seigniories and parts of a Seigniorie, subsequent to the *fourth* day of May, one thousand eight hundred and fifty-nine,—and the said Seigniories and parts of a Seigniorie shall be subject to the provisions of this Act, which shall apply to the said Seigniories and parts of a Seigniorie, so far as regards the ascertaining of the value of the *cens et rentes* and other rights of the Seigniors,—and Schedules and abridged Schedules shall be made for the same as provided by the foregoing provisions of this Act, subject to the following modifications :

*Lods et ventes* abolished in the said Seigniories.

They shall be subject to the Seigniorial Act of 1854, &c.

Subject to certain modifications.

1. The value of the *lods et ventes* shall be reckoned, not at the reduced rate fixed by the Ordinance passed by the Governor and Special Council for the affairs of Lower Canada, in the Session held in the third and fourth years of Her Majesty's Reign, and chaptered thirty, but at the full rate of one-twelfth of the price or value of the property, for each mutation of ownership producing *lods et ventes* ;

Value of *lods et ventes* how reckoned.

2. Every mutation of the ownership of any property commuted under the said Ordinance, which occurred during the ten years immediately preceding the passing of the Seigniorial Act of 1854, shall be taken into account in estimating the value of the said *lods et ventes*, (although such mutation happened after the said commutation,) if without such commutation it would have produced *lods et ventes* ; and the commutation itself shall be reckoned as a mutation producing *lods et ventes* ; but if in any case the commutation money has exceeded one full *lods et ventes*, the excess shall be deducted from the amount to be paid as hereinafter provided in lieu of the said *lods et ventes* and casual rights ;

As to mutations of ownership of commuted property.

3. The *Censitaires* of the said Seigniories and parts of a Seigniorie shall have no share of the fund for the relief of the *Censitaires* provided by sections thirty-six, thirty-seven and thirty-nine of this Act ;—but instead thereof, for the relief of the said *Censitaires*, there shall be paid to the Seigniors :

Sums appropriated for the relief of the *Censitaires* in reduction of rents representing casual rights.

1st. The sum of one hundred and forty thousand dollars out of the Consolidated Revenue Fund ;

2nd. A sum to be agreed upon between the Government and the Seigniors as the value of the outstanding arrears of *lods et ventes* belonging to the Province under the Ordinance aforesaid, which value shall be taken by the said Seminary as money; and the said arrears shall then belong to the said Seminary, whatever their amount may be;

Remainder of the rents representing casual rights, payable out of L. C. Municipalities Fund.

The said sums shall go in reduction of the Capital of the *Rentes Constituées* representing the *lods et ventes* and casual rights, and the remainder (if any) of the said *Rentes* is hereby guaranteed to be paid half yearly on the first of January and July, out of the Lower Canada Municipalities Fund (arising from the Clergy Reserves) after paying the charges on the said Fund under chapter *twenty-five* of the Consolidated Statutes of Canada; and if at any time the moneys in the hands of the Receiver General belonging to the said Fund are insufficient to pay the said remainder of the said *Rentes*, he shall advance the sum required to pay the same out of the Consolidated Revenue Fund, to which it shall afterwards be repaid out of the said Lower Canada Municipalities Fund;

Interest on \$140,000 to be payable half yearly.

4. The interest on the said sum of one hundred and forty thousand dollars shall also be payable to the said Seminary half yearly on the first of January and July; and the said Seminary shall have the same privilege as other Seigniors of receiving the Capital of the said sum, and the capital of the said remainder of the said *Rentes*, at the rate of seventy-five per cent. on such Capital in full satisfaction of the whole;

Payments to include commutation of all Provincial property.

5. The said payments by the Province shall include the commutation of the tenure of all property now held by the Province or the Crown, or by the War Department as representing the late Ordnance Department, in any Seigniority belonging to the said Seminary, and such commutation shall be held to have been perfected on the fourth day of May, one thousand eight hundred and fifty-nine. 22 V. (1859) c. 48, s. 11.

*Lods et ventes* abolished in Montreal.

Commutation fine payable instead in certain cases.

When it shall be exigible.

**67.** In those parts of the Seigniories belonging to the said Seminary, which are within the City and Parish of Montreal, *lods et ventes* and other casual rights shall be held to have been abolished on the said fourth day of May, one thousand eight hundred and fifty-nine,---and instead thereof, a commutation fine, calculated and ascertained in the manner prescribed by chapter forty-two of these Consolidated Statutes, shall be payable to the said Seminary on the first mutation of the ownership of any property after the said abolition of the *lods et ventes* and other casual rights thereon, whether such mutation occurs by sale, exchange, descent, bequest or in any other way; and such commutation fine shall be secured by the same privileges and recoverable in the same manner as the *lods et ventes* and other casual rights for which it is substituted now are; but in the case of mere descent

descent or bequest such commutation fine shall not be exigible by the said Seminary until the expiration of ten years after the decease of the person from whom the property descends. *ibid*, s. 12.

**68.** All property held in mortmain or by any Corporation, in those parts of the said Seigniories which are within the City and Parish of Montreal as aforesaid, and the tenure whereof is not already commuted, shall be commuted within twenty years from the said fourth day of May, one thousand eight hundred and fifty-nine, and if not so commuted voluntarily, the commutation fine thereon, calculated and ascertained in the manner prescribed by chapter forty-two aforesaid, shall become payable to the Seminary, and shall be secured by the same privileges as the commutation fine mentioned in the next preceding Section. *ibid*, s. 13.

Property held in mortmain to be commuted within 20 years.

**69.** If the value of the property, the tenure of which is to be commuted under the two next preceding Sections and of the capital of the *cens et rentes* thereon, have not been ascertained or agreed upon, then the said Seminary, whenever such commutation has become compulsory on the owner of such property, may serve a notice on such owner naming some disinterested person as their arbitrator to fix such value, and requiring such owner to name another disinterested person as his arbitrator, and if the owner does not, within six days after the service of such notice, notify to the said Seminary the name of such arbitrator, or appoints a person who is disqualified, the said Seminary may apply by summary petition to any Judge of the Superior Court at Montreal, who may on such application appoint an arbitrator on behalf of such owner, and the two arbitrators, or if they cannot agree, any Judge of a Superior Court, on the application of either, may name a third arbitrator, and the award of such three arbitrators, or of any two of them, fixing the value of the property or of any buildings thereon, and of the capital of the *cens et rentes*, shall be conclusive evidence of such value and capital for the purpose of ascertaining the commutation fine or indemnity to be paid by such owner, and shall be returned into, filed and enrolled by the Superior Court at Montreal and by the said Court duly confirmed, and may then be enforced by the Seminary by action if need shall be; and the costs of such arbitration shall be borne by the parties in equal shares. *ibid*, s. 14.

How the value of the property, &c., shall be ascertained if not agreed upon.

Arbitration.

Costs.

**70.** Nothing in the three next preceding sections of this Act shall prevent the owner of any such property from commuting the tenure thereof in the manner prescribed by the said Chapter forty-two at any time, if he thinks fit so to do; and whenever the commutation fine or indemnity amounts to not less than four hundred dollars, the owner of the property shall always have the right to declare his option that such commutation fine or indemnity, shall remain charged upon the property at and for

Act not to prevent voluntary commutation.

Owner may convert commutation money into a constituted rent, if it amounts to \$400.

a constituted rent according to the laws of Lower Canada, as provided by the seventh section of the said Ordinance, and the same shall remain so charged accordingly :

Seminary to grant Deed of Commutation.

2. And whenever a commutation fine is paid, or converted into a constituted rent, the Seminary shall, on demand of the owner of the property, execute a notarial Deed acknowledging the same and that the property is held by him in *franc-alleu roturier*, subject to the charges (if any) therein to be expressed. *ibid*, s. 15.

Unconceded lands, &c., vested in the Seminary.

71. The unconceded lands in any of the said Seigniories and all landed property held by the said Seminary within the same, (including the City and Parish of Montreal) shall be vested absolutely in the said Seminary in *franc-alleu roturier*, and they may sell or dispose of any such lands or of any other property belonging to them, either for money or for redeemable ground rents, and may invest the proceeds as hereinafter mentioned. *ibid*, s. 16.

Except in certain cases—arrears over \$100 shall be payable by instalments.

72. Except in cases where before the fourth day of May, one thousand eight hundred and fifty-nine, some other agreement was made—or where suits had been brought,—or where either before or after the said day, oppositions *afin de conserver* have been or may be filed by the said Seminary,—the arrears of *lods et ventes* and *cens et rentes* due by any party personally or hypothecarily before the said day in the said Seigniories (including the said City and Parish of Montreal) shall not be exigible immediately by the said Seminary if they exceed the amount of one hundred dollars ; but if such arrears amount to more than one hundred dollars they shall be payable in four equal annual payments, the first was due and was to be made in the year 1859, the second to be made in the year 1860, the third in the year 1861, and the fourth in the year 1862 ; provided that the failure to make any one such payment within the year prescribed, shall render the whole sum then owing exigible, and it shall bear interest (even without suit) from the end of the year in which such failure shall take place. *ibid*, s. 17.

Further period allowed for disposing of St. Gabriel Farm ;

73. A further period of twenty years beyond that limited by the said Ordinance, shall be allowed to the said Seminary to dispose of the portion of the St. Gabriel Farm now remaining undisposed of,—and with power to the Seminary to make such sale either by auction or private agreement, and in one block or in such parcels as they think proper ; And the *thirteenth* section of the said Ordinance is amended so that it shall be lawful for the Seminary to invest its funds in hypothecs or securities of any kind,—the amount to be invested in the purchase of real property remaining limited as it is by the said ordinance. *ibid*, s. 18.

Seminary may invest its funds in certain securities.

SUMS PAYABLE UNDER SECTIONS THIRTY-NINE AND SIXTY-SIX,  
TO BE DEDUCTED FROM THE LOWER CANADA  
MUNICIPAL LOAN FUND.

**74.** A sum of money equal in amount to the capital at six per cent per annum, of the sum which under the *thirty-ninth* section of this Act will be payable yearly to Seigniors in Lower Canada out of Provincial Funds, added to the sum of one hundred and forty thousand Dollars payable to the Seminary,—shall be deducted from the amount of the Lower Canada Municipal Loan Fund. *ibid*, s. 19.

Sums payable to Seigniors under this Act, to be deducted from the said Fund.

INDEMNITY TO UPPER CANADA, AND TO THE TOWNSHIPS OF  
LOWER CANADA.

**75.** A sum of money equal to that which under the foregoing provisions will be payable *yearly* to Seigniors in Lower Canada out of Provincial Funds, over and above the amount payable to them out of the Fund for the relief of the *censitaires* under the Seigniorial Act of 1854,—shall be payable yearly out of the Consolidated Revenue Fund of this Province to the credit of the Upper Canada Municipal Loan Fund, in reduction of the advances made or to be made from time to time from Provincial funds on account of the said Fund :

Sum payable to Upper Canada Municipal Loan Fund.

2. Such payment shall not in any way extinguish or diminish the individual liability of the Municipalities, which have become indebted upon the security of the said Loan Fund,—but the said yearly sum shall, so soon as the Province ceases to be under advances to the said Loan Fund, be added to the Upper Canada Municipalities Fund (Clergy Reserves) and distributed in like manner ; And so long as any Municipality is at any time in default in any payment which ought to have been made by it to the said Loan Fund, such Municipality shall have no share in any distribution of the Upper Canada Municipalities Fund (arising from the Clergy Reserves,) made while such Municipality is so in default, and the share it would otherwise have had shall go to the other Municipalities ;

Payment not to diminish liability of Municipalities.

3. The sums payable under this section shall be in addition to the sum to be appropriated for local purposes in Upper Canada under section thirty-seven of this Act. 22 V. c. 48, s. 20.

To be in addition to sum payable under Act of 1854.

**76.** A sum of money bearing the same proportion to that which under the sections thirty-six, thirty-seven and thirty-nine of this Act, will be payable yearly to the Seigniors in Lower Canada, as the population of the Townships of Lower Canada are, by the Census of one thousand eight hundred and sixty-one, found to bear to that of the Seigniories,—shall be payable yearly, out of Provincial Funds, to the credit of the Lower Canada Municipal Loan Fund, but for the benefit of the townships only, including St. Armand East and West, in the County of Missisquoi. *ibid*, s. 20.

Sum payable for the benefit of the townships in Lower Canada.

## ARREARS SAVED.

Recovery of arrears of Seigniorial dues not affected.

**77.** Nothing in this Act contained shall affect the right to, or the recovery of, any arrears of Seigniorial dues accrued before the passing of the Seigniorial Act of 1854, or shall give any person whomsoever any right of action for the recovery of money or other value paid by him or his predecessors in the form of rents or other Seigniorial dues, or for the recovery of damages which he pretends to claim for the privation of any right of which he deems that he has been illegally deprived by his Seignior, unless he would have had such right of action if without this Act. 18 V. c. 3, s. 26.

## INTERPRETATION.

Interpretation.

Seignior.

Seignior.

Seignior and Censitaire.

Seigniorial rights.

Land.

**78.** The word "Seignior," wherever it occurs in this Act, shall be construed as meaning any part of a Fief, *arrière-fief* or Seignior held by a single individual, or by a Corporation, or held by several persons in common (*par indivis*) as well as the whole of a *fief*, *arrière-fief*, or Seignior, except in such parts of this Act in which the words "*arrière-fief*" and "*Seignior*" are made use of to distinguish the *Fief dominant* from the *fief servant*; and the word "Seignior" shall be construed as meaning any Corporation, or any sole proprietor, and all persons who are proprietors in common (*par indivis*) of any part of a *Fief*, *arrière-fief* or Seignior, as well as any person or Corporation, being sole proprietor, and all persons, proprietors jointly and *par indivis* of the whole of any such *Fief*, *arrière-fief*, or Seignior; the words "Seignior" and *Censitaire*" shall apply to the owner of any *rente constituée* created under this Act, and the person charged therewith, respectively, as well as to the owner of and person charged with the rights and duties represented by such *Rente*; the words "Seigniorial Rights," whenever they occur in this Act, shall include and be construed as including all rights, duties, charges, obligations, and Seigniorial or feudal dues whatsoever; the word "Land" shall mean any lot, piece or parcel of land, and shall include the buildings thereon constructed, and all its appurtenances. 18 V. c. 3, s. 37.

## RESERVATION OF RIGHT TO MAKE FURTHER LEGISLATIVE PROVISION.

Right to amend this Act in furtherance of its intent reserved.

**79.** The Legislature reserves the right of making any provision, declaratory or otherwise which may be found necessary for the purpose of fully carrying out the intent of this Act; which intent is declared to be,—to abolish as soon as practicable, all feudal or Seigniorial rights, duties and dues, substituting therefor *rentes constituées* of equal value,—to grant to the Seignior a fair indemnity, and no more, for all the lucrative rights which the law gives him, and which this Act will abolish,—to preserve the rights of third parties, unless such rights

rights be lost by their own neglect or laches;—and to aid the *consitaire* out of the Provincial Funds in the redemption of those Seigniorial charges which interfere most injuriously with his independence, industry and enterprise; and every enactment and provision of this Act shall receive the most liberal construction possible with a view to ensure the accomplishment of the intention of the Legislature, as hereby declared. 18 V. c. 3, s. 28.

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SCHEDULE.—FORM A.

Public Notice is hereby given that the Schedules of the several Seigniories, Fiefs and Arrière Fiefs,—(or the Schedule or Schedules of the Seigniority, or Seigniories, Fief or Fiefs, &c., of \_\_\_\_\_, in the Districts of \_\_\_\_\_,)—or the Schedules of the several Seigniories, Fiefs, &c., in the District of \_\_\_\_\_, as the case may be,) in that part of the Province of Canada, known as Lower Canada, shewing the *rentes constituées*, into which the Feudal and Seigniorial rights, dues, charges, obligations and rents, due and payable upon each land and emplacement in each Seignory, Fief or Arrière-Fief, respectively (or, in the said Seignory, &c.,) are converted, are (or is) completed, and that duplicates (or a duplicate) thereof, and abridged triplicates Schedules (or an abridged triplicate Schedule) thereof have (or has) been deposited in the offices of the Prothonotaries of the Superior Courts of the Districts of \_\_\_\_\_ (as the case may be) (or, of the Prothonotary of the Superior Court for the District of \_\_\_\_\_), and that triplicate abridged Schedules (or a triplicate abridged Schedule) have (or has) been deposited in the office of the Receiver General of this Province; and that the duplicate Schedules (or Schedule) of the said Seigniories, Fiefs, &c., (or Seigniority, Fief, &c.,) remain (or remains) in the hands of the Commissioners under the Seigniorial Act of 1854, according to the provisions of the Seigniorial Amendment Act of 1859.

Dated, &c.

A. B. } Commissioners under the  
C. D. } Consolidated Seigniorial Act.

## CAP. XLII.

## An Act respecting the Seminary of St. Sulpice.

Preamble.

WHEREAS the Ecclesiastics of the Seminary of Saint Sulpice, established at Montreal, in this Province, have, since the capitulation made and signed at Montreal aforesaid, on the eighth day of September, in the year of Our Lord one thousand seven hundred and sixty, held, possessed and enjoyed, and do still hold, possess and enjoy the fief and seigniority of the Island of Montreal and its dependencies,---the fief and seigniority of the Lake of the Two Mountains,---and the fief and seigniority of Saint Sulpice,---and their several dependencies,---all situated in the said district of Montreal; And the said Ecclesiastics have alleged and do allege, that they, so as aforesaid, have held, possessed and enjoyed, and still do hold, possess and enjoy all and singular the said fiefs and seigniories, and their dependencies, rightfully, and as the true and lawful owners of the same; And whereas doubts and controversies had arisen touching the right and title of the said Ecclesiastics of the said Seminary of Saint Sulpice of Montreal, in and to the several fiefs and seigniories, and their dependencies, of which they have, as aforesaid, been in possession since the said capitulation, and it had been contended that all and every the said fiefs and seigniories became, by the conquest of this Province by the British arms, vested, and still remain vested, in the Crown; And whereas Her Majesty, desirous that all such doubts and controversies should be removed and terminated, and that Her faithful subjects, holding lands within the seigniorial limits of the said fiefs and seigniories, should be enable to effect and obtain the gradual extinction of all seigniorial rights, dues and duties, payable or performable for or by reason of such their lands, did, of Her own mere will and proper motion, graciously signify Her Royal pleasure, that the right and title of the said Ecclesiastics of the Seminary of Saint Sulpice of Montreal, in and to the said several fiefs and seigniories, should be absolutely confirmed, under and subject to the terms, provisos, conditions and limitations hereinafter contained and expressed, which said terms, provisos, conditions and limitations were fully and formally agreed to and accepted by the said Ecclesiastics of the said Seminary of Saint Sulpice of Montreal, all which were embodied and enacted in the Ordinance passed in the session of the Special Council for the affairs of Lower Canada, held in the third and fourth years of Her Majesty's reign, and chaptered thirty; And whereas for fulfilling Her Majesty's gracious pleasure and intentions in the said behalf, and for other the purposes aforesaid, it is expedient and necessary that the said Ecclesiastics of Seminary of Saint Sulpice, of Montreal, should be and remain an Ecclesiastical Corporation, or Body Corporate and Ecclesiastical, (*communauté ecclésiastique*,) for the purposes hereinafter mentioned; Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. Joseph Quiblier, Jean Louis Melchoir Sauvage du Chatillonet, Jean Richard, Joseph Comte, and others, who now are members of the said Seminary of Saint Sulpice of Montreal, and compose the body thereof, and their ecclesiastical successors, named and appointed by and according to the rules and regulations which now are or hereafter may be in force for the government of that institution or body,—shall be, and remain and are hereby declared to be an Ecclesiastical Corporation or Body Corporate and Ecclesiastical, (*communauté ecclésiastique*), in name and in deed by the name of *The Ecclesiastics of the Seminary of Saint Sulpice of Montreal*; and by the same name they shall have perpetual succession, by admitting and electing new members, according to the rules of their foundation and the practice by them heretofore followed, (subject always to the provisions hereinafter made touching such rules and practice,) and shall have a common seal, with power to alter, break and make new the same, when and as often as they judge it expedient so to do; and they and their successors, by the same name, may sue and be sued, implead and be impleaded, answer and be answered, defend and be defended, in all courts of record and places of judicature and jurisdiction within this Province, and do, perform and execute all and every lawful acts and things, in as full and ample manner and form, to all intents, constructions and purposes, as any other Ecclesiastical Corporation or Body Corporate and Ecclesiastical, by law may or ought to do:

The Members of the Seminary of St. Sulpice and their successors created an Ecclesiastical Corporation.

To have perpetual succession and a common seal.

Other corporate rights.

• 2. Provided that no rules, by-laws or regulations, or practice, for or concerning the admission and election of new members, or the temporal government of the said corporation or its successors, shall be valid, binding or effectual, unless they have been reduced to writing, and have been laid before the Governor of this Province, and have been by him expressly approved, confirmed and ratified. 3, 4 V. c. 30, s. 1.

Proviso: By-laws must be approved by the Governor.

2. The right and title of the said Ecclesiastics of the Seminary of Saint Sulpice of Montreal, in and to all and singular the said fiefs and seigniories of the Island of Montreal,—of the Lake of the Two Mountains,—and of Saint Sulpice,—and their several dependencies,—and in and to all seigniorial and feudal rights, privileges, dues and duties arising out of and from the same,—and in and to all and every the domains, lands, reservations, buildings, messuages, tenements and hereditaments, within the said several fiefs and seigniories, now held and possessed by them as proprietors thereof,—and also in and to all moneys, debts, *hypothèques*, and other real securities, arrears of *lods et ventes*, *cens et rentes*, and other seigniorial dues and duties, payable or performable by reason of lands holden by *censitaires*, tenants and others, in the said several fiefs and seigniories,—goods, chattels and moveable property whatsoever, now due, owing, belonging or accrued to the said Ecclesiastics of the said Seminary of Saint Sulpice of Montreal, or

The title of said Seminary to the Fiefs and Seigniories of the Island of Montreal, Lake of Two-Mountains and of Saint Sulpice, confirmed.

which hereafter become due and owing, or accrue and belong to them, or to the said Ecclesiastical Corporation hereby constituted, or their successors, by reason of any lands and tenements holden in the respective *censives* of the said several fiefs and seigniories, with all and every the rights, privileges and appurtenances thereunto respectively belonging, or in any wise appertaining,---shall be and they are hereby confirmed and declared good, valid and effectual in the law :

Certain special purposes for which the Seminary are to hold the said fiefs, &c.

2. And the said corporation shall have, hold and possess the same as proprietor thereof, as fully, in the same manner, and to the same extent, as the Ecclesiastics of the Seminary of Saint Sulpice of the Fauxbourg of Saint Germain Lez Paris, or the Seminary of Saint Sulpice of Montreal, according to its constitution, before the eighteenth day of September which was in the year one thousand seven hundred and fifty-nine, or either or both of the said Seminaries, might or could have done, or had a right to do, or might or could have held, enjoyed or applied the same, or any part thereof, previously to the last mentioned period,---and to and for the purposes, objects and intents following, that is to say :- the cure of souls within the parish (*la desserte de la paroisse*) of Montreal,---the mission of the Lake of the Two Mountains, for the instruction and spiritual care of the Algonquin and Iroquois Indians,---the support of the *petit séminaire* or college at Montreal,---the support of schools for children within the parish of Montreal,---the support of the poor, invalids and orphans,---the sufficient support and maintenance of the members of the corporation, its officers and servants,---and the support of such other religious, charitable and educational institutions as may, from time to time, be approved and sanctioned by the Governor of this Province, for the time being,---and to or for no other objects, purposes or intents whatsoever. *ibid*, s. 2.

The said fiefs and Seigniories vested in the Corporation.

3. All and singular the said fiefs and seigniories of the island of Montreal, of the lake of the Two Mountains, and of Saint Sulpice, and all and every the said domains, lands, buildings, messuages, tenements and hereditaments, seigniorial dues and duties, moneys, debts, *hypothèques*, real securities, arrears of *lods et ventes*, *cens et rentes*, and other seigniorial dues, goods, chattels and moveable property whatsoever, shall be and remain vested in the said corporation of the Ecclesiastics of the seminary of Saint Sulpice of Montreal, and their successors, to be had, held, possessed and enjoyed by the said Ecclesiastics of the seminary of Saint Sulpice of Montreal, and their successors, as the true and lawful owners and proprietors of the same, and of every part and parcel thereof, to the only use, benefit and behoof of the said seminary or corporation, and their successors for ever, for the purposes aforesaid, and according to their rules and regulations now being or hereafter to be in force; subject, however, to the terms, conditions, provisions and limitations touching and concerning the same, or any part thereof, herein enacted, expressed and contained. *ibid.*, s. 3.

Subject to conditions.

4. The said corporation of the Ecclesiastics of the seminary of Saint Sulpice of Montreal, and their successors, shall, whenever thereunto required by any of the *censitaires*, or other person or persons, or body or bodies politic or corporate, who now hold or may hereafter hold any real or immoveable property, *à titre de cens* or *en roture*, within those parts of any of the said fiefs and seigniories which are within the city and parish of Montreal, grant and allow, to such *censitaire*, person, or body or bodies corporate or politic, a commutation, release and extinguishment of and from the *droits de lods et ventes, cens et rentes*, and all feudal and seigniorial burthens whatsoever, to which such *censitaire*, person or body corporate, holding such real or immoveable property, his, her or their heirs, successors or assigns, and such real and immoveable property, are subject or liable to, in favor of the said Ecclesiastics of the seminary of Saint Sulpice of Montreal or their successors, for a certain price, indemnity and consideration in that behalf, agreed upon or to be fixed, ascertained and determined in manner hereinafter provided, which shall be paid to the said Ecclesiastics of the seminary of Saint Sulpice of Montreal, or their successors, by the *censitaire*, person, or body corporate, requiring such commutation, release and extinguishment, in the manner hereinafter directed :

The Corporation are bound to commute with their *Censitaires, &c.*, for all seigniorial rights, dues and burthens.

2. Provided that no such *censitaire*, person, or body corporate or politic, shall be entitled to any such commutation, release and extinguishment, in the behalf aforesaid, until he or they have duly paid to the said Ecclesiastics of the seminary of Saint Sulpice of Montreal or their successors, all arrears of seigniorial rights, dues and duties, which he, or they then owe, or with which the said land or immoveable property, in respect whereof such commutation, release and extinguishment is sought or required, is then chargeable, or has otherwise satisfied them in that behalf, by any mode of adjustment agreed upon and concluded. *ibid.*, s. 4.

But such *Censitaires* must first have paid up all arrears of Seigniorial dues.

5. The price, consideration and indemnity, to be paid by any *censitaire*, person or body politic or corporate, for such commutation, release and extinguishment, with regard to his, or their land or immoveable property, situate within any such part as aforesaid of any one or more of the said fiefs and seigniories, to be paid by him, or them to the said Ecclesiastics of the seminary of Saint Sulpice of Montreal or their successors, shall be at and after the rates following, that is to say :

Rates at which the commutations are to be made.

2. The said commutation of all *cens et rentes* shall be had and obtained on the payment of such capital or sum of money, as the said *cens et rentes*, reckoned at the legal rate of interest, represent ;

For *cens et rentes*.

3. The commutation of the mutation fine substituted for the *droit de lods et ventes* and all other casual rights by chapter forty-one

Mutation fine in lieu of *lods et*

*centes* in the parish or city of Montreal.

forty-one of these Consolidated Statutes, upon or in respect of any lot, piece or parcel of land in the parish or city of Montreal, having buildings on it, and being with such buildings of the value of two thousand dollars, or upwards, shall be had and obtained, upon payment of not more than one-sixteenth part of the value of such lot, piece or parcel of land and buildings ;

In case the lots and buildings are of less value than \$2,000.

4. The said commutation of the said mutation fine, upon or in respect of any lot, piece or parcel of land, situated within the said city of Montreal, whereupon there are then buildings of which the value is less than two thousand dollars and more than four hundred dollars, shall be had and obtained, upon payment of not more than one-twelfth part of the value of such lot, piece or parcel of land and buildings ;

On lots in city or parish having buildings of less value than \$400.

5. The said commutation of the said mutation fine upon, for or in respect of any lot, piece or parcel of land, situate within the parish but without the said city of Montreal, or for or in respect of any lot, piece or parcel of land, within the said city of Montreal, upon which there are not then buildings of the value of four hundred dollars shall be had and obtained, on the payment of not more than one eighth part of the value of such lot, piece or parcel of land or buildings. *ibid*, s. 5, and 22 V. c. 48, s. 11, &c.

Arbitrators may be appointed to fix the value of property sought to be commuted.

6. In all cases where the said Ecclesiastics of the seminary of Saint Sulpice of Montreal, or their successors, and any of the said *centitaires*, or other person or persons, body politic or corporate so requiring a commutation, release and extinguishment, in manner aforesaid, do not, by voluntary agreement, settle and determine the value of any such lots, pieces or parcels of land and property with reference to which the said price, consideration money and indemnity, according to the rates hereinbefore established, shall be reckoned, such value thereof shall be fixed, ascertained and determined, by the award of arbitrators, in manner following, that is to say :

How the arbitrators are to be appointed.

2. The said Ecclesiastics of the seminary of Saint Sulpice of Montreal, or their successors, shall and may nominate, and in their default so to do, one of the justices of the Superior Court in the district of Montreal, shall on their behalf nominate an arbitrator, being an indifferent and disinterested person, and the said *centitaire*, person or persons, or body corporate or politic, respectively, shall nominate and appoint one other arbitrator, being also an indifferent and disinterested person, and the said Superior Court in the said district of Montreal, upon a petition or summary application to it made in that behalf, shall nominate one other arbitrator, being also an indifferent and disinterested person, which said three arbitrators, after having been previously sworn before any one of the justices of the said court in the said district of Montreal, (hereby authorized to administer such oath,) well truly and honestly to execute the trust

trust and duty of arbitrators, as aforesaid, and after notice to the parties, respectively, of the time and place of their meeting, shall proceed to fix, ascertain and determine the value of the lots, pieces or parcels of land and property, in respect whereof such commutation, release and extinguishment shall be required :

3. The costs and expenses of such arbitration shall be borne by the parties in equal shares, and the said arbitrament and award of the said arbitrators, to be named and appointed as aforesaid, or of any two of them, in and respecting the premises, shall be final, and the same shall be duly returned into, filed, and enrolled in the said Superior Court in the district of Montreal, and shall by such court be duly confirmed. 3, 4 V. c. 30, s. 6. Their award to be final.

7. Upon the rendering and confirmation of the said award, in the behalf and in manner aforesaid, it shall be lawful for the *censitaire*, person, or body corporate or politic requiring such commutation, release and extinguishment of the seigniorial and feudal rights and burthens, as aforesaid, to pay or offer to pay the said Ecclesiastics of the seminary of Saint Sulpice of Montreal, or their successors, as and for the price, consideration money and indemnity for the said commutation, release and extinguishment of all seigniorial and feudal rights and burthens, such part of the value of such piece or parcel of land and property, fixed and determined by such award, as according to the rates mentioned in the fifth section of this Act, should be due and payable in that behalf, or to declare his, or their option to the said Ecclesiastics of the seminary of Saint Sulpice of Montreal, or their successors, that the said price, consideration money and indemnity, (provided the same shall amount to no less than four hundred dollars) shall remain upon, and shall charge and affect such lot, piece or parcel of land or property, at and for a redeemable quit rent, (*à rente constituée et rachetable*) according to the laws of Lower Canada ; and any option in the said behalf so made and declared, shall have the full effect in law, of charging and affecting such land or property, for such price, consideration money and indemnity, at a redeemable quit rent, (*à rente constituée et rachetable*) to all intents and purposes whatsoever. 3, 4 V. c. 30, s. 7. The amount fixed for the commutation to be paid to the corporation or remain a charge on the property *à rente constituée et rachetable*.

8. From and after the voluntary settlement and adjustment between the parties, touching the said price, consideration money and indemnity, or from and after the payment or tender of payment to the said Ecclesiastics of the seminary of Saint Sulpice of Montreal and their successors, of the said price, consideration money and indemnity, reckoned according to such award in the behalf, or from and after a declaration signified to the said Ecclesiastics of the seminary of Saint Sulpice of Montreal, or their successors, by the said *censitaire*, When the Seigniorial rights of the corporation are to be considered as commuted.  
person

person or persons, or body politic or corporate, of his, or their option, that such price, consideration money and indemnity, reckoned according to such award, shall be and remain upon and charge and affect such lot, piece or parcel of land and property, at and for a redeemable quit rent (*à rente constituée et rachetable*,) in manner aforesaid,--the *droits de cens et rentes*, and the right to the said Mutation Fine, substituted by chapter forty-one, for the *droits de lods et ventes*, *droit de banalité de moulin*, *droit de retrait*, and all other feudal and seigniorial rights whatever of the said Ecclesiastics of the seminary of Saint Sulpice of Montreal and their successors, upon, for or in respect of the lot, piece or parcel of land, or property, as to and concerning which such commutation, release and extinguishment may be sought and required, shall be, and be held to be, taken and considered for ever commuted, released and extinguished,--and such lot, piece or parcel of land shall be holden and be deemed and considered as holden thenceforth for ever, by the tenure of *franc-alleu roturier* according to the laws of this Province, and shall never again be granted, surrendered or holden by any feudal tenure whatsoever :

Lands commuted to be held in *franc-alleu roturier*, but the change of tenure not to affect the rights and hypothecs thereon of the corporation.

2. Provided always that nothing hereinbefore contained, shall extend to discharge the lots, pieces or parcels of land, the tenure whereof is so converted into that of *franc-alleu roturier*, from the rights, hypothecs, privileges, reservations and demands of the said Ecclesiastics of the seminary of Saint Sulpice of Montreal and their successors, charged in and upon the same, for the security and recovery of the price, consideration money and indemnity, which by reason of the adjustment with the *cessitaire* or person who required such commutation, release and extinguishment, may remain as a charge and incumbrance of such land or property, at a redeemable quit rent, as aforesaid, (for the security and recovery of which prices, consideration money and indemnity, the said corporation shall have the same legal recourse, privilege and priority of hypothec as they would have had for any right extinguished by such commutation, or for the security and recovery of any arrears of seigniorial dues accrued before such commutation, release and extinguishment may have been required,)--or in any wise to destroy, alter or affect the remedies and recourse at law which the said Ecclesiastics of the seminary of Saint Sulpice of Montreal or their successors might lawfully have had or have taken for the recovery of the same, if such commutation, release and extinguishment had not been made and obtained,--but all and every the lawful rights, *hypothèques*, privileges, actions, demands, recourse and remedies in that behalf, of the said Ecclesiastics of the seminary of Saint Sulpice of Montreal and of their successors, shall be, and the same are hereby saved and maintained. 3, 4 V. c. 30, s. 8.

If the corporation refuse to

9. If the said Ecclesiastics of the seminary of Saint Sulpice of Montreal or their successors, refuse or neglect to execute,

execute, in favour of any *censitaire* or other person, or body corporate or politic, who in manner aforesaid, has paid or tendered payment to them the amount of the said price, consideration money and indemnity, according to any such award, made in due manner,—or who has declared his, or their option, to the said Ecclesiastics of the said seminary of Saint Sulpice of Montreal or their successors, that such amount should remain upon and charge and affect the lot, piece or parcel of land and property, and for a redeemable quit-rent, according to the provisions in that behalf hereinbefore contained,—an instrument in writing before two notaries, or a notary and two witnesses, (at the joint cost of the parties) setting forth such commutation, release and extinguishment of all seigniorial and feudal rights, dues and burthens, and the terms of conditions thereof, according to law and the respective rights of the parties,—such *censitaire*, person or persons, or body corporate or politic aforesaid, may implead the said Ecclesiastics of the seminary of Saint Sulpice of Montreal and their successors, in the said Superior Court in the district of Montreal, for the purpose of compelling them to grant to the said *censitaire*, person or persons, or body corporate or politic aforesaid, such instrument in writing as aforesaid, setting forth such commutation, release and extinguishment, according to law and the respective rights of the parties; and upon their default so to do, the said Superior Court shall by its judgment in that behalf, award and adjudge to such *censitaire*, person or body corporate or politic, the full benefit of such commutation, release and extinguishment, for and in respect of such land or property, according to law and the respective rights of the parties, with lawful costs of suit. 3, 4 V. c. 30, s. 9.

execute the agreement for such commutation, proceedings at law may be taken to compel them.

10. The said Ecclesiastics of the seminary of Saint Sulpice of Montreal, and their successors shall not, for arrears of *lods et ventes* accrued to them before or after the coming into force and effect of the Ordinance mentioned in the preamble to this Act, for each mutation in the ownership of any lands and tenements situated within the said city of Montreal, and of which, with the buildings erected thereon, the value was at the time of such mutation two thousand dollars upwards, demand and exact more than one-twentieth part of the price and consideration for each sale or conveyance of any such lands and tenements :

Rates at which arrears of *lods et ventes* may be exacted by the corporation.

2. Nor shall they, for each and every mutation in the ownership of any lands or tenements situated in the *censive* of any one of the said three fiefs and seigniories, and out of the limits of the said city of Montreal, exact or demand more than one-sixteenth part of the price and consideration of the sale and conveyance of such last mentioned lands and tenements ;

Amount of mutation fine on lands without the limits of the city of Montreal restricted.

3. Nor shall they, for each and every mutation in ownership of any lands or tenements situated within the limits of the said city

And on lands within the said city.

city of Montreal, of which, with the buildings thereon erected, the value was, at the time of such mutation, less than two thousand dollars, exact or demand more than one-sixteenth part of the price or consideration for each sale or conveyance thereof ;

Proviso : as regards judgments already rendered.

4. Provided, however, that any judgment for any such arrears rendered before the said Ordinance came into force, in favour of the said Ecclesiastics of the seminary of Saint Sulpice of Montreal, may be executed according to the tenor thereof, as if the said ordinance had not been passed. *ibid*, s. 10.

Amount of arrears of *lods et ventes* to be received for the uses of the corporation.

11. Provided always that the total amount to be received by the said Ecclesiastics of the seminary of Montreal to their use, for the purposes herein specified, as and for arrears of *lods et ventes* due before the passing of the said ordinance, shall in no case exceed the sum of one hundred and seventy-six thousand dollars, on real property lying within the fief and seigniority of the island of Montreal,---nor the sum of fifty thousand eight hundred dollars, on real property lying within the said fiefs and seigniories of the Lake of Two Mountains and of Saint Sulpice ; and any moneys received by the said corporation for any such *lods et ventes*, over and above the said sums respectively, shall be held to have been so received for Her Majesty, for the public uses of the Province, and shall be paid over by the said corporation to the Receiver General, and await in his hands the disposal of the Legislative authority of the Province. *ibid*, s. 11.

The Farm of Saint Gabriel to be alienated in *franc-alleu roturier* on or before 8th June 1880.

12. Such portions of the lot, piece or parcel of land called the farm of Saint Gabriel, situated within the said fief and seigniority of the island of Montreal, lying on the west side of the lower road to Lachine, containing about two hundred and seventy arpents, being one of the domain lands, farms, tenements and hereditaments, secured and confirmed to the said Ecclesiastics of the seminary of Saint Sulpice of Montreal, and their successors, by the second section of this Act and of the said Ordinance as have not already been alienated and disposed of, shall, within the space of forty years after the passing of this ordinance, that is to say, before the eighth day of June, one thousand eight hundred and eighty, be, by the said Ecclesiastics, alienated and disposed of in *franc-alleu roturier*, for ever, either by auction or private agreement, and in one block or as they think proper, in such parts and parcels and for such prices, terms and considerations as to them may seem most meet and advantageous :

Any portion thereof not so alienated to be forfeited to the Crown.

2. And for the making of any such alienations and conveyances, the said Ecclesiastics of the seminary of Saint Sulpice of Montreal and their successors are hereby fully and duly licensed and authorized ; and if, at the expiration of the said forty years, the said farm of Saint Gabriel, or any parts or parcels thereof, yet remains not alienated or disposed of,---then and

and in that case, the said farm of Saint Gabriel, or such parts or parcels thereof as so remain not alienated or disposed of as aforesaid, shall, by the mere lapse of the said period of time and by operation of law, fall within the provisions of the laws of mortmain, and be forfeited to and be vested in Her Majesty, Her Heirs and Successors, and be re-united to the domain of the Crown for ever. *ibid*, s. 12, and 22 V. (1859,) c. 48, s. 18.

**13.** All and every the moneys which may arise from the commutation, release and extinguishment of the seigniorial rights and burthens, for and in respect of lands, tenements and property within the *censive* of the said three fiefs and seigniories, and which may, by the provisions and for the purposes of the said Ordinance and of this Act, be the property of the said corporation, and all moneys received and gotten in, by reason of the sale, alienation or disposal of the said farm of Saint Gabriel, or of any parts or parcels thereof, and which moneys as aforesaid, may be disposable, after the necessary expenditure for the uses and support of the said institution have been provided for,—may by the said Ecclesiastics of the seminary of Saint Sulpice of Montreal or their successors, be invested in the public stocks or securities of the United Kingdom of Great Britain and Ireland, or of its colonies or dominions, or in hypothecs or securities of any kind; and the rents, revenues, dividends and profits of the moneys so invested, shall be had, taken and received by the said Ecclesiastics of the seminary of Saint Sulpice of Montreal and their successors, to be expended in and about the support and management of the said institution, and in promoting its objects according to the provisions and requirements of the said Ordinance and of this Act :

How the corporation are to invest their disposable moneys.

2. Provided that out of the said moneys which, arising as aforesaid, or received and gotten in and collected, the said Ecclesiastics of the seminary of Saint Sulpice of Montreal and their successors, may apply and invest a sum or sums of money, in the whole not exceeding the sum of one hundred and twenty thousand dollars, in *constitutions de rentes* on immoveable property, or in the purchase of houses, lands and tenements, and immoveable property, situated within *Lower Canada*, in order to create and produce income to the said Ecclesiastics of the seminary of Saint Sulpice of Montreal, and their successors;

A certain amount may be invested in real estate to produce revenue.

3. Provided always that in addition to and over and above such real property producing income, which the said corporation are hereby authorized to purchase and hold, to the value of one hundred and twenty thousand dollars, as aforesaid, and no more, they may likewise purchase and hold any other real property, houses, buildings, or tenements, destined for and appropriated to purposes of religion, charity, or education, and producing no income, which are necessary to accomplish the purposes and objects of the said corporation, as the same are hereinbefore described and defined. 3, 4 V. c. 30. s. 13.

And the corporation may hold other real property for their own use.

Corporation to furnish a statement of their affairs to the Governor when required.

**14.** The said Ecclesiastics of the seminary of Saint Sulpice of Montreal, shall, whenever and so often as they may be thereunto required by the Governor of this Province, lay before him, or before such officer or officers as he shall appoint, a full, clear, and detailed statement of the estate, property, income, debts, and expenditure, and of all the pecuniary and temporal affairs of the said corporation, in such manner and form, and with such attestation of correctness, as the Governor shall direct. 3, 4 V. c. 30, s. 14.

To be subject to visitation.

**15.** The said Ecclesiastics of the seminary of Saint Sulpice of Montreal, and their successors, as to temporal matters, shall continue and be subject to the same powers of visitation, as in the like cases were possessed and exercised by the Kings of France, before the conquest of this Province, and are now possessed and exercised in that behalf by Her Majesty, in right of Her Crown. 3, 4 V. c. 30, s. 15.

Rights of Her Majesty and others not affected.

**16.** Nothing in this Act or in the Ordinance aforesaid contained, shall extend to destroy, diminish, or in any manner to affect, the rights and privileges of the Crown or of any person or persons, society, or corporate body, excepting such only as this Act and the said Ordinance expressly and especially destroy, diminish or affect. 3, 4 V. c. 30, s. 16.

Corporation, &c., to be subject to the provisions of Con. Stat. L. C. cap. 41.

**17.** The said Ecclesiastics of the Seminary of Saint Sulpice of Montreal, and their fiefs and seigniories, shall be subject to all the enactments made with respect to them and extended to them by chapter forty one of these Consolidated Statutes of Lower Canada, and this Act shall be construed subject to the said enactments.

## CAP. XLIII.

## An Act respecting the Commutation of Seignorial Tenure in certain Seignories.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

## CERTAIN SEIGNORIES IN AND NEAR THE CITY OF MONTREAL.

1. The Seigneur or Seigniors of any of the Fiefs Nazareth, St. Augustin, and St. Joseph, in the City and County of Montreal, respectively, may commute with any person, body politic or corporate, or other party holding any real property *à titre de cens* or *en roture*, for the release and extinguishment of all *droits de lods et ventes*, *cens et rentes*, and other Seignorial burthens whatsoever, to which such property is liable, for such consideration and indemnity as by such Seigneur and the party desirous of obtaining such Commutation may be mutually agreed upon; and from and after the passing of a Notarial Instrument for effecting the Commutation so agreed upon, the *droit de cens et rentes*, *lods et ventes*, *droit de retrait*, and all other Seignorial rights, dues and burthens whatsoever, on the property to which such Commutation relates shall be forever released and extinguished, and such property shall be thenceforth holden by the Tenure of *Franc-Allou Roturier*, according to the Laws of Lower Canada, and shall never again be granted, or holden by any Seignorial or Feudal Tenure whatsoever; Provided always, that nothing herein shall exempt the Seigneur of any of the said Fiefs, from the operation of any general law which may be hereafter passed for effecting a general commutation of Seignorial Tenure throughout Lower Canada, and including them. 7 V. c. 27.

The Seigniors of certain fiefs in and near the city of Montreal empowered to commute with their *Censitaires*.

Proviso: this Act not to exempt such Seigniors from any general law of commutation.

2. Any Religious Community being the Seigneur or entitled to any Seignorial Rights in or with regard to the said Fiefs Nazareth, St. Augustin and St. Joseph, or of any of them, may invest any moneys to be received as the consideration or indemnity for the commutation of any such Seignorial rights either as a redeemable ground rent on the land of which the tenure is so commuted, with the same privilege for the security thereof, as they would have had for the rights commuted, or in real property lying within this Province, or in any stocks or public securities in this Province or in any part of the United Kingdom of Great Britain and Ireland, and may hold such real property, stocks, or securities, and may alienate and dispose of the same and acquire others in their stead, without Her Majesty's Letters of Mortmain, or other authority than this Act; but no other moneys than such as shall arise from the commutation aforesaid, or from the alienation of property purchased with such

How religious communities may invest moneys received by them as commutation of Seignorial rights.

such moneys, shall be so invested under the authority of this Act. 8 V. c. 43.

OPTIONAL COMMUTATION IN PRIVATE SEIGNIORIES TO WHICH  
CHAPTER *forty-one* DOES NOT APPLY.

*Censitaires* in certain Seigniories may obtain commutation by special agreement with the Seigniors.

**3.** Whenever any *Censitaire* or owner of Land held *en roture* in any Seigniorie in Lower Canada, (Seigniories in mortmain also included,) desires to commute the Tenure thereof into that of *en franc-alleu roturier*, and for this purpose has made and concluded an agreement, in writing before Notaries, with the Seignior in whose *censive* the land is situate, as to the value or indemnity to be paid to such Seignior, for the release of the land from all Seigniorial dues and charges affecting the same, and its commutation into the Tenure *en franc-alleu roturier*, and such agreement has been duly enregistered in the Registry Office of the place wherein the land is situate, the commutation of the Tenure of such land into the Tenure *en franc-alleu roturier*, shall be held to be perfected and the tenure thereof shall forever thereafter be deemed to be that of *franc-alleu roturier*, and it shall accordingly be disincumbered and free of all Seigniorial dues and charges of every kind, for ever thereafter, as are lands holden in free and common soccage in the Townships in Lower Canada. 8 V. c. 42, s. 1.

Commutation money may remain secured *à constitution de rente*, &c.

**4.** The commutation money agreed upon may, if it be the option of the parties, remain secured, *à titre de constitution de rente*, *à rente foncière*, or otherwise, according to the stipulation between the parties, upon the land, the tenure whereof has been so commuted, with the same privilege, *ex causâ*, and as *bailleur de fonds*, and preference thereupon over all other hypothecary claims affecting the same, as such Seignior would by law be entitled to for the recovery of any Seigniorial dues upon such land previous to the commutation of the tenure thereof. 8 V. c. 42, s. 2.

Formalities to be observed by the Seignior on completing any such commutation.

**5.** Every Seignior who pursuant hereto, has commuted with respect to any land in his Seigniorie, shall give in to the Receiver General of the Province, in the course of the first ten days of January next after the commutation, an authentic copy of the Notarial agreement or *Acte* of every such commutation which during the preceding year he has agreed to, accompanied by an attestation on oath (which oath any Justice of the Peace may administer,) endorsed upon the same, that such Notarial *Acte* specifies the whole terms upon which the commutation has been made, and every Seignior, having so accounted for the commutations with respect to any land in his Seigniorie, shall pay over on or before the first day of July next ensuing the actual receipt of the principal sum agreed upon as the commutation money, (unless the same be remitted to him as hereinafter provided,) into the hands of the Receiver General of the Province for the public uses thereof, an amount equal to five per cent. upon

Proportion to be paid to the Crown.

upon the total amount of commutation money he has received or agreed upon, as the proportion thereof due to the Crown as Seignior *suzerain* or *dominant* : 8 V. c. 42, s. 3.

2. Provided that no Religious or Ecclesiastical Community, or other Corporate Body in Lower Canada, holding in mortmain any Seigniories therein, shall be required to give in to the Receiver General any authentic copy of any notarial agreement executed in virtue of the provisions of this Act, or be liable to pay over into the hands of the said Receiver General, any portion of the commutation money, received in pursuance of any such agreement, or shall incur any penalty or forfeiture for neglecting or refusing so to do. 12 V. c. 49, s. 1.

Proprio: corporations exempted.

6. Every proprietor of any *Arrière Fief* holding under any *dominant* Seignior other than the Crown, who pursuant hereto, has commuted with respect to any land in his *Arrière Fief*, shall give in to his said Seignior dominant, in the course of the first ten days of January next after the commutation, an authentic copy of the Notarial agreement or *Acte* of every such commutation which during the preceding year he has agreed to, accompanied by an attestation on oath, (which oath any Justice of the Peace may administer,) indorsed upon the same, that such Notarial *Acte* specifies the whole terms upon which the commutation mentioned in it has been made ; and every proprietor of any such *Arrière Fief*, having so accounted for the commutations with respect to any land in his *Arrière Fief*, shall pay over on or before the first day of April then next ensuing, (unless the same be remitted for the whole or in part by the Seignior *dominant*,) into the hands of the said Seignior *dominant*, an amount equal to one fifth of the total commutation money received or agreed upon as aforesaid, as the proportion thereof due to the said Seignior *dominant*. 8 V. c. 42, s. 4.

Proprietors of *Arrière-Fiefs* —their duty as regards the Seignior *dominant*.

7. The said Seignior *dominant* shall in like manner pay over on or before the first day of July then next ensuing (unless the same be remitted to him, as hereinafter mentioned,) into the hands of the Receiver General of the Province, for the public uses thereof, *one-twentieth* of the total amount of commutation money to which he is entitled, or has agreed to receive as the amount due to him as Seignior *dominant*, and such Seignior *dominant* shall, at or before the time of paying over such sum of money to the Receiver General, make an attestation under oath, (which oath any Justice of the Peace may administer, that the said sum of money is the *one-fifth* of the total amount) of commutation money or indemnity by him received or agreed upon as such Seignior *dominant* :

Seignior *dominant* to pay one fifth of such commutation money to the Receiver General.

2. Provided that nothing in this and the next preceding section shall prevent any proprietor of any *Arrière Fief* holding under any other Seignior, from making agreement in writing before Notaries with his Seignior *dominant*, for

Owner of *Arrière Fief* may agree with Seignior *dominant* for total

the

extinction of  
Seigniorial  
rights.

the total extinction of all Seigniorial dues and charges affecting the same, and belonging to such Seignior *dominant*, previous to commutation by him with his own *Censitaires*, and agreeing for the payment of a certain sum or for a *rente constituée* or *rente foncière*, or otherwise, as the commutation money to such Seignior *dominant* for all his rights and title therein ; and such Seignior *dominant* shall, on receipt of the sum of money so agreed upon, pay over to the Receiver General the one-twentieth part thereof at the same time, with the same formalities and with the same attestation on oath as hereinbefore mentioned and required ;

Proviso: pro-  
ceedings to  
save rights of  
third parties.

3. Provided also, that in all cases of immediate payment by the Seignior *servant* to the Seignior *dominant*, of the commutation agreed upon between them, or of the one-fifth part of the consideration of any commutation between the Seignior *servant* and his *Censitaires*, the Seignior *servant* shall, in the manner hereinafter provided in the like case as to *Censitaires*, deposit the amount coming to the Seignior *dominant* in the office of the Prothonotary, and with the like observances, and that the same proceedings shall be had thereupon as is in that case by this Act required, with the view of saving the rights of third parties, and with the like effects as respects the land, the tenure of which has been commuted. 8 V. c. 42, s. 5.

Penalty on  
Seignior ne-  
glecting to  
transmit agree-  
ment of com-  
mutation.

8. Any Seignior having commuted, who neglects or refuses to transmit an authentic copy of every Notarial agreement for any such commutation according to the requirements of this Act, shall, for every such neglect or refusal, forfeit to Her Majesty, double the sum which by reason of such commutation he would, under this Act, be liable to pay to the Crown. 8 V. c. 42, s. 6.

Proportion  
coming to the  
Crown may be  
remitted by  
Governor.

9. The Governor of this Province may remit, in all cases of commutation under this Act, (if to encourage commutation he sees fit) the proportion which by reason of such commutation will be payable to the Crown ; and he may also, if he see fit, either in consideration of the loss or disuse of any Seigniorial rights from whatsoever cause, formerly appertaining to Seigniories in Lower Canada, or solely with a view to promote commutation give up to any Seignior desirous of promoting a commutation of the tenure of lands within his Seigniorie, all claim to any indemnity to the Crown, or may accept a smaller proportion than that hereinabove mentioned as the indemnity to the Crown ; and such indemnity being given up, or the sum determined and fixed as the indemnity to the Crown, being paid to the Receiver General, the Seignior in whose favour such abandonment is made, or who has paid such indemnity, shall thereafter be free to commute for any and all lands within his Seigniorie, without being therefor in any manner accountable to the Crown. 8 V. c. 42, s. 7.

**10.** All moneys arising from such commutation as aforesaid, of the tenure of any land, whether the same be paid to the Seignior, or remain as the principal of a *rente constituée* or *rente foncière*, or otherwise, shall be held to be immoveable property by fiction of law, and deemed *propres* belonging to any party to whom the Seignior in which such land is situate is *propre*, and shall accordingly be subject to investment, and being so invested *bonâ fide*, with a proper declaration of *remploi*, shall be substituted for the rights they represent, and shall have the same destination as such rights would have had. 8 V. c. 42, s. 8.

Commutation moneys to be deemed immoveable property.

**11.** And for the protection of the rights of third parties,—The amount agreed upon by the *Censitaire* and Seignior as the indemnity to such Seignior for commutation of the tenure as aforesaid, of any land, shall, when *to be paid*, be, at the diligence of the *Censitaire*, deposited within thirty days next after the day of commutation, with an authentic copy of the Notarial instrument relating thereto, in the office of the Prothonotary of the Superior Court for the District wherein the land is situate, (and of which deposit it shall be the duty of the Prothonotary to grant him *Acte*,) thereto abide the order or judgment of the Court disposing thereof, in case any hypothecary claim affecting the same is presented before the said Court :

Commutation money to be paid to Prothonotary to save rights of third parties.

2. Provided, that such Seignior may be allowed to take up and retain the said commutation money so deposited, on giving a bond (for the taking of which bond the Prothonotary shall be entitled to a fee of twenty-five cents) or security to the satisfaction of any one of the Judges of the said Court, that the amount will, within twenty days next after the rendering of any order by the said Court, (whether notice of such order be or be not served upon or given him,) directing the payment thereof to any hypothecary claimant upon the same, be repaid into the Prothonotary's office, to be disposed of according to such order. 8 V. c. 42, s. 9.

Proviso.

**12.** The Prothonotary shall cause notice to be given three times at least in the course of the four months next after the day of such deposit, in the English and French languages, in the *Gazette* and in some other newspaper or newspapers to be named by the Court or any of the Judges thereof, printed in the District wherein the land commuted is situate, of such commutation ; and by *criée* or proclamation as in the case of *décret* or Sheriff's sale, three times during the aforesaid term, at the Church door of the Parish wherein such land is situate immediately after divine service in the forenoon, and if there be no Church, then at the most public place in the Seignior, designating the land, and requiring every person having any hypothecary claim affecting the commutation money, to file the same at his office within the fifteen days next after the expiration of the said four months' notice, to the end that the same be taken

Notice to creditors to be given by Prothonotary.

Claims not presented within delay fixed to be foreclosed.

taken into consideration by the Court and disposed of in due course of law, and that in default of filing the same within the appointed time, all such claims will thereafter be foreclosed; and accordingly all claims that might in anywise have affected such commutation money, but which are not presented within the time appointed, shall be foreclosed, and those filed shall be collocated for payment according to their order of priority or privilege, by judgment of the Court, and be paid from and out of the commutation money, in so far as the same will suffice therefor. 8 V. c. 42, s. 10.

Fees to Prothonotary.

**13.** For the filing of such Notarial instrument, the Prothonotary shall be entitled to the fee of twenty cents, and for enregistering the same in a Register *paraphé*, (which he shall keep for the purpose,) at the rate of five cents per hundred words, and at the same rate for certified copies thereof; and to such Register every person requiring it shall, during office hours, have access gratis; and the said fee and charges, and all costs and expenses of printing pursuant hereto, shall be taxed in each case at the lowest rate at which, consistently with justice, the same can be fixed, by some one or more of the Judges of the said Court before whom the proceeding is pending, and shall be defrayed by the parties commuting in equal proportions, unless they otherwise agree; but all costs and charges upon, or incidental to, any claim upon the commutation money, shall be paid by the claimant or the Seigneur having commuted, as to justice it appertains and as the Court seized of the case shall award. 8 V. c. 42, s. 11.

To be defrayed by parties commuting.

Proceedings in case no hypothecary claim be filed.

**14.** If no hypothecary claim as aforesaid be filed within the appointed time, a memorandum to that effect shall be entered upon the Register aforesaid, and the bond given (if any) by the Seigneur, shall be cancelled, and a memorandum to that effect indorsed upon the same by the Prothonotary, and be in like manner entered upon the said Register, and the proceeding shall thereby be closed; and the Prothonotary shall pay all moneys which by any order of Court in any such case are directed to be paid to any claimant, and shall take receipts therefor, making mention of the same in the said Register, and of the dates thereof, for future reference, for which service he shall be entitled to such compensation as the Court shall allow. 8 V. c. 42, s. 12.

After instrument filed and commutation money deposited, land free from every Seigniorial claim.

**15.** From and after the filing of such Notarial instrument, and deposit of the commutation money agreed upon, in the office of the Prothonotary, the actual and every future owner (*détenteur*) of the land, the tenure whereof is so commuted, and in like manner the land also, shall thenceforward for ever cease to be liable to any hypothecary claim of any description, created or caused by the Seigneur of the Seigniorie wherein such land is situate, or by any of his *auteurs* or predecessors having owned such Seigniorie. 8 V. c. 42, s. 13.

**16.** Whenever any *rente constituée* or *rente foncière* created under this Act between Seignior and Seignior, or between Seignior and *Censitaire* is redeemed by actual payment, whether by operation of law and in a compulsory manner or by mutual agreement, such redemption shall become subject to the same deposit of the principal thereof in the Superior Court as hereinbefore provided to protect the rights of third parties, and the same proceedings shall be had thereon at the diligence of the person having to pay the said principal :

In case of redemption of *rente constituée, &c.*, created under this Act.

2. Provided that such *rente constituée* or *rente foncière* shall be considered in matters of succession and in judicial proceedings, and to all other intents and purposes whatever, as being a territorial right attached to the domain of the Seignior, to the Seignior of which it is payable, and shall not be liable to be transferred, seized, sold, alienated, hypothecated or mortgaged apart from the said Seignior, but shall form part of the same, and shall also be transferred, seized, sold, alienated, hypothecated, mortgaged and otherwise legally dealt with, along with the said Seignior ; and the register to be kept by the Seignior as hereinafter mentioned shall be considered as one of the titles of the said Seignior. 8 V. c. 42, s. 14.

Proviso : how such *rente constituée* shall be considered in matters of succession.

**17.** The several religious or ecclesiastical communities in Lower Canada, holding in mortmain Seigniories therein, may invest if they see fit, in any lands in this Province, or in any public or private securities in the United Kingdom or in this Province, any sum of money accruing to them from any commutation under this Act. 8 V. c. 42, s. 15.

Religious communities may invest commutation money in real property or otherwise.

**18.** Any rent constituted (*rente constituée*) as the consideration for such commutation as aforesaid, shall be redeemable at the option of the land owner, by one payment, or as agreed upon, including all arrears, in cases where the Seignior has the right of alienating such rent, the formalities and requirements hereinbefore mentioned with respect to *the ready payment* for the liberation of all hypothecary claims being observed ; but if the seignior be entailed (*substituée*) or held in mortmain, or by a Corporation, or the commutation be made on the part of the Seignior, by a tutor, curator, or administrator, the rent and arrears only shall be received, and the principal sum shall only become payable in the cases by law provided, or when the party to whom the rent is payable, has power of alienating the Seignior where in it may be due :

How the *rente constituée* may be redeemed.

In case Seignior be entailed, &c.

2. Provided always, that in all cases where the party with whom, as the Seignior or as the representative of the Seignior, the commutation is effected, has not the power of alienating any seigniorial right commuted, the commutation of such right shall be made for an annual rent, and not for a sum payable at once, unless the Seignior be held in mortmain, in which case the commutation may be for a sum payable at once, and such commutation may be made without any previous authority or formality

In certain case commutation to be made for an annual rent.

formality other than such as is required for the transfer of property from one person to another, and no part of the commutation money shall be payable to the Crown. 8 V. c. 42, s. 6, and 12 V. c. 49, ss. 1, 2.

In case property be in the hands of tutors, &c., or be entailed who, may commute.

**19.** Tutors, curators, and administrators of any kind, may effect any such commutation as aforesaid, on being thereunto authorized in the manner required by law to enable them to alienate the real property of the parties they represent but not otherwise; and the owners and possessors of any entailed seigniorial rights, the absolute property whereof is entailed on their children or descendants, born or to be born, or on the children or descendants, born or to be born of their collateral relatives, descendants of the party by whom the entail was created, or on other persons born or to be born, may commute such rights on an advice of relatives (*avis de parents*) duly homologated according to law; but if the absolute property of such rights be entailed on persons not descendants of the then possessor, then no such commutation shall be effected without the consent of a curator to the entail duly appointed in the usual form; Provided that in all cases mentioned in this section which do not apply to Seigniors holding in mortmain the commutation shall be made for an annual rent, and not otherwise. 8 V. c. 42, s. 17, and 12 V. c. 49, ss. 1, 2.

Proviso.

Penalty against persons fraudulently receiving money or assuming rights in respect of commutation.

**20.** Any person representing any party holding in mortmain or any Corporation, and any tutor, curator or administrator, or the possessor of an entailed estate, who on account of any such commutation collusively receives for his advantage, or for that of any third party, any sum of money, promise, or valuable consideration, over and above the rent stipulated--and, any Seignior in possession who, in effecting any such commutation, assumes to alienate rights with regard to which he has no power of alienation, and who under such pretence receives any principal sum for such commutation, when in fact such principal sum ought to be received by some other party or converted into an annual rent,--may on being legally convicted of such offence be condemned to pay a penalty equal to double the amount which he has so received collusively under such false pretence; and any possessor of any land *en roture* or  *censitaire*, who collusively pays to any such person or Seignior any sum of money in order to obtain any such commutation as aforesaid with intent to defraud any other party, may be condemned to a penalty equal to double the sum so received; such penalty to be imposed in either case by the Court before whom such offender has been convicted. 8 V. c. 42, s. 18.

Parties commuting for annual rents to take measures to secure the same.

**21.** The Directors and Principals of any Community or Corporation holding estates in mortmain, and all curators, tutors and administrators, and all possessors of entailed estates, shall take all necessary precautionary measures for the conservation of any such rents as aforesaid in which the parties they represent

represent are interested ; and in any case of compulsory redemption of such rent, shall, within one year thereafter re-invest the principal sum in a secure and profitable manner, for the benefit of the Corporation or persons therein interested. 8 V. c. 42, s. 19.

**22.** Whenever any such commutation has taken place, all arrears due on the property to which it relates, shall be commuted and extinguished, unless the contrary be stipulated; and in the case last mentioned, or where such arrears are valued apart, or remain as a charge upon the property, the precise amount shall be ascertained and mentioned in the deed of commutation; but no such arrangement shall affect any arrears on any other property held by the same party :

When commutation effected, all arrears to be extinguished unless otherwise agreed.

2. When any such commutation is effected on a part only of any land *en roture* or grant, a proportionate part of the arrears due on the whole shall be held to be commuted and extinguished; and when a part only of any such land *en roture* or grant is so commuted, the Seigniorial charges and dues on the part uncommuted shall be proportionally reduced. 8 V. c. 42, s. 20.

In case commutation is effected on a part only.

**23.** Nothing in this Act shall affect any commutation of Tenure effected in any Seigniorie held by the Ecclesiastics of the Seminary of Saint Sulpice, under the Ordinance or Act in that behalf. 18 V. c. 42, s. 21.

Nothing herein to affect Seigniorie of Saint Sulpice.

**24.** No commutation shall be effected for a part only of the Seigniorial rights affecting any property; but such commutation shall be in all cases full and perfect, so as to produce a change of Tenure as aforesaid. 8 V. c. 42, s. 22.

Partial commutation of Seigniorial rights not permitted.

**25.** Those who hold in mortmain, and Corporations, tutors, curators and administrators, possessing property held *en roture*, the tenure whereof can be commuted with advantage to those whom they represent, may effect such commutation by paying the consideration out of the moneys of those whom they represent, or may validly bind them to the payment of the rent stipulated in the deed of commutation, provided they observe the formalities required by law in the alienation of the property of such party holding in mortmain or Corporations, or of those whose rights such tutors, curators or administrators represent. 8 V. c. 42, s. 24.

Tutors, administrators, &c., bind the parties they act for, in stipulating for commutation.

**26.** The Seignior shall keep a Register, in which shall be entered, at full length, all deeds of commutation and all receipts for principal sums received for the redemption of any rent constituted, as the consideration of any commutation, and all judgments relating to any such commutation, with a proper index; and such Register shall be open to all persons at all seasonable times; and the Seignior, or the person in whose keeping such

Register of commutations to be kept by Seignior.

Register

Register shall be, may demand ten cents for each communication of any such Register; and copies of all entries in such Registers shall be delivered to any party interested, by the Seignior on payment of five cents, for each hundred words; and such Register shall be held to be a public memorial made for the common benefit of the Seignior and his *Censitaires*, and placed in the keeping of the Seignior. 8 V. c. 42, s. 25.

Accounting clause.

**27.** All moneys paid to the Receiver General under this Act, shall form part of the Consolidated Revenue Fund of this Province. 8 V. c. 42, s. 26.

#### COMMUTATION IN THE CROWN SEIGNIORIES.

*Censitaires* in Crown Seigniories may commute on observing certain formalities.

**28.** Whenever, pursuant to the Act passed in the third year of the Reign of King George the Fourth, by the Imperial Parliament, intituled: *An Act to regulate the Trade of the Provinces of Lower and Upper Canada, and for other purposes relating to the said Provinces*, any person holding land *à titre de cens et rentes*, within the censive of any Seignior of Her Majesty, or belonging to the Estates of the late Order of Jesuits, desires to obtain a release of all Seigniorial rights arising therefrom, and to commute the tenure of such land, into free and common soccage, and applies for this purpose to the proper agent as hereinafter mentioned, for the Seignior in which such land is situate, setting forth in his application by writing the description, according to his titles, of the land, the tenure whereof he desires to commute, exhibiting also therewith his titles, and requesting such commutation, and has paid the sum mutually agreed upon by such agent and the applicant, as the commutation money on the intended commutation, or ascertained in manner hereinafter provided; and has also paid or secured the payment of all arrears of Seigniorial rights, dues and duties which he owes to Her Majesty upon the said land, or with which it may then be chargeable in favor of Her Majesty, such agent shall execute a release by *Acte* duly executed before Notaries as nearly as may be in the form prescribed in the Schedule of this Act (for which the Notary shall be entitled to a fee of four dollars and no more from the applicant) in the name of Her Majesty, of the said land from all Seigniorial rights and dues in favor of Her Majesty, and declaring the tenure of the said land to be by such release for ever thereafter commuted into that of free and common soccage; and such *Acte* of Computation shall be to all intents equivalent to a grant of such land from Her Majesty, as provided by the above recited Act of the imperial Parliament, and the commutation of tenure of the said land shall hereby be perfected, and it shall be for ever hereafter held in free and common soccage, according to the intent of the said Act. 10, 11 V. c. 111, s. 1.

Paying amount agreed upon.

And all arrears of Seigniorial rights.

*Acte* of commutation—effect thereof.

**29.** The Governor of this Province may appoint in and for each and every Seigniory in this Province, appertaining to Her Majesty, a fit person to be agent for the purposes of this Act, and may give such directions for his guidance in the performance of his duties, as by and with the advice of Her Majesty's Executive Council he deems expedient. 10, 11 V. c. 111, s. 2.

Commutation Agent may be appointed.

**30.** For all the duties performed by any such agent with respect to any such commutation, he shall be entitled to a fee of six dollars, and no more, from the person applying for the commutation, for whom he shall not in any case of commutation act as agent. 10, 11 V. c. 111, s. 3.

His fees.

**31.** The commutation money for *cens et rentes* shall be the principal sum of money of which the said *cens et rentes* would be the yearly interest reckoned at the legal rate. 10, 11 V. c. 111, s. 4, as amended by 19, 20 V. c. 53, s. 11, abolishing *lods et ventes* in the Crown Seigniories. Sect. 5 also relates only to the Commutation of *lods et ventes*, and can have no effect now.

What shall be the commutation money for *cens et rentes*.

**32.** From and after the voluntary settlement or adjustment as aforesaid, touching the said commutation money, and payment thereof (or tender of the same) to the proper agent, or from and after a declaration signified to the proper Agent, by the *Censitaire*, of his option, that such commutation money do remain as a charge upon such land as a redeemable quit rent (*à rente constituée et rachetable*), and execution conformably thereto of the release by Notarial Act—all and every the *droits de cens et rentes, droit de banalité de moulin, droit de retrait, exhibition de titres*, and all other feudal or seigniorial rights whatever of Her Majesty upon, for or in respect of the land as to which such commutation is required, shall accordingly be for ever commuted, released and extinguished; and such Land shall be holden and thenceforth for ever by the tenure of free and common soccage according to the above recited Act of the Imperial Parliament, and shall never again be granted, surrendered or holden by any *seigneurial* or feudal tenure whatsoever :

After formalities observed, all Seigniorial rights extinguished.

And land to be holden in free and common soccage.

2. Provided, that nothing hereinbefore contained shall discharge the land, the tenure whereof is so commuted from the rights, hypothecs, privileges, reservations and demands of Her Majesty, in and upon the same for the security and recovery of any commutation money remaining as a charge on such land at a redeemable quit rent as aforesaid, for the security and recovery of which commutation money, Her Majesty shall have the same legal recourse, privilege and priority of hypothec as Her Majesty would have had for any right extinguished by such commutation, or for the security and recovery of any arrears of seigniorial dues accrued before such commutation. 10, 11 V. c. 111, s. 6.

Legal recourse of Crown.

Amount of arrears of *lods et ventes* to be taken in city of Quebec limited.

**33.** There shall not, for arrears of *lods et ventes* accrued and due to Her Majesty before the abolition of *lods et ventes* in Crown Seigniories, be demanded or taken for each mutation in the ownership of any lands and tenements situated within the City of Quebec, and of which, with the buildings thereon erected, the value was equal to or exceeded the sum of two thousand dollars, more than one twentieth of the price and consideration for each sale or conveyance :

Amount to be taken for mutations, without the limits of the said city.

2. Nor for each mutation in the ownership of any lands or tenements in any censive of the Crown out of the limits of the said City, shall there be exacted or demanded more than one sixteenth part of the price and consideration of the sale and conveyance of such last mentioned lands and tenements ;

Amount to be taken for mutations in Quebec, in certain cases.

3. Nor for each mutation in ownership in any lands or tenements situated within the limits of said City of Quebec, of which, with the buildings thereon erected, the value shall be less than two thousand dollars, shall there be exacted or demanded more than one sixteenth part of the price and consideration for each sale or conveyance thereof ;

Proviso as to arrears accrued before 27th December, 1847.

4. And further, all such arrears of *lods et ventes* accrued and due within the said City to Her Majesty on or before the twenty-seventh day of December, 1847, according to the respective rates aforesaid, shall not be demandable from any person owing the same personally or hypothecarily, nor shall any such person indebted as aforesaid to a greater amount than one hundred and sixty dollars be compellable to pay the same; except within seven years from the said day, in seven equal annual instalments ; Provided, that in default of any person to pay any such instalment after the same shall become due, the whole of such arrears of *lods et ventes*, according to the rates aforesaid, or the remaining unpaid instalments thereof, shall become immediately payable to Her Majesty by the person owing the same. 10, 11 V. c. 111, s. 7. *But that part of this section from " And further" to the end, seems to be of no effect now.*

Proviso.

Commutation of Tenures Fund established.

**34.** All moneys arising from commutations pursuant to this Act, shall constitute a separate fund to be called " The Commutation of Tenures Fund," (those arising from the Jesuits Estates being kept always apart and distinct) and accounted for, and funded in such manner as may be provided ; and an annual report of all such commutations in detail shall annually be laid before both Houses of the Legislature at each Session thereof. 10, 11 V. c. 111, s. 8.

Lands commuted under this Act to be subject to laws of Lower Canada.

**35.** All lands, the tenure of which has been commuted under this Act, or any other law in force in this Province, into the tenure in free and common soccage, shall be subject to the laws heretofore in force in Lower Canada with respect to testamentary dispositions, and to the grant, bargain, sale, alienation, conveyance,

conveyance, disposal of and descent of lands therein, and to the partitioning thereof among co-heirs, when the same are not devised by last will and testament, dower and other rights of married women in such lands, in the same manner as if held *en franc-alleu roturier*. 10, 11 V. c. 111, s. 9, and see 20 V. c. 45, s. 4.

**36.** Nothing herein shall apply to or affect in any manner the rights of Her Majesty, or of any person, body corporate or politic, other than such as are specially mentioned in this Act, it not being thereby intended to alter or disturb any incumbrance, charge or liability of any kind other than such as are hereinabove specified, to which the land, the tenure whereof has been commuted, was subject, previous to such commutation. 10, 11 V. c. 111, s. 10. Her Majesty's rights saved.

**37.** In this Act, the word "Land" includes real or immoveable property of every kind,—the word "Seignior" includes *arrière-fiefs*,—and the word "*Censitaires*" includes any person or party holding land in a Seignior; and the words "Seigniorial rights and dues," include all feudal and Seigniorial charges and burthens whatsoever. Interpretation.

## SCHEDULE.

### FORM OF THE ACT OR DEED OF COMMUTATION REFERRED TO IN THIS ACT.

BEFORE US, the undersigned Notaries Public for Lower Canada, residing at \_\_\_\_\_ in Lower Canada, came and appeared \_\_\_\_\_ residing in the \_\_\_\_\_ the Agent duly appointed for the purposes hereinafter mentioned \_\_\_\_\_ for the Seignior of \_\_\_\_\_ appertaining to Her Majesty (*as the case may be*) who, on the request to him made by (*name, occupation and residence,*) a party to these presents, and appearing also before us the said Notaries, to grant him (*or them*) in conformity with the Act hereinafter mentioned of the Imperial Parliament, and of Chapter *forty-three* of the Consolidated Statutes for Lower Canada, a commutation of the *droits de cens et rentes*, and all feudal and Seigniorial burthens whatsoever to which he may be subject in respect of a lot of land whereof he is proprietor and possessor, situate in the Seignior of \_\_\_\_\_ and described in the Title Deed of him the said \_\_\_\_\_ as follows: (*Take in a description of the lot or lots.*) The said lot appertaining to the said A by whom it was acquired from B by Deed, &c., and free from arrears of Seigniorial dues up to this date, (*or being charged with the sum of \$ \_\_\_\_\_ for arrears of cens et rentes and lods et ventes according to account this day adjusted*) by these presents acting for and in the name of and on behalf \_\_\_\_\_



C A P . X L I V .

An Act respecting the Partition of Township Lands held in Common.

**W**HEREAS in some instances Townships have been erected by Letters Patent under the Great Seal of the late Province of Lower Canada, and the Waste Lands of the Crown in the said Townships have been by the said Letters Patent granted to the grantees therein named, as tenants in common, which grantees made no partition thereof, and the said Lands continue to be held in common by persons who have derived their titles from the said grantees, and it is impracticable, by the ordinary process of law, to compel a partition of the said Lands : Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Preamble.

1. Any person seized as tenant in common of Lands in Townships in Lower Canada, originally granted by Letters Patent under the Great Seal of the Province of Lower Canada, to the grantees therein named as tenants in common, may, by his petition in this behalf to the Superior Court of Queen's Bench for the District in which such Lands lay, set forth his title to the said Lands, whereof he is so seized, and demand a partition thereof among the several persons by whom the same are held as tenants in common, in like manner as in an action of partition instituted in the ordinary form of law ; and the Court to which such petition is presented shall exercise the same jurisdiction, and adjudge and award the same remedy to the petitioner against his co-tenants in common as in the ordinary action of partition. 10, 11 V. c. 37, s. 1.

Certain tenants in common of lands in townships may obtain partition thereof by the ordinary action of partition.

2. After the petitioner has substantiated, by *prima facie* proof to the satisfaction of the said Court, that he is seized of lands held by him as tenant in common as aforesaid, in any such Township, the Court shall order, that the several co-tenants in common by whom the said lands are held in common with the petitioner, shall on some certain day, in a future Term of the Court, not less distant than twelve months, appear in Court, and answer the petition aforesaid, and shall at the same time file a demand in intervention, in the said Court, of their respective shares, rights and interest in the said lands, and shall also order that the said order in the premises be posted up, in some frequented place in the Township in which the said lands are situated, and if there be no frequented place in such Township, then in some frequented place in the next adjoining Township, at least six months before the time appointed of the said co-tenants as aforesaid, and shall also be published in the Quebec and Montreal Gazettes twice a week, during the same period immediately preceding the time to be appointed as aforesaid. 10, 11 V. c. 37, s. 2, and 12 V. c. 61, s. 1.

Co-tenants with petitioner to set forth their respective claims, upon notice so to do.

Time for appearance of co-tenants having expired Court to determine on the several claims.

3. After the order of the said Court has been posted up and published as aforesaid, and after the time appointed for the appearance of the co-tenants, and the making of their claims, the said Court shall take cognizance of, hear and determine, as well of and upon the petition aforesaid, as of and upon the several demands in intervention, which may have been made by co-tenants in common, or persons professing to be such; and any of the co-tenants appearing in pursuance of such order, as aforesaid, may controvert and plead to the allegations in the Petition, and make their defence to the same, as might be done by Defendants to a Declaration in an action of partition; and in like manner the said Petitioner may, by plea, controvert and plead to the demands in intervention of his co-tenants, or persons professing to be such, and issues of law and fact, may be raised and perfected, as well on the said Petition as on the said demands in intervention, in like manner as in original actions, in the ordinary administration of Justice, to the end that it may be determined by the Court, whether, upon the said Petition, and upon the said demands in intervention, a partition shall be made, and if made then by and between whom, and for whose benefit. 10, 11 V. c. 37, s. 3.

Court to adjudge a partition—The powers of the Court in the case.

4. The said Court, upon the Petition, and demands in intervention aforesaid, shall adjudge that a partition shall be made, and by and between whom, in like manner as in an action of partition, and shall have and exercise upon the said petition, and upon the said demands in intervention, all the powers which it might lawfully exercise in such action of partition, and the rules, orders and judgments so made in and touching the premises, shall be binding as well on the co-tenants who appear and answer the petition, as upon all other co-tenants or persons professing to be such, who make default to appear and answer the petition, and all other persons, in like manner as rules, orders and judgments are binding on the parties to a suit, as well those who appear as those who, after being duly summoned, may make default, and other persons; Provided always, that an appeal shall lie to the Court of Queen's Bench for Lower Canada, from judgments to be rendered under this section, in like manner as from judgments rendered by the said Court in original actions. 10, 11 V. c. 37, s. 4.

Appeals.

Matter may be referred to arbitration.

5. The Superior Court upon the petition and upon the demands in intervention aforesaid, may, by consent of the parties respectively, at any time before final judgment thereupon, refer the matter in contest upon the petition, and the demands aforesaid, and the making of the partition aforesaid, to the award and final determination of three arbitrators, one of whom shall be named by the Petitioner, the second by the said Tenant or Tenants collectively, filing demands in intervention, and the third by the Court; which said arbitrators shall act upon such reference in some place in the Township or Parish in which the

the said lands sought to be partitioned are situate, as the arbitrators, or any two of them shall appoint, and they shall have power to examine witnesses on the matter referred to them after such witnesses have been sworn before any Justice of the Peace, who may administer the oath on this behalf, and also to examine any of the parties on oath touching the said matter, if the arbitrators or any two of them deem such examination necessary or proper, (which oath any Justice of the Peace may administer); and the award of the said arbitrators, or any two of them, on all the matters referred to them shall be final and conclusive. 10, 11 V. c. 37, s. 5.

Powers and duties of arbitrators.

6. Any occupant of land in any of the said Townships so appearing in Court and producing a title to a specified number of acres derived from any of the said grantees, or being by prescription according to the Common Law of Lower Canada, entitled to any number of acres, shall be maintained in possession of the land occupied by him, provided that the number of acres specified in such title and so occupied by him do not exceed the extent of land which the grantee from whom such title is derived would have had a right to, had a partition taken place before he divested himself of his title therein; and provided also, that nothing in this Act shall prevent any such tenant in common or any such occupant of any number of acres as aforesaid from availing themselves of any pleas or prescription, nor deprive them of any other right vested in them by the Common Law of Lower Canada. 10, 11 V. c. 37, s. 6.

Occupants producing title to or entitled by prescription to a certain extent of land, maintained therein.

Proviso.

7. The said Court in the exercise of the jurisdiction hereby vested in it, shall have the same power to award or withhold costs, upon and in respect of the several proceedings to be had before it, as well upon the Petition aforesaid, as on the demands in intervention aforesaid, as might be lawfully exercised by the said Court upon and in respect of proceedings in original actions. 10, 11 V. c. 37, s. 7.

As to costs.

8. Any such co-tenant may institute and maintain in his own name, for him and his co-tenants in common, all possessory actions, and actions of revendication, grounded on trespasses committed on such lands, and the removal of timber and wood from and off the same, without joining with him as co-plaintiffs in the said actions, the other co-tenants in common of the said lands; and any action instituted by such co-tenant for him and his co-tenants in common, may be prosecuted with the same effect to all intents and purposes whatsoever, as if such actions were brought in the names of all the co-tenants of the said lands. 12 V. c. 62, s. 1.

Co-tenants may sue for himself and other co-tenants.

9. All the damages and sums of money, timber, goods and chattels, benefits and advantages, recovered or obtained by such co-tenant as aforesaid, in any such action, shall be held to have been recovered and obtained, for the benefit

Moneys or damages so recovered to be for the benefit of all the co-tenants.

benefit of all the co-tenants in common of the said lands, according to their respective shares, rights and interests in the same, and the said co-tenant shall be accountable to them accordingly; And provided also, that judgment shall not be rendered in any such action until after the plaintiff has given security to the satisfaction of the Court in which such action is instituted, that he will duly account to his co-tenants whenever required by them or any of them so to do, for all such sums of money, timber, goods and chattels, benefits and advantages as he recovers or obtains under such judgment. 12 V. c. 62, s. 2.

Proviso: plaintiff to give security to account therefor.

Recital.

10, 11 V. c. 37.

In respect of certain lands in Bolton and Magog, whenever party interested has given notice of appointment of arbitrator, another arbitrator to be appointed by the Crown.

**10.** And whereas by Letters Patent, bearing date the nineteenth day of August, one thousand seven hundred and ninety-seven, five sevenths part of the Township of Bolton, (a portion of which now lies in the Township of Magog,) were granted to Nicholas Austin and others, associates as tenants in common; And whereas under the provisions of an Act passed in the Session held in the tenth and eleventh years of Her Majesty's Reign, intituled: *An Act to facilitate the partition of lands, tenements and hereditaments in certain cases in Lower Canada*, proceedings were adopted before the Court of Queen's Bench, and are still pending before the Superior Court for the District of Montreal, for the purpose of effecting a partition of the said lands, but owing to the conflicting interests of the resident and non-resident proprietors, it hath been found impossible to effect a partition thereof by the means provided by the said Act; And whereas inasmuch as the obstacles which prevent the partition of the said lands were an inevitable consequence of the unwise and improvident character of the said grant, the Government and Legislature of the Province are bound in justice and equity to repair the injury thereby inflicted upon the resident proprietors, by adopting more efficient means to secure them in their holdings and quiet their titles thereto, therefore,—In every case where, on or before the 10th day of January, 1858, any non-resident proprietor of any undivided share or shares in the lands so granted as aforesaid, has, by letter addressed by himself or his Attorney to the Provincial Secretary, declared that he desires to take advantage of the following provisions, and to have the value of his interest in the said lands estimated, and has appointed the person he proposes to act for him as his arbitrator (*arbitre*.) the Commissioner of Crown Lands for the time being, or in his absence, the Attorney General for Lower Canada, shall appoint a fit and proper person to act as arbitrator (*arbitre*) on behalf of the Crown. 20 V. c. 139, s. 1.

Appointment of third arbitrator.

Valuation and report.

**11.** The arbitrators (*arbitres*) so appointed shall, before proceeding further, appoint a third arbitrator (*tiers arbitre*.) or if they cannot agree in their selection, a Judge of the Superior Court for the District of Montreal, shall, upon the application of either of the first named arbitrators, appoint a third; the arbitrators (*arbitres*) so appointed shall proceed to value the undivided

undivided share of such non-resident proprietor in the said lands according to his titles and to principles of equity and justice; and the decision of a majority of such three arbitrators shall be final; and the said arbitrators, or a majority of them, shall address the report thereon, or a copy thereof duly certified, to the Commissioner of Crown Lands for the time being. 20 V. c. 139, s. 2.

**12.** Upon receipt of any such report, and upon the sale and conveyance by such non-resident proprietor to Her Majesty, Her Heirs and Successors, of all his right, title and interest in the said lands, the Commissioner of Crown Lands, or in his absence, the Attorney General for Lower Canada, shall, in Her Majesty's name, grant, sell and convey in Her Majesty's name, to such non-resident proprietor, an extent of the ungranted lands of the Crown equivalent to the amount at which his share, title and interest in the said lands have been estimated by the said arbitrators in such report, or shall, at his option, deliver to him a certificate entitling him to purchase ungranted lands of the Crown lying in the said Township of Bolton or elsewhere, to an extent equivalent to such amount; and so soon as the Crown has become possessed of all the undivided shares of each of the non-resident proprietors who have disputed or will persist in disputing the titles of the resident proprietors, the Governor shall appoint three fit and proper persons to enquire into and report upon the best and most equitable mode of dividing or partitioning the lands so granted as aforesaid, between the Crown and the resident proprietors, and of quieting the titles of such resident proprietors to their lawful holdings, with a view to effecting such object by further and final legislation. 20 V. c. 139, s. 3.

Compensation in land to be granted upon the report of the arbitrators.

Division of undivided shares acquired by the Crown.

**13.** And in investigating the said titles, and in making such enquiry and report, the said Commissioners shall not be bound to follow the strict rules of law either as to the interpretation of the titles or as to the evidence which they think proper to have adduced before them; but they shall be governed in all matters connected with such investigation and report by broad principles of equity and justice, and by a due regard to the peculiar position in which the parties interested in the said lands so granted as aforesaid, have been placed. 20 V. c. 139, s. 4.

Commissioners not to be bound by the strict rules of law.

**14.** The Commissioners so to be appointed shall have the same powers as the Judges of the Superior Court, within their jurisdiction, to compel the appearance of witnesses and the production of all papers, plans and documents required for the purposes of this Act. 20 V. c. 139, s. 5.

Powers of Commissioners.

**15.** And the Governor shall, by order in Council, from time to time, upon the report of the Attorney General for Lower Canada, order the Commissioner of Crown Lands to grant certificates

Governor may award lands in compensation of costs.

certificates for the purchase of Crown Lands, either in the said Township of Bolton or elsewhere, for the amount of taxable and duly taxed costs incurred by the parties to the proceedings now pending as aforesaid, as well as for the costs of the arbitrators and Commissioners to be appointed as hereinabove provided. 20 V. c. 139, s. 6.

Interpretation.

**16:** In this Act,—the word “person” as applying to a tenant in common, includes any number of persons or any Corporation, or other property having that quality,—the term “non resident proprietor,” whether in the singular or the plural number, applies only to persons who have not, either by themselves or their predecessors, cultivated or improved any portion of the land claimed by them. 20 V. c. 139, s. 7. *Extended to all the Act.*

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C A P . X L V .

An Act respecting redress for the illegal detention of Soccage Lands.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. Any proprietor of any lands, held in Free and Common Soccage in the townships of Lower Canada, the possession of which has been illegally acquired and is detained from such proprietor against his will, by any person, may, by a Summons issued from the office of the Clerk of the Circuit Court in any Circuit within the District where such lands are situate, summon such occupier or person so acquiring and detaining such illegal possession, before the Circuit Court in such Circuit as aforesaid, or before any Judge of the Superior Court in vacation, and the Circuit Court, or Judge of the Superior Court in vacation, shall in due course hear, determine and adjudge the matter in issue and award costs :

Proprietor of lands in the townships which are detained from him may obtain summons against party detaining them.

2. Provided that whenever such defendant pleads and produces an adverse title to such lands, so claimed, then after evidence has been adduced and the *enquête* closed on the part of the plaintiff and defendant, either of the contesting parties, after having previously given security for costs, as well in the Court below as in the Superior Court, may inscribe such cause for final hearing and argument for the Superior Court, at the next ensuing sitting thereof within the District where such action is commenced ; and upon such security for costs having been entered up, and such inscription of the cause having been made as aforesaid, the Clerk of the Circuit Court where such action is commenced shall forthwith send up the record, and all proceedings and evidence taken and had in such cause duly certified to the said Superior Court, and thereupon the said Superior Court shall hear the arguments in such cause, determine the matter in issue and award costs, in the same manner in all respects as if the said action had been originally instituted in the said Superior Court ;

If an adverse title be pleaded and security given, cause may be evoked to Superior Court.

3. Provided also, that unless security for costs, as aforesaid, be entered up in such action in the Circuit Court where it is commenced, within three days after the *enquête* has been closed by both contesting parties to such suit, either of the contesting parties to such suit may inscribe such cause for final hearing and argument before such Circuit Court, or Judge of the Superior Court in vacation, as the case may be, and thereupon the said Circuit Court, or Judge of the Superior Court in vacation, shall proceed to hear, determine and adjudge upon the matter in issue in such cause, and award costs as he might

But not unless such security for costs be given.

do if no such adverse title were pleaded or produced. 14 15 V. c. 92, s. 1.

How such security shall be given.

2. The security for costs required to be given by the next preceding section, previously to inscribing a suit for the Superior Court as therein provided in certain cases, may be given by the party inscribing (without giving notice to the opposite party) within three days after the *enquête* is closed by the contesting parties, by good and sufficient sureties, who shall justify their sufficiency either before the Clerk of the Circuit Court where the suit is of record, or before the Judge before whom the *enquête* in such suit is had, and the Bond shall be deposited and remain of record in the office of the Clerk of the said Circuit Court; and any two sureties, being each a proprietor of real property of the value of two hundred dollars, above all incumbrances payable out of or affecting the same, shall suffice to render such security valid; and the said Judge or Clerk may administer all oaths required by law in such cases from the persons so becoming sureties, and may put to them all necessary inquiries and questions. 14, 15 V. c. 92, s. 8.

Defendant may evoke such action to Superior Court before making defence thereto.

3. In any action instituted as aforesaid, before any Circuit Court, or Judge of the Superior Court in vacation, the Defendant may, at his option, before making defence to such action, evoke the same to the Superior Court at its next ensuing sitting within the District where such action is commenced; and immediately upon the filing of such evocation, and upon security being given as hereinafter provided, the record and proceedings shall forthwith be transmitted to the Superior Court in the District where such action is commenced, to be heard, tried and determined according to the course and practice of the said Court. 16 V. c. 205, s. 1.

Defendant in such case to give security, how and to what amount.

4. In any such case of evocation the Defendant filing such evocation shall be held, within eight days from the filing thereof, to give good and sufficient security for the costs to be incurred by the Plaintiff in conducting such action to final Judgment; and a recognizance duly entered into by two sureties, being each a proprietor of real property of the value of one hundred dollars, above all incumbrances, shall be sufficient; and such security may be taken by any Judge of the Superior Court or the Prothonotary of the said Court, or before the Clerk of the Circuit Court, who may administer all necessary oaths to persons becoming such sureties; and it shall not be necessary to give notice to the Plaintiff of the putting in of such security; And if the security required by this Section be not furnished within the delay prescribed, the right of evocation before trial and *enquête* shall be forfeited. 16 V. c. 205, s. 2.

Actions under this Act to be subject to the rules of prac-

5. Every action instituted under this Act shall be instituted in the same manner, and be subject to the same regulations and delays between the service of process therein and the rules

of pleading, as are required by law and the rules of practice in the Circuit Court, as well when such action is instituted before a Judge of the Superior Court in vacation, as when instituted before the Circuit Court, unless and until such action is removed by appeal or otherwise to the Superior Court as above provided;—and all documents filed and proceedings had in any action under this Act shall become records of the Circuit Court where the Summons issues in such action, as well if such proceedings were had before a Judge of the Superior Court in vacation, as if the whole of such proceedings were had before such Circuit Court; and such documents and proceedings shall be records of such Circuit Court, unless removed as hereinbefore provided, to the Superior Court; and the judgments and orders of such Judge of the Superior Court in vacation, as well as of the Circuit Court, in any such action, shall be executory in every respect as fully by such Circuit Court as the judgments and orders in any other action in the Circuit Court at such place; and that the evidence in all such actions shall be reduced to writing and filed of record, in the same manner as in other appealable cases before the Circuit Court. 14, 15 V. c. 92, s. 2.

Practice of the Circuit Court.

Judgments executory.

6. Whenever the plaintiff is entitled to a judgment under this Act, by the Circuit Court or by a Judge in vacation, the Circuit Court, or Judge in vacation, as the case may be, may render judgment, and order the same to be entered of record by the Clerk of the Circuit Court at the place where the Writ of Summons in the case issued, and may by such judgment declare the plaintiff the lawful proprietor of the real property in contestation, or any portion thereof, and may order the defendant to deliver up the same to the plaintiff within twenty days after a copy of such judgment has been served upon him; and in default of the defendant's delivering up the same within the said twenty days after such service upon him, a Writ of Possession may issue from the Circuit Court at the place where the record in such action is, directed to the Sheriff of the District within which the real property adjudged is situate, to cause the plaintiff to have the possession thereof. 14, 15 V. c. 92, s. 3.

How judgments shall be executed.

Writ of possession.

7. Whenever a judgment has been rendered under this Act, by the Circuit Court, or a Judge in vacation, an appeal shall lie to the Superior Court sitting within the District where such action was originally instituted, which shall proceed to hear and adjudge on such appeal as to law may appertain, and in the manner hereinafter provided. 14, 15 V. c. 92, s. 4.

Appeal to Superior Court.

8. The party appealing from any judgment rendered as aforesaid by the Circuit Court, or by a Judge in vacation, shall, within fifteen days after the rendering of the judgment to be appealed from (but without being bound to give notice thereof to the adverse party) give good and sufficient security, by

Delay allowed for appealing—security to be given.

by sureties who shall justify their sufficiency to the satisfaction of the person before whom it shall be given as hereinafter provided, that he will effectually prosecute the appeal, and that he will pay the costs as well in the Court below as in the Superior Court if the judgment appealed from be affirmed; and such security shall be given either before any Judge of the Superior Court or the Prothonotary thereof, and the Bond shall be deposited and remain of record in the office of the latter; or it shall be given before the Clerk of the Circuit Court where such judgment has been rendered, and the Bond shall there be deposited and remain of record in the office of the latter; and any two sureties being each a proprietor of real property of the value of two hundred dollars above all incumbrances payable out of or affecting the same, shall suffice to render such security valid; and the said Judge, Prothonotary and Clerk are hereby authorized to administer all oaths required by law in such cases from the persons so becoming sureties, and to put to them all necessary inquiries and questions. 14, 15 V. c. 92, s. 5, and 16 V. c. 205, s. 5.

How such appeals may be prosecuted.

9. And for the purpose of obviating delay and expense in the prosecution of appeals under this Act, such appeals shall be prosecuted and proceedings thereon had in a summary manner, by petition of the appellant to the Superior Court, setting forth succinctly the grounds of appeal, and praying for the reversal of the judgment appealed from, and the rendering of such judgment as the Court below ought to have rendered, a copy of which petition, with a notice of the time at which it is to be presented to the Superior Court, shall be served upon the adverse party, or at his domicile, or on his attorney *ad litem* within fifteen days from the rendering of the judgment appealed from; and such petition shall be presented at some term of the Superior Court next succeeding the rendering of the judgment appealed from, if there shall be an interval of twenty days between the rendering of such judgment and such term, and if there shall not be such interval, then on the first juridical day of the term next succeeding the expiration of twenty days next after the rendering of such judgment:

Proviso as to computation of the twenty days.

Provided that neither the day of the rendering of such judgment appealed from nor the day of the presenting of said petition to the Superior Court shall be considered as forming part of the said interval of twenty days; and that a true copy of the appeal Bond given by the party appealing, certified as such by the Prothonotary or Clerk in whose office it has been deposited, shall be annexed to the original petition presented to the Superior Court, and that a copy or copies of the same, certified as such by the party appealing or his attorney, shall be served with the petition and notice hereinbefore mentioned upon the party respondent. 14, 15 V. c. 92, s. 6.

**10.** The Circuit Court, and Judge of the Superior Court in vacation, shall have jurisdiction in the manner hereinbefore stated and to the extent hereinbefore given, in all actions provided for by this Act, as well where the value of the real property claimed is above, as when it is under two hundred dollars. 14, 15 V. c. 92, s. 7.

Value of property not to affect jurisdiction.

**11.** In any action instituted under the provisions of this Act, the Plaintiff may demand such sum of money as he or they may be entitled to by law, for rents, issues and profits, *fruits et revenus*, as well as for damages for the illegal detention of such property; and any Circuit Court, or Judge of the Superior Court in vacation, shall have and exercise jurisdiction over the said demand for rents, issues and profits, *fruits et revenus*, whatever be the sum demanded. 16 V. c. 205, s. 3.

Plaintiff may demand rents, issues and profits, &c.

**12.** In any action instituted under the provisions of this Act, any Defendant; in addition to any other defence which he has to such action, may plead and demand, by incidental cross-demand, all such sum or sums of money as he is entitled by law to demand for improvements, buildings and ameliorations made upon the Real Property sought to be recovered in and by such action; and any such Circuit Court, or Judge of the Superior Court in vacation, shall have and exercise jurisdiction over any such incidental cross-demand, whatever may be the amount claimed thereby. 16 V. c. 205, s. 4.

In actions under this Act, defendant may demand sums due him for improvements.

**13.** An appeal shall lie from all judgments rendered in the Superior Court in cases instituted under this Act to the Court of Queen's Bench, in the same manner, and subject to the same rules and restrictions as other appeals from the said Superior Court. 14, 15 V. c. 92, s. 9.

Appeal to Court of Queen's Bench.

**14.** The costs in any action under this Act, shall be the same as are allowed in actions in the Circuit Court, when the sum of money or the value of the thing demanded exceeds the sum of one hundred dollars; But if such suit be removed by appeal or otherwise to the Superior Court, the costs shall be the same as in other petitory actions before the said Court; and nothing in this Act shall deprive proprietors of the right they now possess, of instituting any petitory action before the Superior Court, but it shall be at their option to proceed under this Act or to institute a petitory action in the Superior Court, as if this Act had not been passed. 14, 15 V. c. 92, s. 10.

What costs shall be allowed.

**15.** Nothing in this Act shall deprive any person of any claim he by law had before the Thirtieth day of August, one thousand eight hundred and fifty-one, for betterments or improvements made by him upon any real property of which he is in occupation, nor interfere in any way with any action pending on the said day, in any Court in Lower Canada for the possession

Act not to affect claims for improvements.

possession of any such real property, which action shall be continued as if this Act had not been passed. 14, 15 V. c. 92, s. 11.

Extent and duration of Act.

**16.** This Act shall apply only to lands held in free and common soccage, in the Townships in Lower Canada, and shall continue in force, until the end of the Session next after the first day of January one thousand eight hundred and sixty, and no longer. 14, 15 V. c. 92, s. 12.

## C A P . X L V I .

An Act respecting fraudulent seizures of township lands.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. If any person knowingly, wilfully and maliciously causes or procures to be seized and taken in execution, any lands and tenements, or other real property, situate within any township in Lower Canada, not being, at the time of such seizure, the *bonâ fide* property of the person or persons against whom, or whose estate, the execution is issued, knowing the same not to be the property of the person or persons against whom the execution is issued, the person so offending shall be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the court before whom the trial and conviction is had, to be imprisoned for any time not exceeding one year, or to be imprisoned and kept at hard labour in any common gaol or house of correction, for any term not exceeding six months. 6 W. 4, c. 26, s. 1,—and see 14, 15 V. c. 2, s. 2.

Knowingly seizing in execution township lands not belonging to the defendant to be a misdemeanor.

Punishment.

2. Nothing in this Act shall debar any person injured by such fraudulent seizure from having his action in damages against the party offending as aforesaid. 6 W. 4, c. 26, s. 2.

Right to damages saved.

## C A P . X L V I I .

An Act respecting the fraudulent conveyance of real estate charged with hypothec, after proceedings to enforce payment thereof.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Sale, &c., made after proceedings for recovering hypothecary debt to be void.

1. Every sale or alienation of any nature whatsoever of any immoveable charged with hypothec duly registered prior to such sale or alienation, after proceedings have been commenced for the recovery of the debt with the payment of which such immoveable is charged, shall be null and void as regards the creditor who has commenced such proceedings, and such creditor may proceed against the defendant in such action to the seizure and sale of such immoveable as though such sale or alienation had never taken place :

Proviso: how the purchaser may prevent the sale of the property by the Sheriff.

2. Provided that in such case the purchaser of the immoveable so seized may prevent the sale thereof, by tendering by his opposition and depositing in the office of the Sheriff, the amount of the debt with which such immoveable is charged, including principal, interest and costs, and not otherwise, and such deposit having been so made, the Sheriff shall forthwith pay to the plaintiff and prosecuting creditor the amount of the debt including capital, interest and costs, and no such opposition shall have the effect of preventing or suspending such seizure and sale, if it be not accompanied with such tender and deposit. 22 V. (1859) c. 51, s. 1.

C A P . X L V I I I .

An Act respecting Licitations.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

VOLUNTARY LICITATIONS.

For avoiding inconvenience, delay and expense to parties interested, in cases of voluntary licitation—

1. Whenever it is intended to sell or otherwise alienate the real estate of minors or of any other person whose real estate can only be sold or alienated according to the formalities required for the sale or alienation of the real estate of minors, the Notary, before calling a meeting of the relations and friends for that purpose, in conformity to law, shall cause two *experts* to be appointed who shall not be related to any of the parties or to their legal representatives, or interested in the matter in question, (mention whereof shall be made in the Deed of *Expertise*,) one of which *experts* shall be appointed by the tutor, and the other by the *subrogé* tutor of the minors, (or in the case of the real estate of any other person, subject to the same formalities as provided by law for the real estate of minors, one *expert* shall be appointed by the curator to such person, and the other by one of the relations nearest of kin to, or appearing to be most interested in such person,) of which appointment an *Acte* shall be drawn up before Notaries in the form of Schedule A ; to which *experts* any Notary shall, by this Act, be authorized to administer the oath, which oath shall be taken (in the form of Schedule B) by the said *experts*, before entering upon their duties :

*Experts* to be appointed to ascertain the value of the real estate to be sold or alienated.

Oath to be taken.

2. The said *experts* shall then proceed to ascertain the value of such real estate, and if the sale thereof shall be required on account of indivisibility, they shall also proceed to ascertain whether it cannot be conveniently divided, and shall make their report thereon by *Acte* before Notaries, delivered *en Brevet*, in the form of Schedule C ;

Duty of the *experts*.

3. Any Notary may thereupon summon before him the relations and friends who are to compose the said meeting ; he shall administer the usual oath to the persons present at such meeting, and shall read to them the contents of the *Acte* of declaration of the persons requiring such meeting, and the contents of the *Acte* of *Expertise* aforesaid, and shall take their advice, and prepare an *Acte* in the form of Schedule D, mentioning therein the names and the age of the minors, the degrees of relationship, the quality and residences of the persons composing such meeting, and giving therein a description of the real estate. 16 V. c. 203, s. 1, and see 18 V. c. 17.

Meeting of relations and friends.

Proceedings to be transmitted to Judges for homologation.

2. The Petitioner shall transmit to the Judges of the Superior Court, or the Judge of the Circuit Court, in the proper District or Circuit, all the originals of the proceedings above mentioned and submit with them a Petition (which every Notary is hereby authorized to certify in the usual manner) setting forth succinctly the object and purpose of the said proceedings without any special designation whatever, in order that the same may be homologated, if they ought so to be, which Petition shall be in the form of Schedule E:

Acte of homologation.

2. If the Judge to whom such proceedings are submitted, homologates the *avis de parents*, he shall place his Acte of homologation and ordinance in the form heretofore made use of in like cases, at the foot of the Acte containing the *avis de parents*, and the whole shall be deposited with the other proceedings in the Archives of the office of the Court, in order that copies thereof may be given to parties entitled thereto; and if the Judge to whom the proceedings are referred thinks proper to refuse to homologate them, he shall state his reasons for so doing at the foot of the Petition, and shall affix his signature thereto. 16 V. c. 203, s. 2.

If Judge declines to homologate.

#### FORCED LICITATIONS.

And in order to provide a more simple and less expensive mode of proceeding to the forced licitation of immoveables held *par indivis* in Lower Canada:

Notice to be given of sale of property subject to licitation.

3. In any case in which a licitation is ordered, the party prosecuting the same shall cause to be inserted three times during the space of four months in the *Canada Gazette*, a public notice setting forth that the immoveables subject to licitation will be put up to auction and adjudged to the highest bidder at a sitting of the Superior Court held after the expiration of four months from the date of the first insertion of the said notice in the *Canada Gazette*; which said notice may be in the form of the Schedule F hereunto annexed. 18 V. c. 110, s. 1.

How notice shall be given.

4. The above mentioned notice shall in like manner be published on the three Sundays immediately preceding the day fixed for the adjudication, at the door of the Church of the Parish in which the said immoveables lie, and if there be no Church, or if the said immoveables be situate without the limits of any Parish, then in the most public place of the locality; and the said notice shall be posted up at the door of the said Church or at the said most public place, on the first Sunday on which it is so published. 18 V. c. 110, s. 2.

Adjudication thereafter to have effect of *décret*.

5. The adjudication made after the above prescribed formalities shall have the effect of a *décret*, and shall purge the property from all charges, privileges, hypothecs and vested rights (*droits ouverts*) in the same manner as adjudication upon execution

execution against immoveables, excepting the charges entered in the Register of charges, as regards the said licitation. 18 V. c. 110, s. 2.

6. Every opposition *afin d'annuler, afin de charge, or afin de distraire* in respect of immoveables under licitation, shall be filed in the office of the Court by which the licitation has been ordered, at least fifteen days before the day fixed for the adjudication thereof; and on failure to file such opposition, the legal recourse of the party who has neglected to file his opposition, shall be converted into an opposition *afin de conserver* on the moneys arising from the adjudication. 18 V. c. 110, s. 4.

When oppositions must be filed.

7. In all cases in which any opposition *afin d'annuler, afin de charge, or afin de distraire* so filed, cannot be tried before the day fixed for the sale, the licitation shall be suspended until judgment has been rendered thereon, and the Court may appoint another day for the adjudication, notice being given by the parties interested, in the said *Canada Gazette*, of the day so appointed, which said notice shall be published once at least ten days before that appointed by the Court as aforesaid. 18 V. c. 110, s. 5.

Licitation to be suspended till opposition tried.

8. The adjudication shall be made in accordance with the conditions contained in the list of charges approved by the Court after hearing the parties thereupon, and the purchase money shall be disposed of in the manner provided for the disposing of moneys arising from execution against the immoveables of any debtor by virtue of a judgment. 18 V. c. 110, s. 6.

How adjudication shall be made.

9. The purchaser of any immoveables sold as aforesaid shall, in default of payment of the price of sale, be subject to the same penalties and obligations as any other purchaser of property sold under execution. 18 V. c. 110, s. 7.

In case of failure by purchaser to pay price of sale.

10. All oppositions *afin de conserver* must be filed before the expiration of the six days next after the adjudication. 18 V. c. 110, s. 8.

Oppositions à fin de conserver.

11. Whenever any real property is situate partly in one District or Circuit and partly in another, the whole of such real property may be partitioned (*partage*) or sold by licitation (*licité*) as if the said real property were wholly situate in the District or Circuit in which any judgment in such action has been rendered, and any proceeding *en licitation* or *en partage*, may be commenced, prosecuted, allowed and carried into effect in one or the other of the Districts or Circuits in which the real property in question is partly situate, at the option of the applicant, as if such real property were wholly situate in the District or Circuit in which the applicant has chosen to commence his proceedings. 14, 15 V. c. 60, s. 2.

Where proceedings may be had, if property situated partly in one and partly in another district.

## SCHEDULE A.

On the                    day of                    in the year one thousand eight hundred and                    , at                    o'clock in the                    noon, before the undersigned Public Notaries for Lower Canada, residing in the District of                    came and appeared A, residing                    of the one part, and B, residing                    of the other part, who have appointed, that is to say, the said A                    the person of                    and the said B                    that of                    as *Experts* for the purpose of proceeding to the inspection of the real estate belonging to                    described in the declaration made by the said                    by *Acte* before *Mtre.*                    , Notary, (or one of the undersigned Notaries,) to ascertain the value thereof, (and if the sale is demanded on account of indivisibility) and whether or not it can conveniently be divided.

## SCHEDULE B.

I,                    and I,                    , do make oath and swear that I will faithfully proceed to the performance of what is required of me by the *Acte* of my appointment, executed before *Mtre.*                    , Notary, and his Colleague, on the                    and that I will make a true report of my opinion on the whole matter, without favor or partiality for any of the parties interested in the matter in question. So help me God.

Sworn before us the undersigned Notaries.

## SCHEDULE C.

On the                    day of                    in the year one thousand eight hundred and                    at                    o'clock in the                    noon, before me the undersigned Public Notary for Lower Canada, residing in the District of                    came and appeared                    the *experts* appointed by the *Acte* above executed by the undersigned Notaries, on                    who declare that having previously made oath as appears by the Certificate hereunto annexed, they proceeded on the day of                    to the inspection of the real estate, appurtenances and dependencies mentioned and described in the declaration of                    received by *Mtre.*                    , Notary, the                    , and after due examination and obtaining every information necessary for the purposes mentioned in their said *Acte* of appointment, they value and estimate the said real estate,                    (if there be several immovables, they should be valued separately,) and further, (if the sale is made on account of indivisibility) they declare that it cannot conveniently be divided.

The said *experts* further declare that they are not related to the parties interested in the matter in question, nor to their legal representatives.

*Acte* whereof is delivered *en Brevet* at

#### SCHEDULE D.

On the                    day of                    in the year one thousand eight hundred and                    at                    o'clock in the noon, before me, the undersigned Notary Public for Lower Canada, residing in the District of                   , came and appeared                   , who affirms that in conformity which the declaration made by *Acte* before *Mtre.*                   , Notary, bearing date the                   , for the purpose of obtaining authority to sell, for the reasons therein set forth, the real estate belonging to                   , therein designated and described as follows, to wit: (*here describe the real estate*) he did for the said purpose cause to be summoned before us, to wit:

                  in default of relations, requiring us, they being present, to receive their advice as to the contents of the *Acte* of declaration aforesaid, and the parties above named having appeared, we have caused to be read the said *Acte* of declaration, the report of the *experts* made before *Mtre.*                   , Notary, and his Colleague, and have taken and received from them the necessary oath, and such oath having been made, they have all unanimously declared that they are of opinion that

(*Should there be a division of opinion, mention the same, and give the reasons therefor.*)

#### SCHEDULE E.

Province of Lower Canada, }  
District of                    }

To the Honorable the Judges of the Superior Court (*or the Judge of the Circuit Court,*) &c. &c. &c.

A. (*addition and place of residence*) humbly represents that he has caused the relations and friends to be consulted by *Mtre.*                   , Notary, at                    on the day of                   , and has caused to be fulfilled all the proceedings by law required to be had in order to                    and submitted for your approval. And he therefore prays that your honors will take these proceedings into consideration and homologate them, if they ought to be so homologated, and you will do justice.

At                    the                    one thousand eight hundred

*These five Schedules from 16 V. c. 302.*

SCHEDULE

## SCHEDULE F.

Lower Canada,  
District of

}

LICITATION.

Public notice is hereby given that under and by virtue of a judgment of the Superior Court sitting at \_\_\_\_\_, in the District of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_, in a cause in which A. B., (*description at length*) is plaintiff and C. D. (*description at length*) is defendant, ordering the licitation of certain immoveables described as follows, to wit: (*here insert the description of the property to be sold*) the property above described will be put up to auction and adjudged to the last and highest bidder on the \_\_\_\_\_ day of \_\_\_\_\_ next, sitting the Court, in the Court Room of the Court House in the said city (*or town*) of \_\_\_\_\_, subject to the charges, clauses and conditions contained in the list of charges, deposited in the Office of the Clerk of the said Court; and any opposition *afin d'annuler*, *afin de charge* or *afin de distraire*, to the said licitation, must be filed in the Office of the Clerk of the said Court fifteen days at least before the day fixed as aforesaid for the sale and adjudication, and oppositions *afin de conserver* must be filed within the six days next after the adjudication, and failing the parties to file such oppositions within the delays hereby limited, they will be foreclosed from so doing. 18 V. c. 110.

C A P . X L I X .

An Act respecting the Sale under execution of immovables of unknown or uncertain owners.

**F**OR avoiding inconvenience and useless expense to hypothecary Creditors by reason of the proprietors of immovables charged with hypothecs being in certain cases unknown or uncertain : Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. In all cases in which the proprietor of any immovable charged with hypothec is unknown or uncertain, the hypothecary creditor to whom is due the capital sum secured by the hypothec, or at least two years' arrears of rent or interest thereupon, may present a petition to the Superior Court for the District in which the immovable is situate, and the following matters shall be contained and set forth in the said petition :

Hypothecary creditor may present a petition containing—

1. It shall contain a correct description of the immovable, setting forth the limits and boundaries thereof, and giving the street of the city or town, or the range or concession of the parish or township in which it is situate, the name of the occupier, if the immovable be occupied, the name of the last known occupier, if it be unoccupied, and the period for which it has remained so, and the names of all the known proprietors since the date of the instrument creating the hypothec ;

Description of Property ;

2. It shall contain all the allegations necessary to establish the debt and the hypothec, and further, such facts and circumstances as will tend to prove that the proprietor of the immovable is unknown or uncertain, and that the petitioner has *bonâ fide* and carefully made the necessary search in order to discover the proprietor ;

Allegations of fact ;

3. It shall conclude by praying, that public notice be given to the proprietor as hereinafter provided, and that, failing such proprietor to appear, the Court will order the sale of the immovable to be proceeded with as hereinafter provided ;

Its prayer ;

4. The petition shall be accompanied by a certificate, given by any person competent for that purpose according to the practice of the Court, setting forth that the petitioner or his agent have made oath of the truth of the allegations therein contained. 18 V. c. 106, s. 1.

Certificate to accompany it.

2. The Court shall examine the documents produced in support of the petition, and shall order such proof as it deems necessary, and being satisfied of the truth of the allegations of the petitioner, shall order the publication of a notice in the form of Schedule A hereunto annexed. 18 V. c. 106, s. 2.

Court may order proof, and notice.

Publication of notice in newspapers.

3. The notice so ordered shall be inserted once a week for four consecutive weeks in a newspaper published in the English language and also in a newspaper published in the French language, in the District in which the immoveable is situate, and if no such newspapers be published in such District, then the publication of the said notice shall be made in the newspapers published in one of the adjacent Districts. 18 V. c. 106, s. 3.

And at church doors.

4. The notice shall be published and posted up in the French and English languages at the door of the Church immediately after Divine Service on Sunday, in the Parish in which the immoveable is situate. 18 V. c. 106, s. 4.

Further proceedings on petition.

5. If within the period of two months after the last insertion of the notice in the newspapers and after the publication at the Church door, no person has appeared as hereinafter provided, the petitioner shall proceed upon his petition as in any case in which the defendant makes default; and if the Court is of opinion that all the formalities have been fulfilled, and that the allegations of the petition are sufficient and sustained, the Court shall give judgment declaring the immoveable hypothecated, and ordering that it be sold to meet the claim of the petitioner. 18 V. c. 106, s. 5.

Judgment.

Execution of judgment.

6. Upon such judgment, an order of the Court shall issue, upon the application of the petitioner, addressed to the sheriff of the District, and the same proceedings in all respects shall be taken by virtue of such order, as are taken by virtue of a Writ of *feri facias de terris*; and the Writ or order shall be in the form of Schedule B, and the Court shall dispose of the proceeds of the sale of the immoveable, in the same manner as in ordinary cases of Sheriff's sale and the sale shall have all the effects of a *decret*. 18 V. c. 106, s. 6.

Disposal of proceeds of sale.

Proprietor may appear and answer petition.

7. The proprietor of the immoveable may enter an appearance to answer the petition, in the same manner as in any other action, at any time before the rendering of the judgment ordering the sale of the immoveable, which appearance shall be in the form of Schedule C; and after the expiration of the delay prescribed by section *five*, the petitioner shall file in the office of the Court a declaration *en déclaration d'hypothèque*, against the party appearing, and the same proceedings shall be taken in every respect between the parties and by the Court as in an action *en déclaration d'hypothèque*. 18 V. c. 106, s. 7.

Proceedings in case several proprietors appear.

8. If several persons appear, claiming, in opposition one to the other, to be proprietors of the immoveable, then unless some one of them pays the petitioner the amount of his claim and costs, or offers against the demand of the petitioner such a plea deemed by the Court to be valid in law, the petitioner may, (the delay prescribed by section *five*, having expired,) inscribe the

the cause, giving notice thereof to the parties appearing, and the Court, after having heard the parties, may render judgment in conformity with section *five*, which judgment shall be executed in conformity with section *six*. 18 V. c. 106, s. 8.

**9.** In case several parties appear claiming to be proprietors, in opposition one to the other, and one or more of them sets against the demand of the petitioner a plea deemed by the Court to be valid in law, judgment shall be rendered upon any such plea before proceeding to judgment in conformity with section *eight*, but no party appearing shall be admitted to make such plea unless he establish, *prima facie*, that he is proprietor of the immoveable. 18 V. c. 106, s. 9.

Contestation of petition to be first adjudicated on.

**10.** In case several parties appear and the defence made by any one of them is declared good, the case shall be dismissed and the Court shall adjudge costs to the parties entitled thereto, but if all the oppositions be dismissed, judgment shall be rendered in conformity with section *eight*. 18 V. c. 106, s. 10.

In case defence be sustained.

**11.** When a judgment ordering a sale has been rendered, in conformity with sections *eight* and *ten*, the parties, who have appeared, shall have their claims adjudicated upon by the Court, after the sale of the immoveable, and the same proceedings shall be had in respect of them, as in the case of the contestation of an opposition, and the Court shall adjudge the balance of the proceeds of sale, (all the hypothecs and costs having been first paid,) to any one of the parties who proves his right of property, but this shall not retard the homologation of the Report of Distribution between the petitioner and the other hypothecary creditors who have made their oppositions. 18 V. c. 106, s. 11.

Proceeds of sale, distribution of.

**12.** Any proprietor, who has not appeared before the rendering of the judgment ordering the sale, may, nevertheless, at any time, present a petition praying that he may receive the balance of the proceeds of the sale of the immoveable hypothecated, and the Court, upon proof by him of his right of property, shall order that the balance be paid to him. 18 V. c. 106, s. 12.

Proprietor not having appeared may, at any time, claim balance.

**13.** The Prothonotary shall publish, in the month of January in each year, a list of the unadjudged balances remaining in his hands by virtue of this Act, which list shall be in the form of Schedule D. 18 V. c. 106, s. 13.

List of unadjudged balances to be published.

**14.** The Superior Court shall prepare Rules of Practice, providing for any proceedings for which sufficient provision is not made by this Act, and a Tariff of Fees to be received by the officers of the Court for the duties imposed upon them by this Act. 18 V. c. 106, s. 14.

Rules of practice and tariff of fees.

Service of judgment need not be made.

Exception.

**15.** It shall not in any case be necessary (except in the case provided for by section seven,) to cause service to be made of any judgment obtained by virtue of this Act, and it shall not be necessary to cause service to be made of any judgment *en déclaration d'hypothèque* obtained against a debtor absent from this Province, or who has no known domicile therein. 18 V. c. 106, s. 15.

In case of known proprietors holding with others unknown.

**16.** In cases where there are one or more known proprietors holding conjointly with unknown or uncertain proprietors, the known proprietor may be sued as joint holder with unknown or uncertain proprietors; and the form of notice to be given shall in such case be changed accordingly and proceedings may be taken with respect to the unknown or uncertain proprietors, in the manner provided by this Act. 18 V. c. 106, s. 16.

Application of this Act.

**17.** The word "proprietor" in this Act includes usufructuaries or any other holders, in so far as such usufructuary or any other holder may, by the law now in force, exercise the rights of the proprietor, and it also includes co-proprietors *par indivis*. 18 V. c. 106, s. 17.

## SCHEDULE A.

### *Form of Notice in the Newspapers.*

Province of Canada, }  
District of                    }

(*Name of place.*)

day of

Know all men that A. B. of the Parish of \_\_\_\_\_ in the District of \_\_\_\_\_, by his petition filed in the office of the Court under No. \_\_\_\_\_, prays for the sale of an immoveable situated in the said District, to wit: A land containing \_\_\_\_\_ arpents in front, by \_\_\_\_\_ in depth, in the first range of the Seigniori of \_\_\_\_\_, in the Parish of \_\_\_\_\_, in the County of \_\_\_\_\_, bounded as follows, to wit: \_\_\_\_\_ which land is now occupied by D. C. (or has not been occupied for \_\_\_\_\_ years, and was last occupied by N.) and the said A. B., alleging that by Deed of \_\_\_\_\_ (entered into by D. E. of \_\_\_\_\_ before F. G., Notary, (or as the case may be) at \_\_\_\_\_ on the \_\_\_\_\_ a hypothec was constituted upon the said immoveable hereinabove described, for the sum of \_\_\_\_\_, claims from the present proprietor of the said immoveable the sum of \_\_\_\_\_ due to him for

The

The said A. B. further alleges that the present proprietor of the said immoveable is unknown (or uncertain) and that the known proprietors since the date of the said Deed of , have been N. G. and F.

Notice is therefore given to the proprietor of the immoveable to appear before this Court within two months, to be reckoned from the fourth publication of this present notice, to answer to the *demande* of the said A. B., failing which, the Court will order that the said immoveable be sold by Sheriff's sale (*décret*.)

First insertion.

H. P.  
Prothonotary.

### SCHEDULE B.

*Form of Writ for sale of the immoveable.*

To the Sheriff of the District of

Whereas the following notice hath been given in conformity with the forty-ninth Chapter of the Consolidated Statutes for Lower Canada (*recite the notice*); and whereas judgment was rendered on the day of , ordering the sale of the immoveable described in the said notice, you are hereby enjoined to make the ordinary announcements thereof and to sell the said immoveable in order to the payment to the said A. B., of the sum of and taxed costs, and you shall make a return of this Writ and of the oppositions which have then been placed in your hands, on the

H. P.

Attest, A. F.,  
Judge.

### SCHEDULE C.

*Form of Appearance.*

I, B. C., appear to answer to the petition of A. B., as proprietor of the immoveable described in the said petition, by virtue of (*state by virtue of what title you are proprietor, and give the dates of the Acts or Deeds by virtue of which you are such proprietor.*)

### SCHEDULE D.

*Form of List to be Published.*

List of sums remaining unadjudged in the hands of the Prothonotary of the Superior Court for the District of , under the forty-ninth Chapter of the Consolidated



C A P . L.

An Act respecting Ground Rents, Constituted Rents and Life Rents.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

GROUND RENTS.

1. From and after the fourth day of May, one thousand eight hundred and fifty-nine, there shall not be created under any description of instrument whatsoever, any perpetual irredeemable ground rents, (*rentes foncières perpétuelles non rachetables*), nor yet any rent to affect real estate irredeemably for a term of more than ninety-nine years, or for more than three lives ; but all such rents as aforesaid, if stipulated, shall at all times be redeemable at the option of the debtor thereof, and be subject to all the laws and rules governing ordinary constituted rents, (*rentes constituées à perpétuité*) as to the redemption thereof and otherwise, save and except as to prescription which shall be that of thirty years for such rents and the arrears thereof. 22 V. (1859,) c. 49, s. 1.

No perpetual irredeemable rent to be created hereafter, &c.

2. It shall be lawful for the parties to any instrument for the transfer of real estate (*titre translatif de propriété immobilière*), whether by sale or otherwise, to regulate thereby, as they see fit, the terms on which any rent which they thereby create, shall be redeemable, and also to stipulate that the same shall not be redeemable until after the expiration of any period not exceeding thirty years ; and if in any case the parties stipulate that any such rent shall not be redeemable until after the expiration of any period not exceeding ninety-nine years but exceeding thirty years, such stipulation shall for such excess over the period of thirty years be null and void. 22 V. (1859,) c. 49, s. 2.

Terms of redemption may be stipulated by deed creating any rent.

But the period of non-redemption shall not exceed 30 years.

3. All rents, other than those hereinafter excepted, which, before the day first above mentioned, have been charged upon any real estate, by any instrument for the transfer thereof (*titre translatif de propriété*) whether by sale or otherwise, either as perpetual irredeemable ground rents (*rentes foncières perpétuelles non rachetables*), or as rents to affect such real estate irredeemably for a term of more than ninety-nine years, or for more than three lives, if owned by any Corporation or by any party capable in law of alienating the same, shall hereafter be redeemable at the option of the holder (*détenteur*) of such real estate, on any day whereon any payment (*arrérages*) of such rent shall fall due ; but no such rent shall be so redeemable if the right of the owner (*créancier*) thereof be only conditional or limited, or if such rent be charged by emphyteotic lease (*créé à titre de bail emphytéotique* :

All rents already created to be redeemable, if owned by a Corporation or party capable of alienating them and on what conditions.

Exception.

Proviso: notice to be given.

2. Provided that such holder shall have given one full year's notice to the owner (*créancier*) of the rent, of his intention to redeem the same on such day, and shall on such day duly pay or tender the full amount of the capital of such rent, and of all arrears (*arrérages*) thereof;

Proviso: if not redeemed pursuant to notice.

3. And provided also, that if, after such notice given, payment or tender be not made on such day, the owner (*créancier*) of the rent shall be under no obligation by reason of such notice to receive the same, but in his option may either insist on the continued payment of such rent as stipulated, or may at any time within one year thereafter sue for and recover, as well personally against the party who may have given such notice as hypothecarily against any third party holder (*detenteur*) of the real estate, the full amount of such capital and arrears, with interest thereon from such day, and liquidated damages at the rate of ten per centum thereon, and costs of suit. 22 V. (1859,) c. 49, s. 3.

Corporations may invest redemption money in or upon real estate.

4. It shall be lawful for any corporation to invest in real estate, or upon security thereof, the amount of the capital of any rent redeemed or recovered under this Act. 22 V. (1859,) c. 49, s. 4.

Calculation of capital of a rent where it is not stated.

5. Whenever the amount of the capital of any rent to be redeemed under this Act has not been stated in the instrument creative thereof, the same shall be calculated from the amount of such rent at the rate of five per centum per annum, if the date of such instrument be prior to the fourth of March, one thousand seven hundred and seventy-seven, and at the rate of six per centum per annum, if the date thereof be on or subsequent to that day; and whenever such rent is wholly or in part payable in kind, the value of the same shall be calculated for the redemption thereof, at the then fair money value of the articles wherein the same is so payable. 22 V. (1859,) c. 49, s. 5.

Act not to apply to certain cases.

6. Nothing in this Act contained shall be construed to affect in any wise howsoever any seignorial rent (*rente seigneuriale*), or any rent created or to be created under Chapter forty-two of these Consolidated Statutes, or any Act consolidated in the said Chapter, or any rent stipulated by any lease or grant from the Crown, or from any department of the Government, or to render redeemable any *rente viagère* created before or after the fourth day of May, one thousand eight hundred and fifty-nine, for not more than three lives, or to abridge or otherwise alter the term now fixed by law for the prescription of any irredeemable rent heretofore created and hereby made redeemable or of the arrears thereof. 22 V. (1859,) c. 49, s. 6.

Not to affect prescription.

OPPOSITIONS AFIN DE CHARGE FOR CERTAIN RENTES.

7. In order more effectually to secure the payment of constituted rents (*rentes constituées*) and life rents (*rentes viagères*) in Lower Canada: The holders of constituted rents (*rentes constituées*) and of life rents (*rentes viagères*) secured by privilege and hypothec of *bailleur de fonds*, may proceed by opposition *afin de charge* for the preservation of their rights in respect of such rents. 19, 20 V. c. 59.

Holders of *rentes constituées* or *viagères* may proceed by oppositions *à fin de charge*.

## C A P . L I .

## An Act respecting the Improvement of Water-Courses.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Proprietors of lands may improve water-courses adjoining them.

**1.** Every proprietor of land may improve any water-course bordering upon, running along or passing across his property, and may turn the same to account by the construction of mills, manufactories, works and machinery of all description, and for this purpose may erect and construct in and about such water-course, all the works necessary for its efficient working, such as flood gates, canals, embankments, dams, dykes, and the like. 19, 20 V. c. 104, s. 1.

But shall be liable for all damages.

**2.** The proprietors or lessees of any such works shall be liable for all damages resulting therefrom to any person whomsoever, whether by the too great elevation of the flood gates or otherwise. 19, 20 V. c. 104, s. 2.

Damages to be ascertained by experts.

**3.** Such damages shall be ascertained by *Experts* to be appointed by the parties interested, in the ordinary manner; and in default of either of the said parties to appoint such *Expert*, one of the *Experts* of the municipality, to be selected by the Warden, shall act; In case of difference of opinion, the two *Experts* appointed shall choose a third; The *Experts* shall be sworn before a Justice of the Peace faithfully to perform their duty as such; In assessing the damages and fixing the compensation to be paid, the *Experts*, if the case requires it, may set off against the whole or any part of such damages, any increased value which the property of the claimant has acquired by reason of the erection of such works, mills, manufactories or machinery. 19, 20 V. c. 104, s. 3.

Proviso as to set off in certain cases.

Works to be demolished if damages are not paid.

**4.** In default of payment of the damages and indemnity so awarded within six months from the date of the report of the *Experts*, together with legal interest to be computed from the said date, the party by whom the payment is due shall demolish the works which he shall have erected, or they shall be so demolished at his costs and charges, upon judgment to that effect rendered, the whole without prejudice to the damages and interest already incurred. 19, 20 V. c. 104, s. 4.

## C A P . L I I .

An Act respecting the repeal of the Law *Æde*.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. Whereas the Law *Æde*, whereby the landlord or proprietor has a right to go into possession of the house leased and evict his tenant therefrom before the expiration of the lease, for the purpose of occupying himself the premises, ought to be repealed,—therefore, so far as respects the right above mentioned, the said Law *Æde* is repealed; and it shall not be competent to any landlord or proprietor, upon any lease made after the fourteenth day of June, 1853, to evict his tenant under or by any such Law for the cause aforesaid, unless the said right has been expressly reserved by the lease, and in that case at least one month's previous notice shall be given, unless it be otherwise stipulated in the said lease. 16 V. c. 204.

Recital.

Law *Æde* repealed as to leases made after 14th June, 1853.

## C A P . L I I I .

An Act respecting the abolition of *Retrait Lignager*.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Right of *retrait lignager*, abolished.

1. The right of *Retrait Lignager* and all rights of action resulting therefrom or contingent thereupon, are abolished, and the seventh title of the Custom of Paris and the articles composing the same are annulled and repealed. 18 V. c. 102, s. 1.

Proceedings pending on 30th May, 1855, not affected.

2. Proceedings arising out of the *Retrait Lignager* pending before and on the 30th May, 1855, before Courts of Justice, shall not however be affected hereby. 18 V. c. 102, s. 2.

C A P . L I V .

Act to secure the titles of certain persons naturalized under the Act of Lower Canada, 1st Will. IV, Cap. 53.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

**1.** All parties who have duly complied with the requirements of the Statute of Lower Canada, 1 W. 4. c. 53, are confirmed and maintained in the enjoyment of all Real Property which was in their actual occupation and enjoyment at the time of the passing of the said Act, and which at any time before had been devised and bequeathed to them by Will, Deed or Gift, or otherwise, or of which they took possession and enjoyed in fact,—as if they had been legal Heirs of their deceased parents being Aliens, and in all Rights, Title and Interest in and to such Real Property, and the rents, issues and profits thereof, as fully as any Natural-born Subject of the Crown might, and could, and may and can take, hold and enjoy Real Property devised or bequeathed to him or them, or coming to him or them by right of descent and inheritance ; any Law, Judgment, or Process to the contrary notwithstanding. 12 Vic. c. 198, s. 1.

Parties who have complied with Act 1 W. 4, c. 53, maintained in the enjoyment of property enjoyed by them when said Act was passed.

**2.** Any party having so complied with the said Statute of Lower Canada, and Naturalized by virtue thereof, who by reason of his having been or being an Alien, is disturbed or who has since the passing of that Act been disturbed on such ground, in the actual enjoyment and occupation of any Real Property by him claimed under the said Statute as Heir, Devisee, Donee or Grantee of his father or mother being Aliens, by any party or parties claiming under any Judgment, Order, Decree, Writ, Process or Proceedings of any Court or Courts of Justice at any time rendered by order thereof, may apply by petition to *the Superior Court* in Lower Canada, and upon proof by affidavit or otherwise, that the said party petitioning hath been Naturalized under the said Statute, and upon proof of service of a copy of such petition upon the adverse party or parties at least twenty-one days before the day of presenting such petition, such Court shall make an Order to quash all Writs of Execution and all proceedings under colour of any Judgment or Judgments, or of such Writs and Process, by which such petitioner is disturbed in or deprived of the enjoyment and possession of any Real Property so by him claimed, held, occupied and enjoyed under the said Statute, as Heir, Devisee, Donee or Grantee of his father or mother being Aliens, and upon the making of the said Order all proceedings whatever under such Judgments, Writs and Process shall surcease and determine, and the said Writs and Process shall be quashed and annulled and set aside. 12 Vic. c. 198, s. 2.

Remedy of such parties if disturbed in their possession by parties claiming under judgments, &c.

Court to make an order to quash the proceedings.

Effect of order.

This Act not to  
affect costs  
awarded before  
23rd Novem-  
ber, 1859.

**3.** Nothing herein shall prevent any remedy which any party now has to enforce the payment of costs awarded under any Judgment against any other party Naturalized under the said Statute, and otherwise entitled to claim the protection of this Act, but every remedy which the party having an award of costs is entitled to exercise, shall continue to be exercised as if this Act had never been passed. 12 Vic. c. 198, s 3.

## TITLE VIII.

## TRADE AND COMMERCE.

## CAP. LV.

## Act respecting the Shipping of Seamen.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. The Governor may appoint during pleasure a fit person to be Shipping Master for the Port of Quebec :

Shipping Master.

2. The person so appointed shall, previously to entering upon his duties as such Shipping Master, himself, with two responsible sureties, enter into bonds to Her Majesty, in the penal sum of two thousand dollars each, for the faithful discharge of his duty, which bond shall enure to the benefit of all parties damnified by the misfeasance, malfeasance or nonfeasance of the said Shipping Master, and all parties damnified shall be entitled to recover from him and his sureties before any Court of competent jurisdiction to the amount to which they may have been so damnified ;

To enter into bonds to Her Majesty for the discharge of his duties.

3. The said Shipping Master shall, before entering upon the duties of his office, take and subscribe the following oath, before any of Her Majesty's Justices of the Superior Court in the District in which the Shipping Master resides ;—

Oath to be taken by him.

“ I, A. B., do solemnly swear that I will faithfully and truly perform the office and duty of Shipping Master according to the true intent and meaning of the *Act respecting the Shipping of Seamen* ; that I will not, either directly or indirectly, personally, or by means of any other person or persons on my behalf, receive any fee, reward, or gratuity whatsoever, by reason of any function of my office as Shipping Master, except such as are allowed to me by the said Act ; and I will not directly or indirectly accept of any bill or draft, bond or note, from any Seaman whatsoever ; and that I will act without partiality, favor or affection, and to the best of my knowledge ; So help me God.”

4. The said oath and bond shall be filed and kept among the records of the office of the Registrar of this Province. 10, 11 V. c. 25, s. 1.

Oath to be filed.

2. The said Shipping Master may appoint such and so many Deputies for the said Port, as the Council of the Board of Trade

He may appoint deputies.

Trade

Trade of Quebec deems necessary, and each such Deputy shall have the powers given to him by this Act, and shall take and subscribe the above oath before any of Her Majesty's Justices of the Peace, and the same shall be filed in the office of the Clerk of the Peace for the District of Quebec :

Bonds to be entered into by deputies.

2. Each Deputy so appointed, shall himself, with two responsible sureties, enter into bond to Her Majesty, in the penal sum of eight hundred dollars each, for the faithful discharge of his duties, which bond shall enure to the benefit of all parties damnified by misfeasance, malfeasance, or nonfeasance of such Deputy, and all parties damnified shall be entitled to recover from the said Deputy and his sureties before any Court of competent jurisdiction, upon such bond, by suit or action, to the amount to which they have been so damnified. 10, 11 V. c. 25, s. 2.

Certain persons ineligible as.

3. No person selling any spirituous liquors or groceries, tavern keeper or boarding-house keeper, or bailiff, shall be eligible to the situation of Shipping Master or Deputy. 10, 11 V. c. 25, s. 3.

Fees to Shipping Master on shipment of Seamen.

4. For each Seaman shipped, the Shipping Master shall be entitled to take and receive the sum of One dollar, and for every certificate of Shipment, if required, the sum of Fifty cents, from the Master of the Vessel on board of which such Seaman is shipped or to which he belongs. 10, 11 V. c. 25, s. 4.

Such fees to be funded and after deducting salary, Shipping Master to pay over balance to Receiver General.

5. The fees payable under this Act and received by the Shipping Master, shall be funded, and shall be accounted for by him in the same manner and form as other public moneys are accounted for within this Province ; and after retaining a sum not exceeding one thousand dollars, for each year's service, by way of salary and in lieu of all emoluments of office whatsoever, the Shipping Master shall pay into the hands of the Receiver General for the public uses of the Province, the net balance received as such fees, after deducting necessary expenses and disbursements. 11 V. c. 5, s. 1.

Registry of Seamen.

6. The Shipping Master shall keep a Registry of all Seamen shipped, which shall be open for public inspection. 10, 11 V. c. 25, s. 5.

Certain persons only may provide or engage Seamen.

7. No person not being such Shipping Master or Deputy as aforesaid, or not being the owner, part owner, master or person in charge of a Merchant Vessel, or the Ship's Husband, shall hire, engage, supply or provide a Seaman to be entered on board any Merchant Vessel. 10, 11 V. c. 25, s. 7.

Seamen not to be accepted or engaged in contravention of this Act.

8. No owner, part owner, master, or person in charge of any Merchant Vessel, or Ship's Husband, shall knowingly receive or accept to be entered on board the said Vessel, any Seaman who

who has been hired, engaged, supplied or provided, to be entered on board thereof, contrary to the provisions of this Act. 10, 11 V. c. 25, s. 8

9. Any person guilty of any of the offences above described shall forfeit and pay for each and every seaman hired, engaged, supplied or provided to be entered on board, or for every seaman knowingly received or accepted to be entered on board contrary to the provisions of this Act, any sum of money not exceeding forty dollars, upon conviction thereof, for each offence, although several seamen be included in the same contract, or several seamen be received or permitted to remain at the same time. 10, 11 V. c. 25, s. 9.

Penalty in such case.

10. No person shall employ any person other than such shipping master or deputy, for the purpose of engaging or providing seamen to be entered on board merchant vessels; and any such shipping master or deputy, knowingly employing any other person for the purpose aforesaid, shall forfeit and pay a sum not exceeding forty dollars, and in addition thereto, shall forfeit his office. *Ibid*, s. 10.

Penalty on persons employing other than the Shipping Master to engage Seamen.

11. The owner, part owner, master or person in charge of any merchant vessel or ship's husband, shall not pay in advance, nor give any note in writing or otherwise in the nature of, and purporting to be an advance note for any part of the wages of any seamen hired, engaged, supplied or provided to be entered on board the said ship, until six hours after the ship's articles have been duly signed by the said seaman, and by the master or owner of the said vessel, and then only to the seaman himself, unless such wages or advance of wages be paid in money, in which case the payment thereof may be made to the seaman himself, at any period most convenient after the signing of the said ship's articles as aforesaid; and all payments of wages contrary to the provisions of this Act shall be null and void, and the amount thereof shall be recoverable by the seaman as if they had not been paid or advanced. *Ibid*, s. 11.

No payment of wages in advance to be made to Seamen, until the ship's articles have been signed.

12. If any person demands or receives from any seaman, or from any person other than the owner, part owner, master or person in charge of a merchant vessel, or the ship's husband requiring seamen, any remuneration whatever, either directly or indirectly, for and on account of the hiring, supplying or providing any such seaman, he shall forfeit for every such offence a sum not exceeding twenty dollars. *Ibid*, s. 12.

Penalty on persons receiving fees for hiring Seamen, except from certain parties.

13. No person (other than any officer or person in Her Majesty's service or employment, harbour master, deputy harbour master, health officer or custom house officer) shall go and be on board of any merchant vessel arriving, or about to arrive at the place of her destination, before or previous to her actual

No one to board a vessel without consent of Master.

actual arrival in dock, or at the quay or place of her discharge, without the permission and consent of the master or person in charge of the said vessel :

Penalty.

2. And if any person (other than as aforesaid) goes on board any such vessel before or previous to her actual arrival in dock, or at the quay or place of her discharge, without the permission and consent of the said master or person in charge of the said vessel, he shall for every such offence, forfeit and pay a sum of money not exceeding eighty dollars; and for the better securing the person of such offender, the master or person in charge of the said vessel may take any person so offending as aforesaid into custody, and deliver him up forthwith to any constable or peace officer, to be by him taken before a justice or justices, to be dealt with according to the provisions of this Act. *Ibid*, s. 13.

Penalty on soliciting Seamen to become lodgers.

14. If any person doth, on board any merchant vessel, within twenty four hours of her arrival in any port as aforesaid, solicit any seaman to become a lodger at the house of any person letting lodgings for hire,—or takes from and out of such ship any chest, bedding or other effects of any seaman, except under the personal direction of such seaman, without having the permission of the master or person in charge of such ship, he shall forfeit and pay for every such offence the sum of twenty dollars. *Ibid*, s. 14.

Penalty on demanding more than is due by Seamen, or taking possession of their effects.

15. If any person demands and receives of and from any seaman payment in respect of his board or lodging in the house of such person, for a longer period than such seaman has actually resided and boarded therein,—or receives or takes into his possession, or under his control, any moneys, documents or effects of any seaman, and does not return the same, or pay the value thereof when required so to do by such seaman, after deducting therefrom what is justly due and owing in respect of the board and lodging of such seaman, he shall forfeit and pay a sum not exceeding forty dollars, (over and above the amount or value of such moneys, documents or effects, after such deductions as aforesaid,) which sum shall be adjudged to be forthwith paid to such seaman under the conviction by the justices before whom the offence shall be heard and determined. *Ibid*, s. 15.

Penalties under this Act, how recovered.

16. All penalties and forfeitures imposed by this Act shall be recoverable with costs by summary proceedings before any two justices of the peace residing at or near to the place where the offence is committed, or where the offender is found; and if the sum imposed as a penalty, or adjudged to be paid as aforesaid by any such justices, is not paid, either immediately after the conviction, or within such reasonable time as such justices shall at the time of the conviction appoint, the justices may commit the offender to the common gaol of the district of Quebec,

Quebec, there to be imprisoned only or to be imprisoned and kept at hard labour, according to the discretion of such justices, for any term not exceeding three calendar months, the commitment to be determinable upon payment of the amount and costs :

2. All such penalties and forfeitures shall be paid and applied in manner following, (that is to say,)--one moiety of such penalty shall be paid to the informer or person upon whose discovery or information the same is recovered, and the residue thereof shall be paid to the commissioners or others entrusted with the principal superintendence or conduct of the Marine Hospital at Quebec, and be applied and accounted for as are the moneys by law appropriated towards the support of the said Marine Hospital ;

And disposed of.

3. In all cases of complaints made by or on the behalf of any seaman under this Act, the evidence of such seaman shall be received and taken, notwithstanding he be interested in the matter, but such seaman shall not in any such case where he has been so examined receive any part of any penalty to be imposed, but only such sum as the magistrate before whom the case is heard shall adjudge him to receive for any moneys or effects which appear to have been deposited by him with any such person as aforesaid. *Ibid*, s. 16.

Evidence of Seamen concerned to be received.

17. The justices before whom any person is summarily convicted of any offence against this Act, may cause the conviction to be drawn up in the following form of words or in any other form of words to the same effect, as the case requires, (that is to say) :

Form of conviction.

“ Be it remembered, that on the \_\_\_\_\_ day  
of \_\_\_\_\_ in the year of our Lord  
at the city of Quebec, in the district of Quebec, A. O. is convicted before us, (*naming the justices*) two of Her Majesty’s  
justices of the peace for the said district, for that he the  
said A. O. did (*specify the offence, and the time and place when and where it was committed, as the case may be,*) and  
we the said justices adjudge the said A. O. for his said  
offence to forfeit and pay the sum of (*here state the amount of the fine imposed, and when necessary, add the words over*  
and above the sum of

“ which we the said justices do hereby adjudge to be forthwith  
paid to the said E. F. the Seaman, the same being the value  
of moneys, documents or effects of the said E. F., received  
by or taken into the possession or under the control of the  
said A. O. and we the said justices do also adjudge the said  
A. O. to pay the sum of \_\_\_\_\_ for costs,  
and in default of immediate payment of the said sums of  
“ \_\_\_\_\_ to be imprisoned in the common jail



CAP. LVI.

An Act respecting the Desertion of Seamen.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. In this Act,—the word “vessel” means and includes any ship or vessel used in navigation, whether moved by sails, by steam, or otherwise howsoever except by oars; the word “master” means and includes the master, commander, or other person having charge of any such vessel,—and the word “seaman” means and includes any seaman, landsman, or other person legally bound or engaged to serve on board any such vessel in any capacity, except as master, pilot or apprentice;—the word “apprentice” means any person legally bound to serve as apprentice on board any such vessel;—the word “owner” includes any part owner, and any body corporate owning any such vessel,—and the word “consignee” includes consignees, or any one or more of a number of consignees, of any such vessel.

Meaning of certain words and expressions in this Act.

2. If any person other than a master or other person in the next section of this Act described, either by himself, or by the means of others acting under his orders or control and with his knowledge,—lodges, harbours, conceals or receives any seaman or apprentice, who has deserted from any vessel in the service of Her Majesty, or who, having regularly entered and signed articles of agreement, or being bound by articles of indenture to serve on board of any merchant vessel—*has deserted or absented himself from the same without lawful leave or discharge*, knowing him to be such deserter, and the person so offending, shall, on conviction thereof, for the first offence, forfeit and pay the sum of forty dollars, and for each subsequent like offence, double the said amount :

Penalty on persons harbouring deserters from Her Majesty's or the Merchant service.

3. If such person be an innkeeper or tavernkeeper, his license for keeping a house or other place of public entertainment, shall also, from and after a conviction for every such subsequent offence, be null and void, and not renewable for the space of twelve months, nor until the judgment of the court, before which the offence was tried, has been certified by the clerk of the peace of the district to have been fully complied with and satisfied; and the said clerk of the peace shall furnish such certificate on receiving the sum of twenty-five cents from the party requiring the same;

In case offender be a Tavern-keeper.

3. The suffering any such deserter or person suspected of desertion as aforesaid, to continue in the house, out buildings or premises of the same master or keeper, for the space of three hours between the rising of the sun and the setting of the same,

What shall be deemed har-bouring.

or for the space of any six successive hours, shall be held to be harbouring, concealing, lodging or receiving such deserter or person within the intent of this Act. 47 G. 3, c. 9, s. 2.

Penalty on Masters of vessels in the Merchant service concealing such deserters on board any vessel.

3. If the master of any vessel in the merchant service, or any owner, or consignee, or any agent, servant or person acting on behalf of such owner, or consignee, or any other person acting on the behalf, with the knowledge or under the authority of any such master, or of such owner, or consignee engages, or receives, harbours or conceals on board of any vessel or elsewhere, any seaman, or apprentice, knowing him to be such, who has deserted as hereinbefore mentioned,—or, by himself, or any servant, or agent, by words or with money, or by promises of future reward or compensation, or by any other ways or means whatsoever, directly or indirectly, entices, prevails upon, procures, persuades, or encourages, or endeavours, or attempts to entice, prevail upon, procure, persuade or encourage, any such seaman or apprentice, to desert from the vessel to which he belongs,—every such master or commander, owner or part owner or consignee, and every other person acting on his behalf, or with his knowledge or under his authority shall, for every such offence, forfeit and pay a sum not exceeding two hundred dollars, nor less than eighty dollars, (at the discretion of the court or magistrate, before whom the offence shall be prosecuted,) for every seaman or apprentice received, harboured, concealed, enticed, prevailed upon, procured, persuaded or encouraged, or attempted to be enticed, prevailed upon, procured, persuaded or encouraged to desert as aforesaid :

Not to affect H. M.'s service by sea or land.

2. But nothing in this Act shall extend so to affect Her Majesty's service, by sea or land, as to subject any seaman or any other person whomsoever, for or in respect of his or their entering into Her Majesty's service, nor shall any officer in Her Majesty's service, or any other person acting by or on behalf, or in the service of Her Majesty, be subject to any pains, penalty or punishment, which he would not have been subject to without this Act. *ibid*, s. 3.

How Seamen who have deserted shall be proceeded against.

4. Upon complaint made upon oath before any one of Her Majesty's justices of the peace, by the master of any vessel in the merchant service, or in his absence, by the chief mate, or by any other person having the charge of such vessel, that any seaman or apprentice hath deserted therefrom, or hath conveyed away by himself, or by any other means whatsoever, from such vessel, his clothes or bedding, or those of any other seaman or apprentice or belonging to the said master, mate, or to the owner of such vessel (such seaman or apprentice doing so with the design or intention of deserting or of aiding, promoting or facilitating the desertion of any other person lawfully engaged to serve on board any such vessel,) or that such seaman or apprentice hath absented himself

himself from such vessel, without leave first obtained from the said master for the space of three hours, after the rising of the sun and before the setting thereof, or for the space of six hours after the setting of the sun, or for six hours succeeding each other, although such last mentioned hours commence before the setting of the sun, (unless the person so absenting himself by his engagement, has contracted for an absence of longer duration than hereinbefore mentioned,) or hath refused and still doth refuse to do and perform his duty on board of such vessel or elsewhere, agreeable to his articles of agreement or indenture, the justice before whom such complaint is made, shall, if thereto required, immediately issue a warrant, addressed to and commanding any constable or constables of the district for which such justice acts, to apprehend every such seaman, or apprentice so complained of, and to bring him before such justice, to answer unto such complaint, and to be further dealt with according to law :

Refusal to do duty.

2. If any such seaman or apprentice is by such justice legally convicted of having deserted from such vessel, or of having absented himself from such vessel, without leave, as aforesaid, during such time as aforesaid, or of having refused to do and perform his duty on board of such vessel, and refuses before such justice to return on board of such vessel, or to perform his duty as aforesaid, and does not assign a sufficient reason for such refusal, to the satisfaction of such justice, such justice may commit such person so convicted to the common gaol or house of correction of the district in which the conviction is had, for any time not exceeding twenty days, then to be returned and put on board the vessel, in which such person is bound to serve, provided such vessel has not then taken her departure ;

In case of conviction of desertion or refusal to do duty.

3. If such seaman or apprentice is, by such justice, convicted of having conveyed away by himself, or by any other means whatsoever, from such vessel, his clothes or bedding, or those of any other seaman or apprentice, or belonging to the master or mate, or to the owner of such vessel, such justice may commit the person so convicted to the common gaol or house of correction of the district in which such conviction is had, for any time not exceeding thirty days, then to be returned and put on board the vessel in which he is bound to serve, provided such vessel has not then taken her departure ;

In case Seamen, &c., are convicted of conveying away their clothes, bedding, &c.

4. If any such seaman, or apprentice, so as aforesaid convicted of any of the offences aforesaid, is thereafter legally convicted before any justice as aforesaid, of having deserted from such vessel, or of having absented himself from such vessel without leave, during such time as aforesaid, or of having refused to do and perform his duty on board of such vessel as aforesaid, or of having conveyed away by himself, or by any other means whatsoever, from such ship or vessel, his clothes or bedding, or those of any other seaman or apprentice, or other such

In case of repetition of the offence.

Punishment in such case.

such person so legally engaged as aforesaid, or belonging to the master or mate, or to the owner of such vessel, such justice may commit such person so again convicted, to the common gaol or house of correction of the district in which such conviction, for such second offence, is had, there to remain for the space of forty days, or until the vessel in which such person is bound to serve sails and departs from such district ;

Master of vessel may, at any time, obtain their discharge.

5. But no such seaman or apprentice so convicted for such second offence, shall, under this Act, be detained in such common gaol or house of correction upon such conviction, for such second offence, for any time exceeding forty days ; And the master of the vessel in which any seaman or apprentice, detained or imprisoned in any such common gaol or house of correction, under this Act, is bound to serve as aforesaid, may obtain at any time the discharge of any such seaman or apprentice, so detained or imprisoned for such cause (and for no other) from such common gaol or house of correction, upon application for that purpose to the justice by whom such seaman or apprentice has been committed ; And such justice upon such application shall release and discharge such seaman or apprentice, from such common gaol or house of correction, by warrant of deliverance under his hand and seal addressed to the keeper of such common gaol or house of correction, as the case may require ;

Proceeding when Seamen, &c., who have been committed, are to be sent on board their ships.

6. And previous to the sailing of such vessel, it shall be incumbent on the master or commander thereof, at whose instance any seaman or apprentice, or other person was so committed, to apply to the justice of the peace who granted the warrant of commitment, or in his absence to some other justice of the peace, who shall grant an order in writing directed to the gaoler or keeper of the house of correction, where such seaman or apprentice is detained, immediately to deliver every such seaman or apprentice into the custody of a constable or constables, to be conveyed on board the vessel to which he belongs on such master paying the gaol fees and other reasonable expenses attending such conveyance or delivery. *Ibid*, s. 4.

Certain amount to be paid to Seamen, &c., committed in lieu of provisions.

5. To every seaman, or apprentice, committed for desertion from any vessel, on complaint of the master or commander thereof, to the common gaol or house of correction, such master shall cause to be paid in advance, for each day such seaman or apprentice remains in such gaol or house of correction, the sum of twelve cents and half a cent in lieu of provisions :

In default thereof, Seamen, &c., to be discharged.

2. And in default of such payment by such master, upon representation of such default by such seaman or apprentice, to any one justice of the peace, for the district wherein such seaman or apprentice is so confined (if immediate proof of such payment is not made by such master to the satisfaction of such justice,) such seaman or apprentice, or other person,

person, shall be discharged upon the warrant of such justice under his hand and seal, directed to the gaoler or keeper of such house of correction. 47 G. 3, c. 9, s. 5, and 6 V. c. 5.

6. Any one of Her Majesty's justices of the peace, on complaint before him by the oath of one or more credible witness or witnesses, that any seaman or apprentice, in the sea service, is concealed or secreted in any dwelling-house or out-house, or on board of any vessel, or elsewhere, shall grant a warrant, under his hand and seal, addressed to a constable or constables of the district, commanding him or them to make diligent and immediate search, in and about such dwelling-house or out-house, or on board such vessel, or such other place or places as shall be specified in the warrant, and to bring before him every such seaman or apprentice, found concealed, whether named in the warrant or not :

Justices of the Peace may grant a search warrant to search for Seamen unlawfully harbored or secreted.

2. On failure of such seaman or apprentice, producing to the justice satisfactory proof of being discharged from the vessel to which he last belonged, or of having obtained permission for such absence from those authorized to give the same, such justice shall commit each and every such seaman or apprentice, to the common gaol or house of correction of the district, for any space of time not exceeding one month, or if the ship or vessel from which such seaman or apprentice has deserted be at the time of his apprehension and commitment, within or near the harbour of Quebec, or any where between that and Montreal inclusive, until the time of the sailing of such vessel from Quebec on her outward voyage, when every such seaman or apprentice shall in like manner, as directed for his apprehension, be conveyed on board of such vessel, and delivered to the master thereof, on payment of all legal fees, disbursements and other reasonable expenses attending such conveyance or delivery. 47 G. 3, c. 9, s. 6.

Seamen not giving a satisfactory account of themselves to the Justices, to be committed.

Fees.

7. Any one of Her Majesty's justices of the peace, on information before him, under oath, that any seaman or other person has deserted, or is suspected of having deserted from any of Her Majesty's vessels, or from any vessel in the merchant service, and is or are lodged or harboured in any tavern or other house of public entertainment, or in any house of ill-fame, or in any other house, may issue an order in writing to the master or keeper of every such tavern, house of ill-fame or other house, commanding such master or keeper to furnish him with a correct list of every such person, stating his name and surname as far forth as known to any such master or keeper of every such tavern, house of ill-fame, or other house of public entertainment, or other person whatsoever, how long he has lodged in the said house, and the name of the vessel on board whereof each of them has declared himself to have arrived at the port of Quebec ; and on the refusal or neglect of such master or keeper to comply with such order, within

Justices may issue a search warrant for apprehending deserters who may be concealed in taverns or houses of ill-fame.

within the time therein specified, or his knowingly delivering a false account of any such person, such master or keeper shall forfeit and pay a sum not exceeding forty dollars for each such offence :

Unless person suspected be a tavern-keeper, &c., informer to make oath, as to his belief in the truth of the information.

2. Nevertheless, in cases in which the party giving such information on oath, seeks to obtain such order against any person, not being a master or keeper of such tavern or house of public entertainment or house of ill-fame, such order shall not be given by any justice of the peace, unless the person giving the information deposes on oath, that he verily believes that such person so not being master or keeper of such tavern or house of entertainment or house of ill-fame, doth then harbour or conceal such deserter or person suspected of desertion, and doth also know that the person who has so deserted, or is so suspected of having deserted, is unlawfully and improperly absenting himself from his duty on board the vessel to which he belongs. *ibid*, s. 7.

Penalty on tavern-keepers, &c., receiving a reward for procuring Seamen to serve.

8. If any tavernkeeper or other person keeping a house or other place of public entertainment, exacts or receives from the master of any vessel, any sum of money as a reward for procuring a seaman to serve on board such vessel, such tavern-keeper or person shall, on conviction thereof, forfeit and pay a sum not exceeding eighty dollars, nor less than twenty dollars; and further, on each subsequent conviction, the license of such person to keep such tavern, house or place of public entertainment, shall be null and void, and shall so continue for twelve months, and further until the judgment of the court before which the offence has been tried, is certified by the clerk of the peace of the district to be fully satisfied. *ibid*, s. 8.

Harbor Master of Quebec to provide and distribute blank discharges of Seamen.

9. In order to enable the tavernkeepers and others the better to distinguish between those seamen that are or are not discharged, the harbour master of Quebec shall provide a sufficient number of blank discharges in the form hereunto annexed, countersigned by himself, and shall distribute the same to the masters of all vessels, on their arrival in port, in such number as they severally require, to be by them filled up, signed and delivered to every seaman they discharge; and for each blank form the said harbour master may ask and receive from each master of a vessel requiring the same a sum not exceeding twenty cents :

Penalty on Master refusing such discharge to Seamen entitled.

2. The master of any such vessel who refuses to fill up, sign and deliver such form of discharge to any seaman requiring the same, and entitled to a discharge from such vessel in Quebec, shall forfeit and pay the sum of eighty dollars for each such offence. *ibid*, s. 9.

FORM FOR THE DISCHARGE OF A SEAMAN OR LANDSMAN  
FROM ANY VESSEL.

These are to certify to all whom it may concern, that  
seaman (or landsman) the bearer hereof, aged  
years hair. complexion feet  
high made, is hereby discharged from the vessel  
under my command, and has received his wages, all legal  
stoppages being first made.

Witness, my hand, at Quebec, 18 as  
the law directs. *Ibid*, s. 9.

*Harbour Master of Quebec.*

**10.** Each constable and other officer employed in the execution of any warrant for the apprehension of, or in search of, or for the delivery of any person against whom a warrant is issued by virtue of the foregoing sections of this Act, may demand from the person at whose request such warrant was issued, a reasonable recompense for the time he has been employed, subject to be taxed by the justice of the peace who issued such warrant,—and in cases within the jurisdiction of the court of vice admiralty, according to the legal course of that court,—and recoverable, on refusal of payment, in a summary way by warrant of distress and sale of such person's goods and chattels; which warrant every such justice of the peace is hereby required to grant, under his hand and seal, on proof of such refusal of payment. *Ibid*, s. 10.

Constables, &c., employed to receive a reasonable remuneration.

**11.** Nothing in this Act shall authorize or justify the execution of any warrant or process of any justice of the peace within the jurisdiction of the vice admiralty of this Province, unless such execution has been previously authorized by the judge of the said court of vice admiralty. *Ibid*, s. 11.

As to execution of Justice of the Peace.

**12.** In so far as may be consistent with the provisions of any Act of the Imperial Parliament in force in Lower Canada and with the terms of existing treaties between Her Majesty and foreign powers respectively, and the rights, privileges, and immunities secured to the Consuls, Vice-Consuls, commercial and other duly accredited agents, subjects and citizens of such foreign powers respectively, the foregoing provisions of this Act shall extend and apply to vessels in the merchant service of foreign countries, and to all persons in relation to such vessels, in the same manner as the same extend and apply to vessels in the British merchant service, and to similar persons in relation to such last mentioned vessels:

This Act to extend to foreign Merchant vessels, under certain conditions.

2. The oath of the master of any such foreign merchant vessels, or of any officer or person employed on board thereof, or on board any other vessel of the same country, that to the

Oath of Master of foreign vessel to be proof that any Sea-

best

men is bound to serve.

best of his belief and understanding, any seaman or other person is bound to serve on board such vessel, according to the law of the country to which such vessel belongs, or of the place where such seaman or other person was hired, shall be *prima facie* evidence that he is legally bound to serve on board such vessel, within the meaning of this Act, although he has not regularly entered into or signed articles of agreement, and is not bound by articles of indenture, in the manner required by law with regard to seamen and others engaged or bound to serve on board British vessels ;

No Justice of the Peace to act as regards foreign vessel, without the consent of the parties.

3. And no justice of the peace shall entertain or act upon any complaint or information under this Act, by or against any person belonging to or connected with any such foreign merchant vessel, and not being a subject of Her Majesty, or exercise jurisdiction under this act over or at the instance of any such person, without the consent of both parties to such complaint or information, or the consent in writing of the Consul, Vice-Consul, or commercial or other duly accredited agent of the country to which such vessel belongs, first had and obtained, unless the parties to such complaint or information be subjects or citizens of a country or countries, by the terms of treaties in force between Her Majesty's government and the government or governments of which country or countries it is stipulated that the assistance of British courts and magistrates shall be granted to the subjects or citizens of such country or countries, or one of such parties be a subject or citizen of any such country and the other a subject of Her Majesty. 13, 14 V. c. 25, s. 1.

How fines, &c., shall be recovered.

13. All fines and forfeitures, incurred under this Act, shall be sued for within six months after the offence committed, and recovered in a summary manner before any two or more of Her Majesty's justices of the peace for the district wherein the offence was committed, on the oath of one or more credible witness or witnesses, other than the informer ; and in case of non payment, shall be levied by distress and sale of the offender's goods and chattels, by warrant under the hands and seals of such justices of the peace, directed to a constable or other peace officer, and the overplus, if any, after deducting the penalty and costs of suit, together with the expenses of the distress and sale, shall be returned to the owner ; and for want of sufficient distress, the offender shall be committed, by warrant under the hands and seals of such justices, to the common gaol of the district, for any time not exceeding six months. 47 G. 3, c. 9, s. 12.

Imprisonment for want of distress.

Appropriation of fines.

14. All fines imposed by this Act shall belong, one half to the informer, and the other half shall belong to Her Majesty, and shall be paid to Her Majesty's receiver general, for the public uses of the Province. *ibid*, s. 13.

**15.** This Act shall be, once in each year, publicly read on the first day of the term of the court of quarter sessions for the month of April, during the sittings of the said courts for the districts of Quebec, Montreal and Threè Rivers, respectively, by the clerks of the peace for the said districts, who shall make an entry in the registers of the said courts that it was so read. 47 G. 3, c. 9, s. 14,---and 13, 14 V. c. 25, s. 2.

This Act to be publicly read.

**16.** This Act shall not prevent the prosecution of any offender against chapter forty-three of the Consolidated Statutes of Canada, under the provisions of the said Act ;--nor shall the said Act prevent the prosecution of any offender against this Act under the provisions hereof ;--but any offence against both Acts may be prosecuted and the offender convicted under either, but he shall not be punished under both for the same offence.

Prosecution of offences under cap. 43, Con. Stat. Canada, not affected by this Act.

## C A P. L V I I .

An Act respecting the recovery of Seamen's Wages  
in certain cases.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Masters of ves-  
sels may be  
summoned by  
Seamen before  
two Justices for  
wages due  
when amount  
under §97. 33.

1. In all cases of wages not exceeding ninety-seven dollars and thirty-three cents (*twenty pounds sterling*;) alleged to be due and payable to a seaman, for his service in any vessel belonging to or registered in Lower Canada, any two justices of the peace, residing near to the place where such vessel has ended her voyage, cleared at the custom house, or discharged her cargo, or near the place where the master or owner upon whom, respectively, the claim is made, is or resides, may, upon complaint on oath to be made to such justices by such seaman or on his behalf, summon such master or owner to appear before him, to answer such complaint :

Justices on  
proof of facts  
may make  
order for pay-  
ment.

2. Upon appearance of such master or owner, or, in default thereof, on due proof of his having been so summoned, such justices may examine upon the oath of the respective witnesses of the parties (if there be any), or upon the oath of either of the parties, in case one of the parties should require such oath from the other, before such justices, touching the complaint and amount of wages due, and may make such order for the payment thereof as to such justices appears reasonable and just ;

How amount  
may be levied  
if the order is  
disobeyed.

3. If such order is not obeyed within twenty-four hours next after the making thereof, such justices may issue their warrant to levy the amount of the wages awarded to be due, by the distress and sale of the goods and chattels of the party on whom such order is made, rendering to such party the over-surplus (if any remains) of the produce of the sale, after deducting therefrom all the charges and expenses incurred by the seaman in the making and hearing of the complaint, as well as those incurred by the distress and levy, and in the enforcement of the justices' order ;

Amount may  
be levied on the  
vessel in default  
of other dis-  
tress.

4. And in case sufficient distress cannot be found, such justices may cause the amount of such wages and expenses to be levied on the vessel in respect of the service on board which the wages are claimed, or the tackle and apparel thereof ; and if such vessel is not within the jurisdiction of such justices, then they may cause the party upon whom the order for payment is made, to be apprehended and committed to the common-gaol for a time not less than one, nor more than three months, under each such condemnation. 6 W. 4, c 28, s. 1.

2. If any suit for the recovery of a seaman's wages is instituted against any such vessel or the master or owner thereof, in the court of vice-admiralty, or in any court of record in Lower Canada, and it appears to the court, in the course of such suit, that the plaintiff might have had as effectual a remedy for the recovery of his wages, by complaint to two justices of the peace under this Act, then the judge shall certify to that effect, and thereupon no costs shall be awarded to the plaintiff.

6 W. 4, c. 28, s. 2.

As to costs if  
suit be brought  
in any higher  
Court.

## C A P . L V I I I .

## An Act respecting Voyageurs.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Agreement to be entered into by voyageur on engaging to perform a certain service.

1. Every person who engages as a guide, conductor, canoe-man, batteau-man or winterer, or in any other quality or capacity, to perform a voyage to or from the Province of Upper Canada, or to or from the Indian country, or to winter or to remain there for any space of time whatsoever, (excepting as hereinafter excepted,) shall enter into an agreement for such purpose with the person whom any such person engages, or his agent :

To be made in writing and before a Notary, and to contain certain particulars.

2. Such agreement shall not be valid unless made in writing and executed before a notary, or, where there is not a notary, before two credible witnesses at the least, who can read and write, and who shall sign their names thereto ; and every such agreement shall, besides such other particulars as the parties may agree upon, specify in what quality or capacity the person engages,—what wages he is to receive for his services, and when and where payable, and the voyage or service he is to perform ;

Only a verbal agreement necessary for a voyage within certain limits.

3. But it shall not be necessary for the conductor of any batteau or batteau-man (unless the parties think fit) to enter into any other than a verbal agreement for any voyage within Lower Canada or into Upper Canada, unless such voyage, if into Upper Canada, is to extend beyond the Bay of Quinte. 36 G. 3, c. 10, s. 1.

Proceedings in case voyageur so engaged fails to proceed on the voyage.

2. If any person, so engaged under a written agreement, refuses or neglects to appear at the place agreed upon for the voyage or service for which he is engaged, after being duly notified for that purpose,—or appearing at such place, refuses or neglects to proceed upon the voyage or service for which he has been engaged,—then on complaint and proof of any such refusal or neglect being made by the oath of any person or the agent of any person to whom such offender is engaged, before any justice of the peace,—and such agreement, or an authentic notarial copy thereof, being produced, such justice shall issue his warrant to any constable or other peace officer to apprehend and bring before him, or any other justice of the peace for the district, the person so neglecting or refusing as aforesaid :

Penalty in case he refuses to proceed on the order of the Justice.

2. If such offender does not forthwith, on the order which may be then made by such justice, proceed upon the voyage or service agreed upon,—or if the canoe or batteau in which such person was intended to proceed, has departed,—then unless

unless such person was prevented from appearance or from proceeding by sickness or other unavoidable necessity, proved before such justice, either by the certificate of a licensed surgeon or of a *curé*, or by the oath of at least one credible witness, before such justice, such offender shall, by such justice, be committed to the common gaol of the district, there to remain for the space of fifteen days, unless that the person to whom such offender is engaged, or his agent, sooner applies for such offender being discharged, in which case such justice, or any other justice for the district, to whom such application may be made, may, by order under his hand and seal, directed to the gaoler, cause such offender to be discharged; but no such discharge shall release any such offender from any claim against him by reason of any advances to him made in money or otherwise, on the faith of the agreement by him entered into. 36 G. 3, c. 10, s. 2.

3. If any person as aforesaid engaged under a written or a verbal agreement, who having entered upon the voyage or service for which he is engaged, afterwards absents himself from such voyage or service, without lawful cause, or deserts therefrom, then on complaint thereof, being made upon oath, by the person to whom such offender was engaged, or his agent, or by the person who had the charge of such offender, or by any other person who may have knowledge of the fact, and the agreement for the voyage or service, or an authentic notarial copy thereof being to such justice produced, the said justice shall issue his warrant directed to any constable or other peace officer of the district, to apprehend and bring the offender before him or any other justice of the peace of the district :

In case voyageur deserts or absents without lawful cause.

2. Such justice of the peace, with the assistance of some other justice, or any two justices of the district, shall enquire into the cause of such offender so absenting himself or deserting, and if no lawful cause is proved to the satisfaction of such justices for such absence or desertion, then they shall, by warrant under their hands and seals, commit the offender to the common gaol of the district, there to remain for any space of time not less than one calendar month, and not exceeding three calendar months, without bail or mainprize ;

Penalty for desertion.

3. But no such offender so committed to goal shall be liable to any action or suit for the pecuniary damages suffered in consequence of his so absenting himself or deserting from the voyage or service he had engaged to perform, except only for the amount of the advances in money or goods to such offender made, on the faith of the agreement by him entered into. 36 G. 3, c. 10, s. 3

Offender not liable to action for pecuniary damages.

4. And whereas, since the division of the Province of Quebec into two Provinces, persons employed in the transport of property by the inland navigation, may steal goods, wares or merchandize and evade punishment by the facility of escaping from under

Recital.

Voyageurs stealing goods

may be punished in Lower Canada whether they have been engaged in or out of Lower Canada.

under the jurisdiction wherein the crime may be committed,—every person who engages in Lower Canada, either by written or verbal agreement, to perform any voyage or service to any part of Upper Canada, or to any part of the Indian country, out of this Province; and who in the course of such voyage or service from or to Lower Canada, steals any goods, wares, merchandize or other commodities whatsoever, in or about the transportation of which he is in any wise employed,—and every person who being engaged out of Lower Canada to perform a voyage into the same, does in the course of such voyage steal any goods, ware, merchandize, or other commodities whatsoever as aforesaid,—may be lawfully apprehended for such crime; and if he has any such stolen goods, wares, merchandize or other commodities in his possession or custody within Lower Canada, he may be indicted, tried and punished in any district of Lower Canada, where he has such goods, wares, merchandize or other commodities as aforesaid, in his custody, as if the same had been originally stolen within the limits of such district. 36 G. 3, c. 10, s. 4. *Query—as to the effect of this Act now.*

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## C A P . L I X .

## An Act respecting the Medical Treatment of Sick Mariners.

**H**ER Majesty by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. There shall be levied and collected on every vessel arriving in either of the ports of Quebec and Montreal from any port out of the limits of this Province (except as hereinafter excepted); a rate or duty of one cent and two-thirds of a cent for every ton which such vessel measures, which shall be paid by the master or person in command of such vessel, or by some person on his behalf, to the collector or other chief officer of the customs at the port at which such vessel is first entered, and at the time of making such first entry, which shall contain on the face of it the tonnage of such vessel; and no such entry shall be validly made, or have any legal effect whatever, unless the rate or duty is so paid as aforesaid; and the moneys so received shall be paid by such collector or chief officer to the receiver general of the province, for the purposes hereinafter mentioned: 6 W. 4, c. 35, s. 1.

A certain duty to be collected on all vessels arriving in the Ports of Quebec and Montreal.

2. But no vessel of the burthen of two hundred tons or less, belonging to any party in this province, and trading between either of the said ports of Quebec and Montreal and any other port in British North America, shall be subject to the payment of the said duty. 16 V. c. 166, s. 1.

Certain vessels exempted.

2. The Governor may, by warrant under his hand, pay from time, for the purposes of this Act, and out of any moneys paid under it into the hands of the receiver general, a sum equal to that received as aforesaid at the port of Quebec, to the managers or directors of the marine hospital established at Quebec, and a sum equal to that received as aforesaid at the port of Montreal, to the treasurer of the corporation of the Montreal general hospital, clear in each case of all deductions for the expense of collecting the same:

An amount equal to that collected in each place to be paid by Government to Hospitals therein.

2. And the master or person in command of every such vessel, may send to the said marine hospital at Quebec, and to the said Montreal general hospital, at any hour of the day, (and in case of accident or emergency, at any hour of the night) any sailor or mariner belonging to his vessel, who is sick or who has met with any accident requiring surgical assistance and treatment; and such sick sailor or mariner, or person so sent with a written recommendation from such master or person in command of such vessel, shall be gratuitously received into such hospital, and receive therein such medical and surgical attendance and such other treatment as the case may require, during his illness. 6 W. 4, c. 35, s. 2.

Masters of vessels may send their sick Seamen to such Hospitals where they shall be received gratuitously.

Certain amount may be appropriated for relief of shipwrecked Seamen.

**3.** The Governor may, whenever he deems it necessary, appropriate from the funds arising from the duties imposed by this Act, a sum not to exceed in the course of any one winter six hundred dollars, towards the temporary relief, in such manner as he deems advisable, of shipwrecked or destitute mariners from beyond the seas, and who from misfortune or other unavoidable cause, not originating in desertion from their employ, or from their own misconduct, have been detained in Quebec, or other seaport or place in Lower Canada during the winter, and who can neither procure by labour the means of a subsistence until the return of the season of navigation, nor of proceeding to the nearest seaport where employ may be found. 8 V. c. 12, s. 1.

Expenditure of fund to be accounted for, and vouchers produced.

**4.** Every person entrusted with the expenditure of any portion of the moneys hereby appropriated, shall make up detailed accounts of such expenditure, showing the sum advanced to the accountant, the sum actually expended, the balance, if any, remaining in his hands, and the amount of the moneys hereby appropriated, to the purpose for which such advance has been made, remaining unexpended in the hands of the receiver general; and every such account shall be supported by vouchers, therein distinctly referred to by numbers corresponding to the numbering of the items in such account, and shall be made up to and closed on the tenth day of April and tenth day of October, in each year during which such expenditure shall be made, and shall be attested before a judge of the Superior Court or a justice of the peace, and shall be transmitted to the officer whose duty it is to receive such account, within fifteen days next after the expiration of the said periods respectively. 6 W. 4, c. 35, s. 3.

Accounts to be attested.

Expiring clause.

**5.** This Act shall remain in force until the first day of January, one thousand eight hundred and sixty, and thence until the end of the then next ensuing session of the Provincial Parliament.

## C A P . L X .

## An Act respecting the discharging of the Cargoes of Vessels.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. Whenever any sailing vessel or steamer has arrived at its destination in any port in Lower Canada, and the master thereof or his agent has notified the person to whom the freight is consigned or his agent, either by public advertisement or otherwise, that such freight has reached the place designated in the bill of lading, the person to whom the freight is consigned shall be bound to receive the same within twenty-four hours after notice to that effect has been given to him as aforesaid ;—and thereafter such freight, so soon as placed on the wharf, either direct from the vessel or otherwise, shall be at the risk and charges of the consignee or owner. 22 V. (1859,) c. 55, s. 4.

Consignee bound to receive goods consigned, within a certain time.

2. When the cargo of the vessel consists of coal, such coal shall be discharged at the rate of forty chaldrons *per diem* ; When the cargo consist of metal the freight of which is estimated by the ton, not less than sixty tons shall in like manner be discharged daily ; If the cargo consists of salt or grain, not less than two thousand minots shall be discharged daily ; If it consists of salt in sacks, not less than one thousand sacks shall he discharged daily ; If of sawed lumber, not less than fifty thousand feet shall be discharged daily ; And if of bricks, not less than twenty-thousand of such bricks shall be discharged daily. 22 V. (1859,) c. 55, s. 5.

Time for discharging certain cargoes.

3. All proceedings for the recovery of fines and penalties imposed by this Act shall be had and taken before one or more Justices of the Peace, or before the Superintendent of Police or Recorder, at the place at which the infraction of this Act has occurred, and shall be summary. 22 V. (1859,) c. 55, s. 6.

Proceedings under this Act to be summary, &c.

## C A P . L X I .

## An Act respecting the Inspection of Butter.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

## APPOINTMENT OF EXAMINERS AND INSPECTORS.

Appointment  
of Board of  
Examiners.

1. The Board of Trade in each of the cities of Québec and Montreal may appoint a board of examiners of applicants for the office of inspector of butter, and may from time to time remove such examiners and appoint others in their stead :

Number of  
Members.

2. Each of the said Boards of Examiners shall consist of three fit, proper and skilful persons resident in the city or in the immediate vicinity of the city for which they are to act ; and each examiner shall, before acting as such, severally take and subscribe the following oath, before any one of Her Majesty's Justices of the Peace within the District in which such Examiner resides, who shall administer the same :

Their oath of  
office.

“ I, A. B., do swear that I will not, directly or indirectly, personally or by means of any person or persons on my behalf, receive any fee, reward or gratuity whatever, by reason of any function of my office of Examiner of Applicants for the office of Inspector of butter, and that I will therein well and truly, in all things, act without partiality, favour or affection, and to the best of my knowledge and understanding : So help me God.” 11 V. c. 7, s. 1.

Mayor of Que-  
bec or Montreal  
to appoint an  
Inspector.

2. The Mayor of the said city of Québec or Montreal respectively, shall from time to time, by an instrument under his hand and the seal of the Corporation, appoint an Inspector of Butter for such city, and may, from time to time, remove any such Inspector, and appoint another in his stead :

Inspector to  
undergo exam-  
ination before  
the Board as to  
fitness, &c.

2. No person shall be appointed as such Inspector (except as hereinafter provided) who was not, previously to his appointment as such, undergone an examination before the Board of Examiners for the same place, as to fitness, character and capacity, in the manner hereinafter provided ; nor shall any person be so appointed as Inspector of Butter, unless approved and recommended as such by the Board of Examiners or a majority of them, pursuant to such examination ; nor except on the requisition of the Board of Trade for the place, with which the Mayor shall be bound to comply ;

And furnish  
approved  
securities.

3. Before any Inspector shall act as such, he shall furnish two good and sufficient sureties, jointly and severally with himself, for the due performance of the duties of his office, in the

the sum of two thousand dollars ; and such sureties shall be approved by the Mayor by whom such Inspector has been appointed, and a bond shall be executed before him to Her Majesty, in the form used with regard to the sureties of persons appointed to offices of trust in this Province ; and such bond shall avail to the Crown and to all persons whomsoever aggrieved by any breach of the conditions thereof. 11 V. c. 7, s. 2, *part.*

3. The said bond or suretyship of any Inspector shall be made and kept at the office of the clerk of the Corporation of the city for which the Inspector is appointed, and every person shall be entitled to have communication and copy of any such bond or suretyship at such clerk's office, upon payment of twenty cents for each communication, and of fifty cents for each copy. 11 V. c. 7, s. 3.

Bond of Inspector to be kept by City Clerk.

4. Each person examined, approved and recommended as aforesaid, shall, if appointed Inspector of Butter, before he shall act as such, take and subscribe an oath before the Mayor of the city for which he is appointed, in the words following, to wit :

Oath to be taken by Inspector.

“ I, A. B., do solemnly swear, that I will faithfully, truly and impartially, to the best of my judgment, skill and understanding, do and perform the office of an Inspector of butter, according to the true intent and meaning of the chapter of the Consolidated Statutes for Lower Canada, intituled, *An Act respecting the Inspection of Butter*, and that I will not directly or indirectly, by myself or any other person or persons whomsoever, manufacture, buy or sell any butter, on my account, or upon the account of any other person or persons whomsoever, during the time I continue such Inspector. So help me God.”

Which oath shall be recorded in the office of the clerk of the Corporation of the city where it is taken, and for recording such oath, and for a certificate thereof, the clerk shall be entitled to demand and have the sum of fifty cents, and no more, and shall give communication of the original to any person applying for the same, on payment of twenty cents for each such communication, and fifty cents for each copy. 11 V. c. 7, s. 4.

Oath to be recorded.

5. Whenever a vacancy occurs in the office of inspector of butter by the death, resignation, or removal of any inspector, an inspector of butter shall, upon the requisition of the board of trade for the place, be appointed in his stead by the Mayor of the city, who shall appoint such duly qualified person as may be recommended for that purpose by the board of trade ; But no such person shall be appointed inspector until he has undergone an examination before the board of examiners, and has been by them certified competent to the duties required of such inspector, and he shall not enter upon the duties of his office until,

In case of vacancy, the person recommended by Board of Trade to be appointed.

until he has given the security and taken the oath of office required by this Act, and complied with the other requirements thereof. *ibid*, s. 12.

Inspector may have sworn assistants.

6. No such Inspector shall allow any person whomsoever to act for him about the duties of his office, excepting only his sworn assistant, to be appointed in the manner hereinafter provided. 11 V. c. 7, s. 2, *part*,

In such number as he may require, but subject to approval of Board of Trade.

7. Each inspector of butter may appoint such number of assistants as he may, from time to time, be required to appoint by the board of trade of the city for which he is appointed, for the acts of which assistants he shall be responsible,—and shall be bound to increase the number of such assistants from time to time, on a requisition in writing to that effect, from the board of trade, and may diminish the same with the permission of the said board; and each such assistant shall be subject to the approval of the said board of examiners, in the manner hereinbefore provided for the examination of inspectors, and before entering upon the duties of his office shall take and subscribe the following oath, before the mayor of the city for which he is appointed, who shall administer the same :

Oath of assistant.

“ I, A. B., do swear that I will diligently, faithfully, and impartially execute the office of Assistant to the Inspector of Butter for \_\_\_\_\_ according to the true intent and meaning of chapter \_\_\_\_\_ of the Consolidated Statutes for Lower Canada, intituled, *An Act respecting the Inspection of Butter*, and that I will not, directly or indirectly, personally or by means of any person or persons in my behalf, receive any fee, reward or gratuity whatever, by reason of my office of Assistant to the said Inspector (except my salary from the said Inspector) and that I will not, directly, or indirectly, trade in the article of butter, or be in any manner concerned in the purchase or sale of butter : So help me God.”  
And such Oath, shall remain in the Office of the Corporation of the city in which the same is taken, for the same purposes, and in all cases subject to the same regulations, as to communication and copy, as are provided with regard to the oath of the inspector. *Ibid*, s. 10.

Remuneration of assistants.

8. The said assistants shall respectively be paid by, and shall hold their offices at the pleasure of the inspector, and may be removed or reinstated, or others may be appointed in their stead by such inspector. *Ibid*, s. 11.

#### MODE OF INSPECTION, CHARGES, &c.

No butter to be branded unless packed as required by this Act.

9. No inspector of butter shall brand, mark or certify any butter as inspected, unless it is packed in the manner hereinafter required; but any butter not so packed, submitted for inspection, shall, by the inspector to whom it is submitted be

be repacked in the manner hereby required, and the inspector shall receive the actual costs of such new packages as may be required for such re-packing, and the further sum of five cents for each firkin or keg of butter so re-packed as compensation for his time and labour :

2. All butter branded, marked or certified as inspected shall be packed in firkins or kegs, made of the best seasoned white ash timber, and each bound with at least twelve wooden hoops, and being of the following sizes and dimensions, that is to say: the firkin to contain as nearly as possible fifty-six pounds of butter, the length of the staves from croe to croe, to be fourteen inches and a half, the diameter of the head to be eleven inches and a half, the thickness of the staves to be, as nearly as may be, three quarters of an inch, and the thickness of the head, as near as may be, half an inch, the package to weigh as nearly as possible, but in no case to exceed ten pounds when dry;— the keg to contain, as nearly as possible, eighty-four pounds of butter, the length of the stave, from croe to croe, to be seventeen inches, the diameter of the head to be thirteen inches, the thickness of the staves to be as nearly as may be, three quarters of an inch, and of the head as nearly as may be, half an inch, and the package to weigh, as nearly as possible, but in no case to exceed thirteen pounds when dry;—and the weigh of each package shall be branded on the outside of the firking or keg, at the center of the stave or bilge, with the name of the maker thereof, under a penalty of one dollar per package, upon any cooper contravening the requirements of this Act, as aforesaid ;

Description of firkins or kegs.

3. But nothing herein contained shall apply to any packages other than those containing butter submitted for inspection. 11 V. c. 7, s. 6.

Proviso as to other packages.

10. In inspecting butter, the inspector shall take out the head of each firkin or keg, and shall pass the taster through the butter, from end to end, and shall empty out and throw aside all salt or pickle which, in his judgment, is not necessary to the preservation of the butter, and after he has ascertained the quality of the butter, he shall replace so much thereof as he has taken out, and if there is in his judgment a deficiency of loose salt, so that he thinks the preservation and condition of the butter would be promoted by an additional quantity of salt, he shall add such quantity :

How butter shall be inspected.

2. He shall then have the package securely headed and coopered, and shall inscribe or brand on the head of the package the gross weight thereof in pounds avoir du poids, excluding fractional parts of a pound, and the tare, which shall include one pound weight for each firkin, and two pounds weigh for each keg, for soakage over and above the cooper's tare; and he shall then brand on the head his own name, the month, year and place of inspection, and the quality of the butter as "first,"

Weight of package to be branded thereon.

Qualities of butter.

"second,"

“second,” “third” or “fourth,” or as “grease,” according to the quality of the butter, and adopting the standard of quality and system of classification in use in that portion of the United Kingdom called Ireland; first, removing all such marks (the distinguishing mark of the owner of the butter excepted) on the package as would interfere with the brands or marks of the inspector. *Ibid*, s. 7.

Suitable premises to be provided by Inspector.

**11.** Each of the said inspectors shall provide himself with suitable and convenient premises for the storage and inspection of butter, and shall keep all packages of butter delivered to him for inspection, while they remain in his possession, in some place safe from the injuries of the weather or of floods, and under tight roof; and any inspector contravening this provision shall forfeit and pay to the owner the sum of one dollar, for every package not stored as aforesaid, besides the actual damages sustained by such owner. *Ibid*, s. 8.

Proceedings in case of dispute between Inspector and owner of butter as to the quality, &c.

**12.** If any dispute arises between any inspector or assistant inspector and the proprietor or possessor of any butter with regard to the quality thereof, then upon application to any Justice of the Peace for the district, the said Justice shall issue a summons to three persons of skill and integrity, one whereof to be named by the inspector or his assistant, another by the proprietor or possessor of the butter, and the third by the said Justice of the Peace, requiring the said three persons immediately to examine and inspect the same according to the provisions of this Act, and report their opinion of the quality and condition thereof under oath, (which oath the said Justice shall administer,) and their determination, or that of a majority of them, shall be final and conclusive, whether approving or disapproving of the judgment of the inspector or his assistant, who shall immediately attend thereto, and brand each package of the quality directed by such determination, and if the opinion of the inspector or his assistant be thereby confirmed, the reasonable costs and charges of re-examination, to be ascertained and awarded by the said Justice, shall be paid by the proprietor or possessor of the butter, if otherwise, by the inspector. *Ibid*, s. 16.

Fees for inspecting;

For re-inspecting;

For extra-cooperage or repairs;

**13.** For all the services to be performed as aforesaid, including unheading, weighing, salting, heading, tightening hoops, marking and branding, and ten days' storage, each inspector shall be entitled to receive ten cents for every package of butter by him inspected as aforesaid,—and if re-inspected, *six and two third cents*, together with the actual cost or charge of any package by him furnished, or for *extra* cooperage or repairs done to packages containing butter by him inspected, and no more; the charge for which said *extra* cooperage and repairs shall not in any case exceed five cents per package; in consideration of which all packages shall be delivered in good shipping order, and such charges shall be paid by the person offering such butter for inspection, or his agent:

2. Each inspector shall further be entitled to receive *two and a half cents*, per month, per firkin, and one penny per keg, per month, for the storage of each package of butter, which remains stored with him as aforesaid more than ten days after the date of the invoice, weigh-note or inspection bill, and such storage shall be paid by the person receiving or shipping the said butter, or his agent; but in no case shall any storage be paid or required when the butter has not remained stored as aforesaid during ten days from the date of the inspection bill;

Fees for storage.

3. All the charges of inspection and storage shall be payable before the butter is re-delivered by the inspector; and the inspector shall furnish a bill of inspection signed by him, and specifying neatly and legibly the quantity and quality of the butter, the charges thereon, and the owner's name. *Ibid*, s. 9.

When charges payable.

Inspection bill.

14. If any inspector of butter, or assistant inspector, not then employed in the inspection of any butter, (according to the duties prescribed by this Act,) on application on lawful days between sunrise and sunset to him made, refuses, neglects or delays to proceed to such examination or inspection, for the space of two hours after such application so made to him, the inspector or assistant so refusing, neglecting or delaying to make such examination and inspection, shall for each such offence forfeit the sum of twenty dollars, to the use of the party so delayed. *Ibid*, s. 14.

Penalty on refusing or neglecting duty by Inspector or his assistants.

OFFENCES, PENALTIES, &C.

15. Any inspector or assistant inspector who, during his continuance in office, is directly or indirectly concerned in the buying or selling of any butter, or participates in any transaction or profit arising therefrom, (further than the fees or emoluments granted by this Act for inspection and storage)---or who permits any cooper or other person to retain or keep any butter or the scrapings thereof, or who marks, brands, or certifies as inspected, any package of butter of any description or size other than is prescribed by this Act,---or who dates any bill of inspection differently from the time the butter was actually inspected,---or delivers out of his possession any such bill of inspection without any date,---or who does not conform to the provisions of this Act, shall be guilty of a misdemeanor, and shall, for every such offence, be punishable by fine not exceeding four hundred dollars, and be forever thereafter disqualified and disabled from holding and exercising the duty or office of inspector of butter, or of assistant to any such inspector. *Ibid*, s. 13.

Inspector or his assistants trading in butter, &c., or otherwise contravening this Act, guilty of misdemeanor.

Penalty.

16. If any person counterfeits any mark or brand of any inspector of butter, or impresses or brands the same knowing the same to be counterfeit, on any package of butter, or any other

Penalty for counterfeiting brands or fraud.

fraudulently marking butter, &c.

other mark purporting to be the mark of the inspector or of any manufacturer of butter, either with the proper marking tools of such inspector or manufacturer, or with counterfeit representations thereof, or empties any package of butter marked or branded as aforesaid by an inspector or manufacturer in order to put therein other butter for sale or exportation, without first cutting out the said brand-marks,—or fraudulently packs therein any other substance than the butter packed in the same by the inspector or manufacturer,—or if any person in the employ of any inspector or manufacturer of butter, hires or loans out the marks of his employer to any person whatsoever, or connives at or is privy to any fraudulent evasion of the provisions of this Act, such person shall, for every such offence, incur a penalty of two hundred dollars. *Ibid*, s. 15.

How fees and fines under this Act shall be recoverable.

**17.** All fees, fines, penalties and forfeitures imposed by this Act, not exceeding forty dollars, shall be recoverable with costs by any inspector, assistant inspector or any other person suing for the same in a summary way before any two Justices of the Peace for the district, and shall on failure of payment be levied by warrant of distress to be issued by such Justices against the goods and chattels of the offender; and when the same exceed the sum of forty dollars, they shall be sued for and recovered with costs, by information or action before any court having jurisdiction in civil cases, to the amount sued for, and levied by execution as in the case of debt:

Fines and forfeitures appropriated.

2. One moiety of all such fines and forfeitures when recovered shall (except when herein otherwise provided) be immediately paid into the hands of the treasurer of the city where the said action or prosecution is instituted, and shall remain at the disposal of the corporation thereof for the public use of the said city, and the other moiety shall belong to the person suing for the same, unless the action be brought by an officer of such corporation, in which case the whole shall belong to the corporation for the use aforesaid. *Ibid*, s. 17.

#### PROTECTION OF INSPECTORS, &C.

Limitation of actions—general issue may be pleaded.

**18.** If any action or suit be brought against any person for anything done in pursuance of this Act, such action or suit shall be commenced within six months next after the matter and thing done, and not afterwards; And the defendant in such suit or action may plead the general issue and give this Act and the special matter in evidence at any trial to be had thereon, and if afterwards judgment is given for the defendant or the plaintiff is nonsuit or discontinues his action after the defendant has appeared, then such defendant shall have treble costs awarded against such plaintiff, and have the like remedy for the same as any defendant hath in other cases to recover costs at law. *Ibid*, s. 18.

**19.** This Act shall be in force until the end of the Session of the Provincial Parliament next after the first day of January, 1860, and no longer.

## CAP. LXII.

## An Act respecting Weights and Measures.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Whereas under the authority of the Legislature of Lower Canada, the following weights and measures, that is to say : three pair of neat sight-hole box and scales adjusted to weigh from half a grain to one ounce,—three pair of neat sight-hole scales adjusted to weigh from one dram to one ounce,—six pair round sight-hole box scales adjusted to weigh from one ounce to four pounds,—six round sight-hole box and counter beams fitted with brass chains and copper scales, proper for adjusting weights from fifty-six pounds downwards,—four sets of *avoir-du-poids* brass weights from one dram to four ounces,—four sets of like weights from a quarter of an ounce to four pounds,—four sets of like weights, each set consisting of one of four, one of seven, one of fourteen, one of twenty-eight and one of fifty-six pounds,—four sets of Troy weights in brass from half a grain to one ounce,—four sets of like weights from a quarter of an ounce to sixty-four ounces,—four sets of like weights, each set consisting of one of seven, one of fourteen and one of twenty-eight pounds,—four sets of wine measures in brass from one gill to one gallon,—four sets of Winchester measures in brass from one gill to one gallon,—four Winchester half bushels in brass ; three like measure bushels,—four sets of Canada measures in brass from a *poisson* to a *pot*,—four half minots of the like measure in brass,—three minots of the like measure in brass,—four English standard foot rules in brass,—four Paris standard foot rules in brass,—four English standard yards in brass,—four English standard ells in brass,—were imported for the purpose of regulating weights and measures in Lower Canada ; and having been found just and true, were adopted by law as standard weights and measures for Lower Canada ;

Preamble.

And whereas under the authority of an Act of the Legislature of Lower Canada, some of the said standard weights and measures, were delivered over to the persons appointed to be inspectors of weights and measures in divers parts of Lower Canada, and one complete set to the clerk of the assembly to remain in the custody of him and his successors in office as standards : Therefore,—39 G. 3, c. 7.

## STANDARDS OF WEIGHTS AND MEASURES.

1. One set of the said beams, scales, weights and measures, shall be placed and remain in the custody of the clerk of the Legislative Assembly of Canada, to be for ever hereafter kept

One set of said weights and measures to remain in the  
by

custody of the Clerk of the Legislative Assembly.

by him and his successors in office respectively; and they shall be and remain standards for weights and measures to be used in Lower Canada :

Clerk to take oath that he will faithfully preserve the said weights and measures, &c.

2. The present Clerk of the Legislative Assembly, and each of his successors in office, before he enters on the execution of his office, shall make oath before the *Chief Justice* or one of the Justices of the Superior Court for Lower Canada, that he will well and faithfully keep and preserve the said beams, scales, weights and measures, under lock and key, and not suffer any person to have access to or make use of the same, except a Revenue Inspector (as Inspector of weights and measures) in his presence, and for the purpose only of re-comparing and adjusting the standards of beams, weights and measures in the official custody of such Revenue Inspector when the same is deemed necessary by the Governor; and each Clerk of the Legislative Assembly, shall cause a certificate of such oath to be deposited in the office of the Prothonotary of the said Superior Court in Quebec. 39 G. 3, c. 7, s. 2, and 12 V. c. 54, s. 2, &c.

Certificate of such oath.

Governor may import new weights and measures, &c., when required.

2. If any of the said standard weights or measures, or of the said beams or scales directed to be kept in the custody of the clerk of the Legislative Assembly are at any time found wanting, the Governor may cause others to be imported or procured at the public cost, and placed in the custody of the clerk of the Legislative Assembly, for the purposes aforesaid. 12 V. c. 54, s. 2.

Standard weights and measures fixed and sale of certain articles thereby regulated.

3. Subject always to the provisions of chapter fifty-three of the Consolidated Statutes of Canada, or of these Consolidated Statutes for Lower Canada, prescribing any other standard of weight or measure, in any case :

Pound *avoir du poids*.

1. The standard pound *avoir du poids* weight hereinbefore mentioned, with its parts, multiples and proportions, shall be the standard weight of Lower Canada, for weighing all goods, wares, merchandize, butcher's meat, flour, meal, bread, biscuit and other commodities whatever, commonly sold by weight, (gold and silver in coin, bullion, drugs and precious stones, only excepted) ;

Pound Troy.

2. The standard pound troy weight, hereinbefore mentioned with its parts, multiples and proportions, shall be the standard weight of Lower Canada, for weighing gold and silver in coin or bullion, drugs or precious stones ;

Wine Gallon.

3. The standard wine gallon, hereinbefore mentioned, with its parts, multiples and proportions, shall be the standard liquid measure of Lower Canada, for measuring wine, cider, beer and spirituous liquors of all kinds, treacle or molasses, and all other liquids, commonly sold by guage or measure of capacity ;

4. The Canada minot hereinbefore mentioned, with its parts, multiples and proportions, shall be the standard measure of Lower Canada, for measuring all rents payable in wheat or other grain of any kind, and also for measuring of all salt, wheat, oats, pease, barley, flax-seed, or other grain or seeds, fruits or roots whatever, and likewise for measuring lime, sand, ashes or any other kind of commodity, usually sold by measure of capacity, where no special contract or agreement has been made to the contrary ; Canada Minot.

5. The English Winchester bushel, hereinbefore mentioned, with its parts, multiples and proportions, shall be the standard measure of capacity in Lower Canada, for measuring all salt, wheat, oats, pease, barley and other grain or seeds, when such articles have been specially sold or contracted for by such measure ; English Winchester Bushel.

6. The Paris foot, hereinbefore mentioned, with its parts, multiples and proportions, shall be the standard measure of length of Lower Canada, for measuring all land and lots of ground granted or sold prior to the conquest of this Province, or since granted or sold or to be granted or sold by the arpent or foot, or the parts, multiples or proportions thereof, and also for measuring all kinds of wood, timber and stone, and all manner of masons', carpenters' and joiners' work, or any other article or any other kind of work, commonly measured by the foot, or other measure of length, being parts, multiples or proportions thereof, where no special contract or agreement to the contrary has heretofore been or shall be hereafter entered into ; Paris foot.

7. The English foot, hereinbefore mentioned, with its parts, multiples and proportions, shall be the standard measure of length in Lower Canada, for measuring all lands granted or that shall be hereafter granted by the British Crown, or the division thereof heretofore or hereafter made,—and also for measuring all kinds of wood, timber, or stone, and all manner of masons', carpenter's and joiners' work, or any other kind of work whatever, where a special contract or agreement has been made for that purpose ; English Foot.

8. The English yard, hereinbefore mentioned, with its parts shall be the standard measure of length in Lower Canada, for measuring all kinds of cloth or stuffs, made of wool, flax, hemp, silk or cotton or any mixture thereof, and all other kind of goods, wares or merchandize, commonly sold by measure of length ; English Yard;

9. The English ell, containing three feet nine inches of the standard English foot hereinbefore mentioned, with its parts, shall be the standard measure of length in Lower Canada, for measuring all kinds of cloth or stuffs made of wool, flax, hemp, silk or cotton, or any mixture thereof, and all other kinds of goods, English Ell.

goods, wares or merchandizes specially sold or contracted for by such measure. 39 G. 3, c. 7, s. 6, *Con. Stat. Can.*, c. 53, &c., and 6 W. 4, c. 36, and 22 V. 1859, c. 55, as to coals.

## INSPECTION OF WEIGHTS AND MEASURES.

Revenue Inspectors to be Inspectors of weights and measures.

4. The several revenue inspectors in Lower Canada shall within their respective revenue divisions and by virtue of their office, and without any other appointment, be inspectors of Weights and Measures within the same, and shall have all the powers and perform all the duties incident to the regulating, adjusting, stamping and marking Beams, Weights and Measures, and such duties shall be deemed part of their duties as revenue inspectors, and any bonds given for the faithful performance of the duties of their office shall extend to the duties hereby assigned to them. 12 V. c. 54, s. 3.

Duty of such Inspectors.

5. Each such inspector shall at all proper times on application made to him carefully examine all Beams and Scales or weighing Machines of any kind, and examine and compare all Weights and Measures presented to him for that purpose within his division as such inspector with the standard provided by law, and when found correct and just and of the true weight and measure, he shall mark, stamp or brand the same (if a measure, as near the two ends, top and bottom, as may be) with the stamp or brand to be provided for that purpose. 12 V. c. 54, s. 4.

To compare all weights and measures with the copies of Standard measures, &c., in his possession.

6. Each such inspector, upon such day or days, and in such place or places within his division, shall, as shall be from time to time appointed by the Governor in Council, attend with the stamps and copies of standard Weights and Measures in his custody, to examine and compare, and stamp if found correct all Beams, Scales and Weighing Machines, Weights and Measures brought to him for that purpose; and such stamp shall bear such letters or device as the Governor in Council shall from time to time direct. 12 V. c. 54, s. 5.

Notice to be given of the times and places at which he will attend.

7. Each such inspector shall give one month's notice in one or more newspapers of the district in which he is acting, (if any is there published, and if not, then in some adjoining district,) from time to time, and at least one in each, year, of the different days and places to be appointed as aforesaid, when and where he will attend with the stamps and copies of the standard Weights and Measures, to examine and compare all Beams, Scales and Weighing Machines, Weights and Measures made use of in buying or selling, and to stamp them if found correct. 12 V. c. 54, s. 9.

Penalty for stamping without first verifying.

8. If any such inspector stamps, brands or marks any weight or measure without having first duly compared and verified the same with and by the copies of the standard weights and

and measures provided by law for that purpose, or is guilty of a breach of any duty imposed upon him by this Act, he shall, on conviction, forfeit a sum not exceeding twenty dollars. 12 V. c. 54, s. 7.

9. For every Weight, Beam or Scale, marked or stamped by any such inspector, he shall be entitled to demand and receive ~~ten~~ cents, and for every Measure six cents and three-eighths of a cent, and no more. 12 V. c. 54, s. 8. His fee.

10. Any such inspector may, at all reasonable times, enter any shop, store, warehouse, stall, yard or place whatsoever within his division, where any commodity is bought, sold, weighed, exposed or kept for sale, and there examine all weights, measures, beams, scales, steel-yards or other weighing machines, and compare and try the same with the copies of the standard weights and measures provided by law; and if upon such examination it appears that the same or any of them are unstamped or are false, light or otherwise unjust, they may be seized and forfeited, and the person in whose possession they are found, shall on conviction forfeit a sum not exceeding eight dollars for the first and twenty dollars for every subsequent offence: Inspector empowered to enter shops, &c., and to examine weights and measures.  
Penalty for having false weights, &c.

2. Any person who neglects or refuses to produce for such examination, when thereto required, all weights, measures, beams, scales, steel-yards or other weighing machines, in his possession, or otherwise obstructs or hinders such examination, shall be liable to the same penalty. 12 V. c. 54, s. 6, *part.* Penalty for refusing to produce for examination.

11. Whenever any revenue inspector is removed from office or resigns, he shall deliver to his successor in office all the beams and standard weights and measures, or copies thereof, and stamps in his possession as such inspector;—and in case of the death of any such inspector, his representatives shall in like manner deliver the same to his successor in office: Inspector resigning to hand Standards to his successor.

2. In case of refusal or neglect to deliver such standards or copies entire and complete, in addition to the penalties hereinbefore provided, the successor in office may maintain an action on the case against the party so refusing or neglecting, and recover double the value of such standards or other articles aforesaid not so delivered; and in every such action in which judgment is rendered for the plaintiff, he shall recover double costs;—and one moiety of the damages recovered in every such action shall be retained by the person recovering, and the other shall be applied in supplying such standards as are required in his office. 12 V. c. 54, s. 11. In case of refusal, successor to have an action.

## PENALTIES AND THEIR PROSECUTION.

Penalty for selling goods, &c., by any measure not compared and regulated according to this Act.

**12.** No merchant, shop-keeper, butcher, baker, tavern-keeper, miller or other trader, shall sell, barter or exchange any goods, wares, merchandize or commodity whatever, or pay any gold or silver coin current in Lower Canada, by any beam, weight or measure which has not been adjusted and regulated pursuant to this Act; and every such person, selling, bartering or exchanging or offering to sell, barter or exchange any goods, wares, merchandizes or commodities whatever, or to pay any gold or silver coin current in this Province, by any weight or measure which has not been so regulated and adjusted, shall forfeit the sum of eight dollars, to any person suing for the same. 39 G. 3, c. 7, s. 5.

Penalty for counterfeiting stamps or fraudulently altering weights, &c.

**13.** If any person counterfeits any stamp or mark used by any Revenue Inspector for stamping or marking any beam, weight or measure, or in any manner whatever, with a fraudulent intention, alters, diminishes or augments any beam, weight or measure, stamped or marked under this Act, or sells, barters or exchanges any goods, wares, merchandize or any commodity whatever, by any beam, weight or measure, stamped or marked with any counterfeit stamp or mark, or by any beam, weight or measure altered, diminished or augmented as aforesaid,--such person shall, for the first offence, forfeit the sum of twenty dollars, and for the second offence, forty dollars, and for the third and every subsequent offence, forty dollars, and suffer two months' imprisonment. 39 G. 3, c. 7, s. 4.

How penalties shall be recovered and disposed of.

**14.** The penalties imposed by this Act shall be recoverable with all reasonable costs, before any justice of the peace, on the oath of the inspector or of any other credible witness, and shall, if not forthwith paid, be levied by distress and sale of the goods and chattels of the offender, and such penalty when recovered, shall belong to the Crown for the public uses of the province, and shall be paid over to the inspector, and by him accounted for in the same manner as other public moneys coming into his hands by virtue of his office. 12 V. c. 54, s. 6, *part*.

Limitation of actions.

**15.** No complaint or prosecution shall be brought against any person for any fine or penalty, by this Act imposed, unless the same shall be commenced within three calendar months after the offence committed. 39 G. 3, c. 7, s. 9.

## C A P . L X I I I .

## An Act respecting the Measurement of Coals.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

**1.** Whenever no agreement to the contrary is made between the parties, all sales of coal in Lower Canada shall be made by the chaldron, or by the bushel. 6 W. 4, c. 36, s. 1. Sales of coal to be by measure.

**2.** The chaldron of coal shall contain thirty-six Imperial Winchester bushels. 22 V. (1859,) c. 55, s. 2. Contents of chaldron.

**3.** No tub or other measure shall be used for the purpose of measuring coal which has not been previously inspected by some one of the Inspectors of Weights and Measures in Lower Canada, and by him stamped or branded with the proper mark, after having been first compared and verified with and by the copies of the standard of the Imperial bushel or half bushel provided by law for that purpose ; And all the provisions of Chapter *sixty-two* of these Consolidated Statutes, with respect to inspection and the enforcing thereof by penalties or otherwise, shall apply to the measures used for the measurement of coal. 22 V. (1859,) c. 55, s. 3. Coal measures to be verified as provided by this Act.

**4.** When, by agreement of the seller and buyer, coals are sold or bought by the weight, the same shall be by the ton, consisting of two thousand pounds *avoir-du-poids*. 6 W. 4, c. 36, s. 5,—22 V. (1859,) c. 21, s. 5. When coals sold by weight, to be by ton.

**5.** This Act shall not affect any contract made before the fourth day of May, one thousand eight hundred and fifty-nine, but any such contract shall be governed by the Law in force when it was made. 6 W. 4, c. 36, s. 6,—22 V. (1859,) c. 21, s. 6. Contracts before a certain date not affected.

**6.** Where any difference or dispute arises between any seller and buyer of coal, with respect to the measurement or weight thereof, the same shall be referred to and adjusted by the clerk of the hay market. 6 W. 4, c. 36, s. 7. In case of dispute as to measurement.

## C A P . L X I V .

## An Act respecting Bills of Exchange and Promissory Notes.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

## DAMAGES ON PROTESTED BILLS AND NOTES.

Damages allowed on protested bills of exchange.

1. All bills of exchange drawn, sold or negotiated within Lower Canada, although not drawn on or by any person residing therein, which are returned under protest for non-payment, shall, if drawn upon persons in Europe or in the West Indies or in any part of America not within the territory of the United States, and so returned under protest for non-payment, be subject to ten per *centum* damages, or if drawn on persons in any of the other British North American colonies or in the United States, and so returned, shall be subject to four per *centum* damages, and in each of the foregoing cases shall also be subject to six per *centum* per annum of interest on the amount for which the bill is drawn, to be reckoned from the day of the date of the protest to the time of repayment :

When such damages and the interest shall be paid.

2. The amount of the said damages and interest shall be reimbursed to the holder at the current rate of exchange of the day when the protest for non-payment is produced and repayment demanded, that is to say,—the holder of any such bill returned under protest for non-payment, shall be entitled to recover from the drawer or indorsers thereof, so much current money of this Province as will then be equal to the purchase of another bill of the like amount, drawn on the same place and at the same sight, together with the damages and interest above mentioned, as also the expenses of noting and protesting the bill, and the postages incurred thereon. 3 W. 4, c. 14, s. 2.

If the rate of exchange on commercial bills be disputed arbitrators to be appointed.

2. When the protest of a bill returned for non-payment is, by the holder thereof notified to the drawer or indorser, in person or in writing delivered to a grown person at his counting house or dwelling house, and they disagree about the then rate of exchange for commercial bills, the holder and the drawer or indorser so notified shall each nominate and appoint an arbitrator to determine the said rate, and if the said arbitrators disagree, they shall nominate a third one, and the decision of any two of them given in writing to the holder of the bill, shall be final and conclusive as to the then rate of exchange and shall regulate the sum to be paid accordingly :

In case of refusal to name an arbitrator.

2. If either the holder, indorser or drawer of the bill, as the case may be, refuses or neglects for the space of forty-eight hours

hours after such notification to name an arbitrator on his behalf, the decision of the single arbitrator on the other part shall be in like manner final and conclusive. § W. 4, c. 14, s. 3.

**3.** All bills or orders drawn by persons in Lower Canada on persons within the same, or promissory notes given in Lower Canada, if protested for non-payment, shall be subject to six per centum per annum of interest from the date of the protest, or if interest be therein expressed as payable from a particular period, then from such period to the time of payment. 3 W. 4, c. 14, s. 4.

Bills or notes drawn or given in L. C. if protested to bear interest at 6 per cent.

**4.** The foregoing provisions of this Act shall be in force until the end of the session of the provincial parliament next after the first day of January, 1860, and so long as they are in force the ordinance, (17 Geo. 3, c. 3.) save and except the last article or clause thereof relating to the rate of interest, shall be suspended and discontinued. 3 W. 4, c. 14, s. 1,—22 V. (1859) c. 28, s. 1.

Duration of the foregoing sections.

FORM, PAYMENT, DAYS OF GRACE, &c., OF BILLS AND NOTES.

**5.** Any bill drawn or note made payable to the order of any person, or to the order of the maker or drawer thereof, shall be deemed and taken to be negotiable, and shall be transferable by endorsement either in full or in blank or by delivery, and the holder under a blank endorsement shall have the same remedy by action as if the endorsement were in full. 12 V. c. 22, s. 2.

Bills or notes to the order of any person to be transferable by endorsement or delivery.

**6.** When the words "*value received*" are expressed on the face of any bill or note, value shall be presumed to have been received on such bill or note and on every endorsement thereon, for the amount thereof. *Ibid*, s. 3.

Import of words *value received*.

**7.** No acceptance of any bill shall be sufficient to bind or charge any person, unless such acceptance is in writing on some part of such bill, or if there be more than one part of such bill, on one of the said parts. *Ibid*, s. 4.

Acceptance of bill to be in writing thereon.

**8.** Three days of grace, and no more, after the day when such bill or note becomes due and payable, or after the day when such bill is presented to the *drawer* thereof, if drawn at sight, shall be allowed for the payment thereof, and shall be reckoned to expire in the afternoon of the third of the said days of grace, unless the said third day falls on a Sunday or legal holyday, at the place where the bill or note is payable, in which case the next day thereafter not being a Sunday or holyday shall be the last of the days of grace :

Three days of grace allowed.

**2.** But nothing herein contained shall entitle the marker of any note payable on *demand* to any days of grace, or prevent

But not on notes payable on demand.

the holder of any such note from demanding payment for the same at any time, and protesting for non-payment whenever payment is refused. *Ibid*, s. 5,—and 18 V. c. 10, s. 1.

Non-payment on maturity to entitle holder to interest.

**9.** The non-payment of any bill or note after the maturity thereof, and on or before the last day of grace, shall *ipso facto* entitle the holder to recover from the party liable on such bill or note, in addition to the principal sum thereof, legal interest thereon from the last day of grace, whether such bill or note is protested or not. 12 V. c. 22, s. 6.

To be deemed payable generally unless certain place specified.

**10.** Every such bill and note shall be held to be payable generally, unless it is expressed in the body thereof that the same is payable at a bank or other stated place; and every acceptance of a bill shall be deemed and taken to be a general acceptance, unless the same is expressed to be payable at a bank or other stated place; and the acceptance on such bill and the promise on such note so made payable at a bank or other stated place as aforesaid, shall be and be taken to be a qualified acceptance of such bill or promise of such note, and it shall be payable at such stated place only; and the acceptor or maker shall not be liable to pay such bill or note, except in default of payment when such payment is duly demanded at such bank or other stated place. 12 V. c. 22, s. 7, and 13, 14 V. c. 23, s. 4.

What shall be deemed a general or qualified acceptance.

#### NOTING AND PROTESTING OF BILLS AND NOTES.

Provision with respect to protesting for non-acceptance.

**11.** Whenever any bill is refused acceptance by the drawee thereof, the same may be forthwith protested for non-acceptance; and after due notice of such protest has been given to the parties liable on such bill, the holder thereof may insist on immediate payment from the said parties, and may sue for and recover the amount of such bill with costs and interest as if the same had matured and been protested for non-payment; But when due notice of non-acceptance has been given to the said parties, it shall not be necessary afterwards to present the said bill for payment, or if such presentment be made to give notice of the dishonour. 12 V. c. 22, s. 8.

Proviso as to notice.

Public Notaries to note and protest bills and notes in L. C.

**12.** The duty of noting and protesting bills and protesting notes shall be performed in Lower Canada by the public notaries for Lower Canada; and every protest shall be made in duplicate by one notary underneath or on the back of a copy of the bill or note and its endorsements; and no second or counter-signing notary, and no witness, shall be deemed necessary for the perfecting of any act of noting, protesting, or notice made or given by such notary. *Ibid*, s. 9.

One Notary sufficient.

Noting for non-acceptance to be made underneath or en-

**13.** Every noting for non-acceptance of a bill shall be made underneath, or be endorsed upon the back of a copy of the bill and endorsements, and filed and kept upon record by the notary

notary noting the same ; and upon every bill noted or protested for non-acceptance, and every bill or note protested for non-payment, the protesting notary shall write, print or stamp the words "noted for non-acceptance," or "protested for non-acceptance," or "protested for non-payment," (as the case may be), with the date of the noting or protest, and his fees and charges, and shall subscribe thereto his initials, and the usual initial letters designating his office ; But when a bill noted for non-acceptance is afterwards protested for non-payment, it shall not be necessary to extend a protest for non-acceptance, but the noting and the date thereof, with the name of the notary by whom the noting was effected, shall be stated in the body of the protest for non-payment. *Ibid*, s. 10.

dorsed on a copy of the bill

As to notes protested.

**14.** Notice to any party entitled thereto, of the protest for non-acceptance or for non-payment, shall be sufficient, if such notice is given to such party personally or at his residence, office or usual place of business ; and in case of death or absence, at his last residence, office or place of business,—or if the said notice, directed to such party, is deposited in the nearest post office communicating with the residence or office or place of business aforesaid of such party, and the postage thereon be pre-paid :

How service of notice of protest on party entitled thereto shall be made.

2. Like notice given to the duly appointed and notified assignee of the bankrupt estate of any bankrupt party liable on any bill or note, shall be as valid and effectual as if such notice had been given to the bankrupt personally, or at his residence, office or usual place of business, or through the post office as aforesaid ; provided in such cases that the bill was drawn or endorsed, and the note endorsed by the bankrupt, before the issuing of the commission of bankruptcy against him. *ibid*,

Notice to assignee of bankrupt to be valid.

**15.** The duplicate protest and duplicate notice aforesaid, with the service of such notice duly attested under the signature of the protesting Notary, shall be deemed and taken by all courts, and by all persons, and in all places within Lower Canada, to be *prima facie* evidence of the truth of the matters in such protest and notice and service thereof respectively set forth as matters of fact ; and the same faith and credence shall likewise be given to all copies of the same, attested in like manner to be true copies of the originals thereof remaining of record in the protesting Notary's office. *ibid*, s. 12.

Duplicate protest and notice with service, attested to be *prima facie* evidence in L. C.

**16.** Every bill or note, payable at a bank or other stated place only shall at maturity be presented for payment at such bank or place only

Bills or notes payable at a stated place.

1. Every bill and note payable generally, shall at maturity be presented to the acceptor or maker, either personally or at his then residence or office or usual place of business ;—or if presentment for payment of any such bill or note payable generally,

if payable generally where presentment for payment shall be made.

generally, cannot be made to the acceptor or maker as aforesaid, by reason of his absence, and his not having any known residence or office or place of business, at or in the place where his acceptance or note bears date, or by reason of his death, then such presentment for payment shall be sufficient if made at the residence or office or usual place of business of such acceptor or maker, or at his last known residence or office or usual place of business, in the place where the acceptance or note bears date. *ibid*, s. 13.

Bills unpaid may be protested after forenoon of last day of grace.

**17.** If any bill or note is unpaid at the expiration of the forenoon of the last day of grace, the holder thereof may cause the same to be duly presented for payment, and in default thereof to be protested for non-payment, and if such bill or note is payable at a bank, it may be presented at such bank, and the demand of payment preliminary to the protest thereof may be made either within or after the usual afternoon banking hours of such bank : 12 V. c. 22, s. 14,---and 14, 15 V. c. 62, s. 5.

Parties to a bill or note (other than the acceptor or maker) discharged from their liability in certain cases.

**2.** No presentment and protest for non-payment of any bill or note, shall be sufficient to charge *the* parties liable on such bill or note, unless such presentment and protest are made in the afternoon of the last day of grace, nor unless also due notice of the protest be given to the said parties as hereinafter provided, But the liability of the acceptor or maker towards the holder, shall continue in full force and effect, although the liability of the other parties may be discharged from the want or illegality of protest or of notice of protest. 12 V. c. 22, s. 14.

Protests within a certain period held to have been made in the afternoon.

**18.** Any protest of a bill or note made between the thirtieth day of May, one thousand eight hundred and forty-nine, and the thirtieth of August, one thousand eight hundred and fifty-one, shall be held to have been made, in the afternoon of the day on which it bears date, unless the contrary appears on the face thereof, notwithstanding the omission in such protest of the period of the day at which it was made :

Protests made since that period held to have been made in the afternoon.

**2.** And any protest of a bill or note made after the said thirtieth day of August, one thousand eight hundred and fifty-one, in the form prescribed by this Act, shall be held to have been made in the afternoon of the day on which it bears date, notwithstanding such omission as aforesaid. 14, 15 V. c. 62, ss. 1, 2.

When a bill or note payable generally, becomes due after acceptor or maker became bankrupt.

**19.** If a bill accepted payable generally, or a note payable generally, becomes due after the appointment and public notification of the appointment of an assignee to the estate of the acceptor or maker as aforesaid, under a commission of bankruptcy issued against him, the presentment for payment of such bill or note may be made either to the bankrupt personally or at his residence or office or usual place of business, or to the assignee

assignee personally or at his residence or office or usual place of business ;--and such presentment shall be as valid and effectual as if the presentment had been made to the bankrupt personally or at his residence or office or usual place of business ; provided the acceptance of the bill or the making of the note, was effected before the issuing of such commission against such acceptor or maker. 12 V. c. 22, s. 15. Proviso.

**20.** Any service of notice of protest for non-acceptance or non-payment, if made within three days next after the day upon which such bill or note is protested, shall have the same force and effect as if such service had been made upon the day of protesting the same ; but nothing in this section shall extend the time herein provided for protesting any bill or note. *ibid*, s. 16. Service of notice of protest may be made within three days after date of protest.

**21.** Whenever any bill is noted for non-acceptance, it shall not be necessary to cause service of notice of the same to be made upon any party liable thereon ; But whenever any bill so noted is afterwards protested for non-payment, the notice of such protest shall also embody notice of the previous noting for non-acceptance, and shall give the holder of any such bill the same right to recover from the parties liable thereon, as if they had been severally served with notice of the noting thereof. *ibid*, s. 17. Notice of noting not requisite, but notice of protest to contain notice of previous noting.

**22.** The several fees and charges mentioned in the schedule to this Act, relating to the protesting and noting of bills and notes, together with the postages pre-paid upon notices deposited at any post office as herein provided for, shall and may be claimed from the holder of the bill or note by the Notary or Justice of the Peace performing such duties, and shall be recovered from such parties thereto as are liable for the payment of the same. *ibid*, s. 18. Fees under this Act.

**23.** The several notings, protests, notices thereof, and services of notices hereinbefore mentioned, shall be in the forms of the several schedules of forms to this Act subjoined. *ibid*, s. 29. Forms.

**24.** Any person who represents himself to be a notary for or justice of the peace in Lower Canada, and who acts as such in and about the protesting of a bill or note, or in and about the noting of a bill, not being such notary for or justice in Lower Canada, shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment for a period of not more than six months. *ibid*, s. 19. Penalty on unqualified person protesting or noting notes or bills.

**25.** In places where the holder of a bill or note is prevented from employing a notary, by reason of there being none resident practising therein, or by reason of the absence or disability from sickness or otherwise of such notary, any justice of the peace Where no Notary, Justice of the Peace may protest.  
duly

duly commissioned and sworn in Lower Canada, may make such noting and protest and give notice of the same; and all such acts done by any such justice shall have the same force and virtue as if the same had been done by a notary; but such justice shall set forth in the body or preamble of such protest, the particulars and reasons wherefore the same could not be done and performed by a notary; and a certificate and duplicate copy of such protest or noting, containing such reasons, under the hand and seal of such justice, shall be deemed sufficient proof in any court in Lower Canada of the truth thereof. *ibid.*, s. 20.

Proviso.

#### BILLS DRAWN ABROAD.

Bills drawn abroad and payable in L. C., to be subject to certain of the provisions of this Act.

**26.** All bills drawn abroad upon any person in Lower Canada, or payable or accepted at any place within Lower Canada, shall, as to all parties resident therein and liable on such bills, be subject to the provisions of this Act with respect to the days of grace for payment of the same, and commission and interest thereon and to the noting and protesting of such bills for non-acceptance, and non-payment, and the notification and service of such protest. 12 V. c. 22, s. 30.

#### DISCOUNT, COMMISSION, USURY.

Discount may be retained at time of discounting.

**27.** In discounting any bill or note, the party discounting may retain, receive or charge the amount of the discount or interest upon the principal sum therein specified at the time the bill or note is discounted or received. 12 V. c. 22, s. 21.

Commission may be charged in addition to discount in certain cases.

**28.** Any person who discounts or receives any bill or note payable in Lower Canada, but at a distance from the place wherein the same is discounted or received, may charge, retain or receive over and above the legal interest upon any such bill or note, a commission sufficient to defray any agency, expense or exchange attending the collection thereof; and the holder shall, notwithstanding such commission, have the same right to recover the full amount of any such bill or note, with any interest thereon accrued after maturity and protest, as he would have had if no more than interest had been charged, retained or received thereupon; But such commission shall in no wise exceed the rate of one per centum upon the amount of such bill or note, and this section shall not apply to banks, as to which special provisions is made by chapter fifty-eight of the Consolidated Statutes of Canada. 12 V. c. 22, s. 22, *and Con. Stat. Can.* c. 58, ss. 4, 5, 7.

Proviso: not to exceed 1 per cent.

This section not to apply to Banks.

Usurious consideration not to affect a *bonâ fide* endorsee, &c., without notice.

**29.** No bill or note drawn or made after the thirtieth day of May, 1849, shall, though given for an usurious consideration, or upon an usurious contract, be void in the hands of an endorsee, or in the case of a note transferable by delivery, in the hands of a person who acquired the same as bearer for valuable consideration,

consideration, unless such endorsee or bearer had, at the time of discounting or paying such consideration for the same, actual knowledge that such bill or note had been originally given for an usurious consideration or upon an usurious contract. 12 V. c. 22, s. 23. See also *Con. Stat. Can.* c. 58.

ACTIONS ON BILLS AND NOTES.

**30.** In every action and claim founded upon a bill or note, any party to which is designated on such bill or note by the initial letters or some contraction of his christian or first name or names, it shall be sufficient in every affidavit to hold to bail, and in the writ or process and declaration or claim, to designate such person by the same initial letter or letters or contraction of his christian name or first name or names, instead of stating the same in full. 12 V. c. 22, s. 24.

Initials of christian name sufficient in actions, &c., on bills and notes.

**31.** In all matters relating to bills and notes not herein specially provided for, recourse shall be had in all courts in Lower Canada, to the laws in force there, and in the absence of such laws to the laws of England in force on the thirtieth day of May, one thousand eight hundred and forty-nine; and in the investigation of all facts in actions and suits founded upon bills and notes, recourse shall be had in all such Courts to the laws of England in force on the day last aforesaid :

Where no special provision herein, recourse to be had to laws of L. C., and failing such laws, to the laws of England.

2. Bills or notes made or endorsed by persons not traders shall be subjected, in matters of proof thereon, to the said laws of England, and in any action or suit against any party founded on a bill or note, no other evidence shall be required or adduced than such as under this Act may be required or adduced in an action or suit founded on a bill or note whereto all the parties are traders ;

In matters of proof the laws of England to prevail.

3. But nothing in this Act shall debar the parties to such actions and claims, from examining each other upon of interrogatories *sur faits et articles*; or upon the *serment décisoire*, or shall debar the Judges of the Courts from deferring to any of the parties to such actions and claims, the oaths known as the *juramentum judiciale*, or *juramentum suppletorium*, and the *juramentum in litem*. 12 V. c. 22, s. 25,—14, 15 V. c. 62, s. 4.

But nothing herein to prevent examinations on *faits et articles*, *serment décisoire*, &c.

**32.** All bills whether foreign or inland and all notes, due and payable in Lower Canada, on the first day of August, one thousand eight hundred and forty-nine, shall be held to be absolutely paid and discharged if no suit or action was brought thereon within five years next after the day on which such bills or notes became due and payable ; and all such bills and notes made and not due on the said day or made after the said day shall be held to be absolutely paid and discharged if no such suit or action has been brought thereon, within five years next after the day on which such bills or notes became due and payable. 12 V. c. 22, s. 31.

Limitation of actions on bills and notes.

What shall be holidays under this Act.

33. New Year's or Circumcision day, the Epiphany or Twelfth day, Annunciation day, Good-Friday, Ascension day, Corpus Christi day, St. Peter and St. Paul's day, all Saints day, Conception day, and Christmas day, the anniversary of and day fixed to celebrate the birth-day of our Sovereign, and any day appointed by Royal Proclamation or by Proclamation of the Governor General or person administering the Government of this Province, for a Solemn Fast or as a day of Thanksgiving, and no other day shall be deemed holydays within the meaning of this. 12 V. c. 22, s. 26.

SCHEDULE

OF FEES AND CHARGES.

For presenting and noting for non-acceptance any Bill of Exchange, and keeping the same on record .....	1	00
Copy of the same when required by the holder .....	0	50
For noting and protesting for non-payment any Bill of Exchange or Promissory Note, Draft or Order, and putting the same on record .....	1	00
For making and furnishing the holder of any Bill or Note, with duplicate Copy of any protest for non-acceptance or non-payment, with certificate of service and copy of notice served upon the drawer and endorsers.....	0	50
For every Notice, including the service and recording copy of the same, to an endorser or drawer, in addition to the postages actually paid.....	0	50

12 V. c. 22,---13, 14 V. c. 23, s. 2.

SCHEDULE No. 1.

NOTING FOR NON-ACCEPTANCE.

(Copy of Bill and Endorsements.)

On the 18, the above bill was by me, at the request of, presented for acceptance to E. F., the drawee, personally (or, at his residence, office or usual place of business in the city, (town or village) of ) and I received for answer, " "; The said bill is theretofore noted for non-acceptance.

A. B.,

Not. Pub.

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Due notice of the above was by me served upon { A. B., }  
the { drawer, } personally, on the day of  
{ endorser. }  
(or,

(or, at his residence, office or usual place of business in \_\_\_\_\_), on the \_\_\_\_\_ day of \_\_\_\_\_, (or, by depositing such notice, directed to him, at \_\_\_\_\_, in Her Majesty's Post Office in this city, (town or village,) on the \_\_\_\_\_ day of \_\_\_\_\_, and prepaying the postage thereon.)

A. B.,  
*Not. Pub.*

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**SCHEDULE No. 2.**

**PROTEST FOR NON-ACCEPTANCE OR FOR NON-PAYMENT OF A BILL PAYABLE GENERALLY.**

*Copy of Bill and Endorsements.*

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 18\_\_\_\_, I, A. B., Notary Public, for Lower Canada, dwelling at \_\_\_\_\_, in Lower Canada, at the request of \_\_\_\_\_, did exhibit the original bill of exchange, whereof a true copy is above written, unto E. F., the { drawee } { acceptor } thereof, personally, (or, at his residence, office or usual place of business in \_\_\_\_\_,) and, speaking to himself (or his wife, his clerk, or his servant, &c.,) did demand { acceptance } { payment } thereof; unto which demand { he } { she } answered, “ \_\_\_\_\_ ”

Wherefore I, the said Notary, at the request aforesaid, have protested, and by these presents do protest against the acceptor, drawer and endorsers (or, drawer and endorsers) of the said bill, and other parties thereto, or therein concerned, for all exchange, re-exchange, and all costs, damages and interest, present and to come, for want of { acceptance } { payment } of the said bill.

All which I attest under my signature.  
(Protested in duplicate.)

A. B.,  
*Not. Pub.*

**SCHEDULE No. 3.**

**PROTEST FOR NON-ACCEPTANCE OR FOR NON-PAYMENT OF A BILL PAYABLE AT A STATED PLACE.**

*Copy of Bill and Endorsements.*

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 18\_\_\_\_, I, A. B., Notary Public for Lower Canada, dwelling at \_\_\_\_\_, in \_\_\_\_\_, in \_\_\_\_\_

in Lower Canada, at the request of \_\_\_\_\_, did exhibit the original bill of exchange whereof a true copy is above written, unto E. F., the { drawee } thereof, at \_\_\_\_\_, being the stated place where the said bill is payable, and there, speaking to \_\_\_\_\_, did demand { acceptance } of the said bill; unto which demand he answered, “\_\_\_\_\_.”

Wherefore I, the said Notary, at the request aforesaid, have protested, and by these presents do protest against the acceptor, drawer and endorsers, (or, drawer and endorsers) of the said bill, and all other parties thereto, or therein concerned, for all exchange, re-exchange, and all costs, damages and interest, present and to come, for want of { acceptance } of the said bill. { payment }

All which I attest under my signature.

(Protested in duplicate.)

A. B.,  
Not. Pub.

#### SCHEDULE No. 4.

##### PROTEST FOR NON-PAYMENT OF A BILL NOTED, BUT NOT PROTESTED FOR NON-ACCEPTANCE.

*If the protest is made by the same Notary who noted the bill, it should immediately follow the act of noting and memorandum of service thereof, beginning with the words “And afterwards, on, &c.,” continuing as in the last preceding form, but introducing between the words “did exhibit,” the word “again;” and, in a parenthesis, between the words “written, unto,” the words (“and which bill was by me duly noted for non-acceptance on the \_\_\_\_\_ day of \_\_\_\_\_ last.”)*

*But if the protest be not made by the same Notary, then it should follow a copy of the original bill and endorsements and noting marked on the Bill,—and then in the protest introduce in a parenthesis, between the words “written, unto,” the words (“and which bill was on the \_\_\_\_\_ day of \_\_\_\_\_ last, by \_\_\_\_\_, Public Notary for Lower Canada, noted for non-acceptance, as appears by his note thereof marked on the said Bill.”)*

#### SCHEDULE No. 5.

##### PROTEST FOR NON-PAYMENT OF A NOTE PAYABLE GENERALLY.

(Copy of Note and Endorsements.)

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 18 \_\_\_\_\_, I,  
A. B., Notary Public for Lower Canada, dwelling at \_\_\_\_\_,  
in \_\_\_\_\_.

in Lower Canada, at the request of \_\_\_\_\_, did exhibit the original Promissory Note, whereof a true copy is above written, unto \_\_\_\_\_, the promisor, personally, (or, at his residence, office or usual place of business, in \_\_\_\_\_,) and speaking to himself, (or his wife, his clerk, or his servant, &c.,) did demand payment thereof; unto which demand { he } answered, “ \_\_\_\_\_ ”  
 { she }

Wherefore I, the said Notary, at the request aforesaid, have protested, and by these presents do protest against the promisor and endorsers of the said Note, and all other parties thereto or therein concerned, for all costs, damages and interest present and to come, for want of payment of the said Note.

All which I attest under my signature.

(Protested in duplicate.)

A. B.,  
*Not. Pub.*

SCHEDULE No. 6.

PROTEST FOR NON-PAYMENT OF A NOTE PAYABLE AT A STATED PLACE.

(*Copy of Note and Endorsements.*)

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 18 \_\_\_\_\_, I, A. B., Notary Public for Lower Canada, dwelling at \_\_\_\_\_, in Lower Canada, at the request of \_\_\_\_\_ did exhibit the original Promissory Note whereof a true copy is above written, unto \_\_\_\_\_, the promisor, at \_\_\_\_\_, being the stated place where the said Note is payable, and there, speaking to \_\_\_\_\_, did demand payment of the said Note, unto which demand, he answered, “ \_\_\_\_\_ ”

Wherefore I, the said Notary, at the request aforesaid, have protested, and by these presents do protest against the promisor and endorsers of the said note, and all other parties thereto, or therein concerned, for all costs, damages and interest, present and to come, for want of payment of the said Note.

All which I attest under my signature.

(Protested in duplicate.)

A. B.,  
*Not. Pub.*

SCHEDULE

## SCHEDULE No. 7.

## NOTARIAL NOTICE OF A NOTING, OR OF A PROTEST FOR NON-ACCEPTANCE, OR OF A PROTEST FOR NON-PAYMENT OF A BILL.

*(Place and date of Noting or of Protest.)*

1st.

To P. Q., (*the drawer.*)  
at

Sir,

Your Bill of Exchange for \$ \_\_\_\_\_, dated at \_\_\_\_\_,  
the \_\_\_\_\_, upon E. F., in favor of C. D., payable \_\_\_\_\_ days  
after { sight, } was this day, at the request of \_\_\_\_\_,  
          { date, }  
duly { noted } by me for { non-acceptance. }  
      { protested } { non-payment. }

A. B.,  
*Not. Pub.*

*(Place and date of Noting or of Protest.)*

2nd.

To C. D. (*endorser,*)  
      (*or F. G.*)  
at

Sir,

Mr. P. Q.'s Bill of Exchange for \$ \_\_\_\_\_, dated at \_\_\_\_\_,  
the \_\_\_\_\_, upon E. F., in your favor (*or in favor of C. D.,*)  
payable \_\_\_\_\_ days after { sight, } and by you endorsed,  
                                          { date, }  
was this day at the request of \_\_\_\_\_, duly  
{ noted } by me for { non-acceptance. }  
{ protested } { non-payment. }

A. B.,  
*Not. Pub.*

SCHEDULE

SCHEDULE No. 8.

NOTARIAL NOTICE OF PROTEST FOR NON-PAYMENT OF A NOTE.

*(Place and date of Protest.)*

To \_\_\_\_\_,  
 at \_\_\_\_\_,  
 Sir,  
 Mr. P. Q.'s Promissory Note for \$ \_\_\_\_\_, dated at \_\_\_\_\_,  
 the \_\_\_\_\_, payable { days }  
 { months } after date to  
 { you } or order, and endorsed by you, was this day, at  
 { E. F. } the request of \_\_\_\_\_, duly protested by me for non-  
 payment.

A. B.  
*Not. Pub.*

SCHEDULE No. 9.

ACT OF NOTARIAL SERVICE OF NOTICE OF A PROTEST FOR NON-ACCEPTANCE OR NON-PAYMENT OF A BILL, OR OF NON-PAYMENT OF A NOTE *(to be subjoined to the Protest.)*

And afterwards, I, the aforesaid protesting Notary Public, did serve due notice in the form prescribed by law, of the foregoing Protest for { non-acceptance } of the { bill } thereby  
 { non-payment } { note } protested upon { P. Q., } the { drawer } personally, on  
 { C. D., } { endorsers } the \_\_\_\_\_ day of \_\_\_\_\_ (or, at his residence, office, or  
 usual place of business in \_\_\_\_\_, on the  
 day of \_\_\_\_\_; or, by depositing such notice, directed to  
 the said { P. Q., } at \_\_\_\_\_, in Her Majesty's Post Office  
 { C. D., } in this city, (town, or village,) on the \_\_\_\_\_ day of \_\_\_\_\_,  
 and prepaying the postage thereon.)

In testimony whereof, I have, on the last mentioned day and year, at \_\_\_\_\_ aforesaid, signed these presents.

A. B.  
*Not. Pub.*

SCHEDULE No. 10.

PROTEST BY A JUSTICE OF THE PEACE (WHERE THERE IS NO NOTARY) FOR NON-ACCEPTANCE OF A BILL, OR NON-PAYMENT OF A BILL OR NOTE.

*(Copy of Bill or Note and Endorsements.)*

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 18 \_\_\_\_\_,  
 I, N. O., one of Her Majesty's Justices of the Peace for the \_\_\_\_\_ District

District of \_\_\_\_\_, in Lower Canada, dwelling at (or near the village of \_\_\_\_\_, in the said District, (there being no practising Notary Public resident at or near the said village, or any other legal cause,) did, at the request of \_\_\_\_\_ and in presence of \_\_\_\_\_, a house-holder in the said District, well known unto me, exhibit the original { bill } { note } whereof a true copy is above written unto P. Q., the { drawer } { acceptor } { promisor } thereof, personally, (or, at his residence, office, or usual place of business in \_\_\_\_\_,) and speaking to himself, (his wife, his clerk or his servant, &c.,) did demand { acceptance } { payment } thereof, unto which demand { he } { she } answered, “ \_\_\_\_\_.”

Wherefore I, the said Justice of the Peace, at the request aforesaid, have protested and by these presents do protest against the { drawer and endorsers } { promisor and endorsers } { acceptor, drawer and endorsers } of the said { bill, } { note, } and all other parties thereto and therein concerned, for all exchange, re-exchange, and all costs, damages and interest, present and to come, for want of { acceptance } { payment } of the said { bill, } { note. }

All which is by these presents attested under the signature of the said (*the witness*) and under my hand and seal.

(Protested in duplicate.)

(*Signature of the witness.*)

(*Signature and seal of the J. P.*)

C A P . L X V .

An Act respecting Partnerships.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

PUBLIC NOTICE OF TRADING PARTNERSHIPS, &C.

1. All persons associated in partnership, in Lower Canada, for trading, manufacturing or mechanical purposes, or for purposes of construction of roads, dams, bridges or other buildings, or for purposes of colonization, or settlement or of land traffic, shall cause to be delivered to the prothonotary of the superior court in each district, and to the registrar of each county, in which they carry on or intend to carry on business, a declaration in writing, signed by the several members of such partnership, when all such members are, at the time of making the same, in this province,—and if any of the said members be absent at the time, then by the members present, in their own names and for their absent co-members, under their special authority to that effect :

Declaration in writing to be made by persons associated in partnership for certain purposes.

2. Such declaration shall be in the form or to the effect of the Schedule to this Act and shall contain the names, surname, addition and residence of every partner, and the name, style or firm, under which they carry on or intend to carry on such business, and shall also state the time during which the partnership has existed, and declare that the persons therein named are the only members of such partnership ;

What the declaration shall contain.

3. Such declaration shall be filed within sixty days after the formation of the partnership ; and a like declaration shall be filed in like manner when and so often as any change or alteration takes place in the members of such partnership, or in the name, style or firm under which they intend to carry on their business ;

To be filed within a certain period.

4. Each and every member of any partnership with regard to which the requirements of this section are not complied with, shall be liable to a penalty of two hundred dollars, to be recovered before any court having jurisdiction in civil cases to the amount of such penalty, by any person suing as well in his own behalf as on behalf of Her Majesty ; and one moiety of such penalty shall belong to the Crown for the uses of the Province, and the other moiety to the party suing for the same, unless the suit be brought (as it may be) on behalf of the Crown only, in which case the whole of the penalty shall belong to Her Majesty for the uses aforesaid. 12 V. c. 45, ss. 1, 2,—and 19, 20 V. c. 52, s. 1.

Penalty on failure to comply with this section.

Declaration to be registered.

Fee therefor.

Allegations in declaration—  
their legal effect.

Persons being partners and not mentioned in declaration not exempted from liability.

Rights of partners with regard to each other.

How actions may be brought against persons associated as partners under this Act:

If the action be on any instrument.

2. The said prothonotary and registrar shall enter each such declaration as aforesaid, in a book to be by them kept for the purpose, which shall be at all times, during office hours, open to the inspection of the public, gratuitously; and for registering each such declaration, the prothonotary and registrar shall each be entitled to demand from the person delivering it to him the sum of fifty cents if it does not contain more than two hundred words, and at the rate of five cents per hundred words, for all above the number of two hundred. 12 V. c. 45, s. 2.

3. The allegations made in the declaration aforesaid shall not be controvertible as against any party, by any person who has signed the same, nor as against any party not being a member of the partnership, by any person who has signed the same or who was really a member of the partnership therein mentioned at the time such declaration was made;—nor shall any such signer or partner be deemed to have ceased to be a partner until a new declaration has been made and filed by him or his partners, or any of them as aforesaid, stating such alteration in the partnership:

2. Nothing in this Act shall exempt from liability any person who, being a partner, has not been mentioned in the declaration, and such person may, notwithstanding such omission, be sued jointly with the partners mentioned in the declaration, or they may be sued alone, and if judgment be recovered against them, any other partner or partners may be sued jointly or severally, in an action on the original cause of action upon which such judgment was rendered;

3. Nor shall any thing in this Act be construed to affect the rights of any partners with regard to each other, except that no such declaration as aforesaid shall be controverted by any signer thereof. *ibid*, s. 3.

4. If any persons have been or are associated as partners in Lower Canada for any of the purposes mentioned in the *first* section, and no declaration has been filed as aforesaid with regard to such partnership, then any action which might be brought against all the members of the partnership, may also be brought against any one or more of them, as carrying on or as having carried on trade, jointly with others, (without naming such others in the writ or declaration) under the name and style of their said partnership firm; and if judgment be recovered against him or them, any other partner or partners may be sued jointly or severally on the original cause of action on which such judgment has been rendered:

2. If any such action is founded on any obligation or instrument in writing in which all or any of the partners bound by it are named, then all the partners named therein shall be made parties to such action;

- 3. The service of any summons or process for any claim or demand upon any existing partnership *liability* at the office or place of business of such existing partnership carrying on business within *this Province*, is and shall be held to have the same and equal effect as a service made upon the members of the said partnership, personally, and any judgment rendered against any member of such existing partnership, for a partnership debt or liability, shall be executory by process of execution against all and every the partnership stock, property and effects in the same manner and to the same extent as if such judgment had been rendered against such partnership. *ibid*, s. 4.

As to service of process and execution against partnerships.

5. The word "partnership" in the foregoing sections of this Act, shall include any unincorporated society, company, or association for trading purposes or for any of the purposes mentioned in the first section; the word "trade" shall include any of the purposes last referred to,--and the word "action" shall include any proceeding at law to which any such partnership is a party. 12 V. c. 45, s. 5,--and 19, 20 V. c. 52, s. 2.

Meaning of certain words herein.

**DISTRIBUTION OF PROPERTY OF PARTNERSHIPS AND PARTNERS.**

6. The rule of law to be followed in the distribution of the joint stock or property of a firm and of the separate estate of each of the partners taken in execution or otherwise brought into Court for distribution, shall be the following, that is to say :--The net proceeds of the partnership estate shall be appropriated in the first instance to pay the creditors of the firm; and the net proceeds of the separate estate of each partner shall be appropriated in the first instance to pay his separate creditors; if there be any balance of the separate estate of any partner after payment of his debts, such balance shall be added to the proceeds of the partnership estate, if necessary, for the payment of the creditors of the firm; and if there be any balance of the partnership estate after payment of the debts of the firm, such balance shall be appropriated among the separate estates of the respective partners according to their rights and interest therein;--and the sum so appropriated to the separate estate of any partner shall be applied to the payment of his separate debts, if necessary. 22 V. (1859) c. 4, s. 1.

How the joint stock of a firm and the separate estate of each of the partners brought into Court for distribution shall be disposed of.

7. The next preceding section shall not affect any judgment of distribution rendered before the twenty-sixth day of March, 1859. 22 V. (1859) c. 4, s. 2.

Judgments of distribution before a certain day not affected.

## SCHEDULE.

Province of Canada, }  
 District of }

We, \_\_\_\_\_ of \_\_\_\_\_ in \_\_\_\_\_, (*Grocers*), hereby certify that we (have carried on and) intend to carry on trade and business, as (*Grocers*), at \_\_\_\_\_, in partnership under the name or firm of \_\_\_\_\_ (*or as the case may be*), or I (*or we*) the undersigned, of \_\_\_\_\_ hereby certify that I (*or we*) (have carried on and) intend to carry on trade and business as \_\_\_\_\_ at \_\_\_\_\_ in partnership with C. D. of \_\_\_\_\_ E. F. of \_\_\_\_\_, and that the said partnership hath subsisted since the \_\_\_\_\_ day of \_\_\_\_\_ one thousand \_\_\_\_\_, and that we (*or I or we* and the said C. D. and E. F.,) are and have been since the said day the only members of the said partnership.

Witness our (*or any of our*) hands at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ one thousand \_\_\_\_\_ (*or as the case may be*).

C A P. L X V I.

An Act respecting Unclaimed Goods in the hands of Wharfingers and others.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. All wharfingers, warehouse-keepers, agents, steamboat proprietors or companies, canal or railway officers and servants, stage proprietors, and other persons, in whose custody any unclaimed goods or articles remain, shall advertise once in every month, in at least one newspaper printed in the city of Quebec, and in one printed in the city of Montreal, a list and description, with the marks, numbers and addresses, if such there be, of such unclaimed goods and articles as remain at the time in their custody, with a notice to all persons who claim any of the same, to come forward within six months from the date of such notice, to prove their property and receive the same, upon payment of any charge for freight, carriage or otherwise that has accrued thereon, with a proportionate part of the expense of advertising, and a reasonable charge for wharfage or storage ;— and with a further notice, that at the expiration of the said six months, the packages, parcels and other articles then remaining unclaimed, will be opened, examined, and if nothing appears therein whereby to ascertain the names of the owners, consignees, or persons entitled to receive the same, that then, at the expiration of six months thereafter, the same will be sold by public auction, and the proceeds, deducting all expenses, deposited in the hands of the receiver general of this province ; But fruit or other perishable articles shall be immediately advertised, and may be sold within one week after the date of such advertisement. 2 W: 4, c. 32, s. 1.

Wharfingers, &c., to advertise in newspapers a list and description of unclaimed goods remaining in their custody.

Proviso.

2. If, upon opening such packages or parcels, the names of the owners, consignees, or persons entitled to receive the same, are ascertained, the person in whose possession such packages or parcels remain, shall send by post or otherwise a written notice to such owners, consignees, or persons entitled to receive the same, with an intimation similar to the advertisement above enjoined, to come and claim the same within six months, and that in default thereof they will be sold by public auction, as provided in the first section. *ibid*, s. 2.

Duty of person in whose hands packages are, on opening the same.

3. Immediately after the expiration of twelve months from the time when such unclaimed articles have been advertised in the manner hereinbefore provided, the person in whose custody they are, shall cause them or such parts thereof as are then unclaimed to be sold by public auction, and shall forthwith cause the proceeds of such sale, after deducting the charges and expenses to be paid to the receiver general, and shall deposit with

Unclaimed articles to be sold twelve months from the time they were advertised.

with him a separate account of sales for each package, which shall remain in his office, subject to all further authenticated claims for any part of the said proceeds. *ibid*, s. 3.

Penalty on persons not complying with foregoing provisions.

4. If any person in whose custody such unclaimed articles remain, neglects to comply with the foregoing provisions, he shall incur a penalty not exceeding one-fourth of the appraised value of the goods detained, one moiety of which shall belong to Her Majesty and the other to the informer; and the same may be sued for and recovered before any justice of the peace for the district, on the oath of one or more credible witness or witnesses, other than the informer; and in default of immediate payment, shall be levied with costs, by distress and sale of the offender's goods and chattels, under a warrant signed by any justice of the peace. *ibid*, s. 4.

Persons whose goods have been sold may receive the amount.

5. Any person whose goods or property has been sold, and the proceeds thereof paid to the receiver general in the manner hereinbefore provided, shall receive the amount of such proceeds from the receiver general upon a warrant to be issued by the Governor, after sufficient proof that the person claiming is entitled to the same. *ibid*, s. 5.

How disputes between parties claiming articles shall be determined.

6. If any dispute arises between the claimant of such articles and the person in whose possession they are either with respect to the legality of the claim, or with respect to the amount charged for expenses thereon, and storage or wharfage, the same shall be determined in a summary way before a justice of the peace, within four days after application made to him for that purpose by either of the parties; and the costs thereof, which shall in no case exceed in the whole the sum of two dollars shall be paid by the party against whom such decision is made, and in default of payment, shall be levied by distress and sale of the goods and effects of such party, under a warrant signed by any justice of the peace. *ibid*, s. 6.

C A P . L X V I I .

An Act respecting the Limitation of Actions in Commercial cases and the Statute of Frauds.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. No action of account or upon the case, nor any action grounded upon any lending or contract without specialty, shall be maintainable in or with regard to any commercial matter, unless such action is commenced within six years next after the cause of such action. 10, 11 V. c. 11, s. 1.

Certain actions not maintainable unless brought within six years.

2. No acknowledgment or promise by words only shall be deemed sufficient evidence of a new or continuing contract, whereby to take any case out of the operation of the next preceding section, or to deprive any party of the benefit thereof, unless such acknowledgment or promise is made or contained by or in some writing to be signed by the party chargeable thereby; and where there are two or more joint contractors, or executors or administrators of any contractor, no such joint contractor, executor or administrator shall lose the benefit of the said section so as to be chargeable in respect or by reason only of any written acknowledgment or promise made and signed by any other or others of them:

Verbal promise not sufficient evidence of a new contract to take the case out of the reach of sect. 1.

Case of joint contractors.

2. But nothing in this section shall alter or take away or lessen the effect of any payment of any principal or interest made by any person whatsoever;

Effect of payment.

3. And in actions commenced against two or more such joint contractors or executors or administrators, if it appears at the trial or otherwise that the plaintiff though barred by this Act as to one or more of such joint contractors or executors or administrators, is nevertheless entitled to recover against any other or others of the defendants, by virtue of a new acknowledgment or promise, or otherwise, judgment may be given and costs allowed for the plaintiff, as to the defendant or defendants against whom he recovers, and for the other defendant or defendants against the plaintiff. *Ibid*, s. 2.

In case of joint contractors, plaintiff may recover against one though he fail against the rest.

3. If any defendant in any action on any simple contract in or with regard to any commercial matter, pleads any matter in abatement, to the effect that any other person or persons ought to be jointly sued, and issue is joined on such plea, and it appears at the trial or otherwise, that the action could not by reason of this Act be maintained against the other person or persons named in such plea or any of them, the issue joined on such plea shall be found against the party pleading the same. *Ibid*, s. 3.

Provision in case of plea that parties not liable under this Act ought to be jointly sued.

Effect of indorsement of payment on a note or bill.

4. No indorsement or memorandum of any payment written or made upon any promissory note, bill of exchange or other writing, by or on behalf of the party to whom such payment is made, shall be deemed sufficient proof of such payment so as to take the case out of the operation of this Act. *Ibid*, s. 4.

Act to apply to debts pleaded by way of set off.

5. This Act shall apply to the case of any debt of a commercial nature, alleged by way of set-off on the part of any defendant, either by plea, notice or otherwise. *Ibid*, s. 5.

Promise after full age to pay a debt contracted while a minor must be in writing to give a right of action.

6. In or with regard to any commercial matter, no action shall be maintained whereby to charge any person, upon any promise made after full age to pay any debt contracted during infancy, or upon ratification after full age of any promise or contract in any such matter made during infancy, unless such promise or ratification is made by some writing signed by the party to be charged therewith. *Ibid*, s. 6.

Cases of guarantee in which a written memorandum is requisite.

7. In or with regard to any commercial matter, no action shall be maintainable whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade or dealings of any other person, to the intent or purpose that such other person may obtain credit, money or goods thereupon, unless such representation or assurance is made in writing, signed by the party to be charged therewith. *Ibid*, s. 7

Provisions of 29 Charles 2, c. 3, to extend to contracts for goods to the value of \$48 33½

8. The enactments of the Act passed in England in the twenty-ninth year of the reign of King Charles the Second, and intituled: *An Act for prevention of frauds and perjuries*, are declared to extend and shall extend in Lower Canada, to all contracts for the sale of goods of the value of forty-eight dollars and thirty-three cents and one third of a cent (or ten pounds sterling,) and upwards, notwithstanding the goods are intended to be delivered at some future time, or are not at the time of such contract actually made, procured or provided, or fit or ready for delivery, or some act is requisite for the making or completing thereof, or rendering the same fit for delivery. *Ibid*, s. 8.

## TITLE 9.

## JOINT STOCK COMPANIES.

## CAP. LXVIII.

## An Act respecting Mutual Insurance Companies.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. Any ten freeholders, in any county in Lower Canada, may call a meeting of the freeholders of the county (and of any number of adjoining counties not exceeding five, if they think it necessary) for the purpose of considering whether it is expedient to establish in such county or counties fire insurance company on the principle of mutual insurance:

Preliminary meeting for the establishment of the Company.

2. Such meeting shall be called by an advertisement mentioning the time, place and object of the meeting, and published and posted on the door of the church of each parish, seigniori or township within such county or counties, on one Sunday or holiday immediately after Divine service in the forenoon, and inserted during three weeks immediately preceding the meeting, in some newspaper published in the district in which the meeting is to be holden, if any is published therein. 4 W. 4, c. 33, s. 1, and 6 W. 4, c. 33, s. 3.

Notice of meeting.

3. If at such meeting there are not fewer than forty freeholders present, and a majority of them determine that it is expedient to establish such company, they may elect three persons from among the freeholders of the county or counties, to open and keep a book, in which all freeholders in the county or counties may sign their names, and enter the sums for which they shall be respectively bound to effect insurance with the company. 4 W. 4, c. 33, s. 2.

Number of freeholders required to be present.

3. Whenever the number of persons duly qualified, who have signed their names in the said subscription book, is sixty or more, and the sums for which they have bound themselves to effect insurance amount together to sixty thousand dollars, or upwards, such persons, and all other persons who may thereafter become members of the company, by effecting insurances therein in the manner hereinafter provided, shall be a body politic and corporate by the name of *The Mutual Fire Insurance Company*, and their legal addition shall be, *of the county (or counties,)* by name, for which the company has been established; and by that name may mutually insure the irrelative dwelling houses,

Company constituted a Corporation.

Corporate name and powers.

houses, shops, stores and other buildings, household furniture and merchandize, against loss or damage by fire, whether happening by accident, lightning, or by any other means, except that of design in the insured, or by the invasion of an enemy, or by an insurrection :

Company may sue, &c., hold real estate and make By-laws.

2. And by the same name the company may sue and be sued, appear, prosecute and defend in any court of competent jurisdiction, purchase and hold personal estate, and may hold real estate, to the annual value of two thousand dollars, and no more, and may sell and convey the same at their pleasure ; and may make and execute such by-laws, not contrary to the provisions of this Act or to the laws of this Province, as they deem expedient ; and may do and execute all acts and things necessary for carrying this Act into effect. 4 W. 4, c. 33, s. 3, and 6 W. 4, c. 33, s. 2.

Only one company may be established in a county.

4. Whenever any such company is established in and for any county, or any two, or more counties, no other such company shall be established in and for the same or any of them, and (except in the case provided for by the next section,) the company so first established shall (subject to the exception aforesaid) alone have the right of mutually insuring, under this Act, property lying within such county or counties :

But Insurance may, nevertheless, be effected with other companies.

2. But nothing herein contained shall prevent any such property from being insured by any person or company by whom it might lawfully be insured without this Act, nor shall prevent any company, after it has been lawfully incorporated under this Act, from insuring any property, moveable or immovable, lying within the county or counties for which it is established, although the owner of such property be not a freeholder in such county or counties ; or prevent any person so insured from becoming a member of the company ; 4 W. 4, c. 33, s. 4, and 14, 15 V. c. 21, s. 3.

Persons in other Counties may be members of the company.

3. And any such company may admit as a member thereof the owner of any property situate within any county other than the county or counties for which it is established, and may insure any property of such person so situate as aforesaid ; and each person so admitted as a member of any such company shall have the same rights, and be subject to the same liabilities as the other members of the said company. 14, 15 V. c. 21, s. 3.

Cities and towns, in certain cases, may establish a separate company.

5. Whenever in any county in Lower Canada there is any city or town having a population of more than five thousand souls, according to the then last census, the freeholders of such county residing out of the limits of such city or town, may establish a Mutual Fire Insurance Company for the insuring of property within such county but not within such city or town, although another company may have been already established in

in and for such county, and the provisions of this Act shall apply to any company established under this section: *Ibid*, s. 1.

2. But nothing in this section shall prevent the inhabitants of the county parts of any such county as aforesaid, or any of them, from insuring their property therein in any Mutual Fire Insurance Company lawfully established for the whole county including the cities and towns, if they prefer so to do, or shall invalidate or affect the rights of any such last mentioned company. *Ibid*, s. 2.

But the rights of county companies to remain the same.

6. Every person who at any time becomes interested in any company incorporated under this Act by insuring therein, shall be a member thereof, during the time specified in his policy, and no longer, and shall during such time be bound by the provisions of this Act. 4 W. 4, c. 33, s. 5.

How long person insured remains a member.

7. Any ten members of any such company may call the first meeting of the same, by notice given in the manner prescribed with regard to the preliminary meeting; and at such meeting the said company may elect, by a majority of votes of the members present, a board of directors consisting of not more than nine, nor less than five members of the corporation:

First meeting for election of Directors.

2. A like meeting shall be held on the first Monday in October in every year, and at every such meeting a board of directors shall be elected in the following manner;

Annual meeting.

3. The proceedings shall be commenced by striking off, from the former board of directors, a number equal to the majority of the members of the said board; those who remain, after this operation, shall be members of the board for the year following, and proceedings shall then be taken to complete the number required for the formation of the said board; but any number of members of such former board may be elected as members of the new one; 6 W. 4, c. 33, s. 4.

Proceedings thereat.

4. Any vacancy in the said board, happening in the interval between any two meetings, shall be filled by a person elected for that purpose by a majority of the remaining members of the board, which shall not be competent to act as such until such vacancy has been filled. 4 W. 4, c. 33, s. 6, and 6 W. 4, c. 33, s. 4.

Vacancies in board of Directors.

8. Any ten members of the company may call a general meeting of the same, by giving at least fifteen days' notice:

General meetings.

2. Notice of any meeting other than the first of any such company need not be published at any Church door, but it shall be sufficient that such notice under the signature of the Secretary of the company and specifying the time and place of such meeting, be inserted during two consecutive weeks prior to the meeting,

What notice of meetings will suffice.

meeting, in one newspaper in the English language and in one in the French language published at or nearest to the place of business of the Company. 4 W. 4, c. 33, s. 6, and 19, 20 V. c. 58, s. 6.

**Duty of Directors.** 9. The board of directors shall superintend the concerns of the company, and have the management of the funds and property thereof, and of all matters and things thereunto relating, not otherwise provided for by the company; and may from time to time elect one of their members to be president; and may **Appointment of Officers, &c.** appoint a secretary and treasurer, and such other officers, agents and assistants as they shall think necessary, and prescribe their duties, fix their compensation, take security from them for the faithful performance of their duties, and remove them at pleasure:

**Fixing rates of Insurance.** 2. The said board may determine the rates of insurance, the sum to be insured on any building or other property, and the sum to be deposited on the insurance thereof, and shall order and direct the making and issuing of all policies of insurance, the providing of books, stationery and other things needful for the office of the company, and for carrying on the business thereof; and may order the treasurer to pay the amount of any loss which has happened to the company and any expenses incurred in transacting the affairs thereof;

**Special meetings of Directors.** 3. The said board may hold special meetings as often as they shall deem necessary, and shall keep a record of their proceedings; and any director disagreeing with the majority of the board may enter his dissent on the books of the company, with his reasons for so dissenting, which book shall at all times be open to the inspection of the members of the company. 4 W. 4, c. 33, s. 7.

**Proceedings to obtain a policy.** 10. Every member of any such company shall, before he receives his policy, deposit his promissory note (hereinafter called a deposit note) payable on demand to the order of the company only, endorsed to the satisfaction of the directors of the company, and for a sum of money proportioned according to the classification of risks which shall be established by the directors; a part of which note, to such amount as the directors have by their by-laws determined, the said directors may demand and take from such member before he receives his policy for the purpose of raising a fund to defray the incidental expenses of the company, and the remainder of the sum mentioned in such note shall be payable, in part or the whole, at any time when the directors deem the same to be necessary for the payment of the losses or expenses of this company: 4 W. 4, c. 33, s. 8,—6 W. 4, c. 33, s. 5, and 14, 15 V. c. 21, s. 4.

**Amount of dividend to be** 2. The Directors of the company may by By-law declare in each year in advance, the amount of dividend on the deposit notes

notes required to be paid in to meet the estimated annual losses and expenses of the company, such dividend to be settled and determined by the Directors, upon an estimate of the probable losses and expenses during the year, and published in the manner to be provided by the By-law ;

determined by Directors.

3. The balance of any such deposit note remaining at the credit of any member at the expiration of his policy shall be returned to such member. 14, 15 V. c. 21, s. 4.

Balance of deposit note.

11. When any party applying for insurance cannot write, the application; premium note, or any other document necessary to be signed by him, may be signed with his mark in the presence of two witnesses who shall attest the same after such application, note, or other document has been read to the party so making his mark. 19, 20 V. c. 58, s. 4.

In case party insuring cannot write.

12. Every member of any such company shall pay his proportion of all losses and expenses incurred by the company ; and all real property belonging to the insured at the time of the date of the policy, or during the continuance thereof, shall be hypothecated to the company, from the date of the policy, for the amount of the deposit note given to the directors by the party insured, and it shall not be necessary that the deposit note or policy be enregistered in any registry office to the validity of such hypothec. 4 W. 4, c. 33, s. 9, and 6 W. 4, c. 33, s. 7.

Proportion of losses, &c., to be paid by each Member.

13. Whenever any property, insured by any such Company, has been destroyed or damaged by any fire, the proprietor thereof shall, within twenty days after such fire, cause a notice thereof, in writing, to be delivered at the office of the secretary of the company, and such notice shall set forth the sum claimed by such proprietor, as the amount of the loss sustained in consequence of such fire, and shall also contain the name of some freeholder of the county in which such fire happened, who shall be the *expert* named by the claimant, in case the amount to be paid by the company to such claimant is afterwards estimated by *experts*, in the manner provided by this Act. 4 W. 4, c. 33, s. 10.

Proceedings when property insured has been destroyed by fire.

14. The directors of such company shall, within five days after the delivery of such notice, answer the same in writing, and shall cause such answer to be delivered at the domicile of the claimant, or to the said claimant in person, and shall therein state whether the directors do or do not agree to pay the sum demanded in the notice given by the claimant ; and if they do not so agree, such answer shall mention the sum which they are willing to pay to the claimant as the amount of such loss, and shall also contain the name of a freeholder of the county, in which such fire happened, who shall be the *expert* appointed by the company in case the amount to be paid by the company

In case of disagreement as to amount to be paid for damages so suffered.

company to such claimant is estimated by *experts* as aforesaid. 4 W. 4, c. 33, s. 11.

Appointment of  
*experts*.

**15.** If the sum offered by the directors in their answer is not agreed to by the claimant, the two *experts*, so appointed, shall appoint a third *expert* to act jointly with them; and the three *experts* shall give notice to the directors and to the claimant, of the time and place when and where they intend to proceed to estimate the sum to be paid as aforesaid, and shall, by such notice, require the directors and the claimant then and there to produce such documents or parole testimony, as they may respectively wish to offer for the consideration of the *experts*. 4 W. 4, c. 33, s. 12.

*Experts* to be  
sworn.

**16.** The said *experts* shall not proceed to make such estimate, until they have been sworn by some justice of the peace, (and any justice of the peace may and shall administer the necessary oaths,) faithfully and impartially to perform their duty as such *experts*. 4 W. 4, c. 33, s. 13.

Powers and du-  
ties of *experts*.

**17.** The said *experts*, when so sworn, may, at the time and place so appointed, proceed to examine the documentary evidence and the witnesses then and there adduced, and may, if they think it necessary, or if required by either party, examine the claimant or the directors, or any of them, upon interrogatories upon *facts et articles*, to be duly exhibited to the said *experts*; and a true copy thereof served upon the party to be examined; but they shall not so examine any person who has not been previously sworn before the said *experts* (who may administer the necessary oaths) to declare the truth, the whole truth, and nothing but the truth, in the answers to be given to the questions put to them by the said *experts*; and if any person wilfully states what is untrue, knowing it to be so, in any such answer, he is guilty of wilful and corrupt perjury, and on conviction thereof, shall incur the pains and penalties attached to that offence. 4 W. 4, c. 33, s. 14.

False swearing  
to be perjury.

**18.** The award agreed upon by the said *experts*, (or by any two of them, in case of difference of opinion,) shall be drawn up in writing and signed by the *experts* agreeing to the same, who shall cause copies thereof, signed by them, to be delivered at the domicile of the claimant and at the office of the secretary of the company. 4 W. 4, c. 33, s. 15.

Award to be in  
writing.

In case the  
award of the  
*experts* is not  
accepted,  
claimant to  
have an action  
against the  
company.

**19.** If, within the delay hereinbefore limited, the directors deliver no answer to the notice given by the claimant, or in their answer to the same, offer to pay no sum to the claimant, or if such offer is not accepted by the claimant, or if such answer does not contain the name of a person to be an *expert* or if no award is given by the *experts* appointed, within thirty days from the time due notice was given by the claimant to the directors,—or if either party is dissatisfied with the award made

made by the *experts*, or if the directors refuse or neglect to pay the sum thereby awarded to the claimant, —such claimant shall have an action against the company in any court of competent jurisdiction, and either party to such action may demand and obtain a trial by jury ; and if the verdict given by the jury is for a greater sum than that offered by the directors in their answer to the notice of the claimant, or (if there has been an award of *experts*) if such verdict is for a greater sum than that awarded, or if the sum so awarded has not been legally tendered to the claimant before the action was commenced, the plaintiff shall have full costs of suit, otherwise full costs of suit shall be given to the defendant. 4 W. 4, c. 33, s. 16.

Costs.

20. Whenever any loss or damage by fire, sustained by any member, is ascertained and is payable by any such company, the directors may settle and determine the sums to be paid by the several members as their respective portions of such loss, and publish the same in such manner as shall be provided by the by-laws of the company ; and the sum to be paid by each member shall always be in proportion to the original amount of his deposit note or notes, and shall be paid to the treasurer within thirty days next after the publication of such notice ; and if any member, for the space of thirty days after such notice, neglects or refuses to pay the sum so determined by the directors, the directors may sue for and recover from such member the amount of his or her deposit note, and costs of suit, and the amount recovered shall remain in the hands of the treasurer of the company, subject to the payment of that portion of all losses and expenses to which such member shall be liable ; and the balance, if any, shall be returned to such member at the expiration of the term of his or her policy. 4 W. 4, c. 33, s. 17.

Directors to determine the proportions of the loss to be paid by each Member.

21. But in order that there may be but one assessment annually, and that it be paid at the annual meeting of the company, the directors are hereby authorized, in case of any loss or damage by fire, or to cover incidental expenses, to borrow such sums of money as the circumstances may render necessary ; and the interest payable on such loan shall be included in the annual assessment, and the deposit notes in the hands of the Secretary or Treasurer especially appropriated in favor of the lender or lenders, to the payment of the amount of such loans : 6 W. 4, c. 33, s. 6.

Power to Directors to borrow money, when required.

2. Whenever any loss or damage by fire, sustained by any member of the company, is ascertained, and payable by the company, the directors shall cause the same to be settled and paid conformably to this Act and the regulations of the company, and shall cause to be entered in the books of the company the amount of the dividend to be paid by each member of the said company, on the amount of the deposit notes which such member shall have deposited ; and such amount shall always

Losses to be settled and paid by Directors conformably to this Act.

always be proportionate to the original amount of the premium notes of such member ;

Notice to be given of amount of dividends on deposit note payable in each year.

3. The directors shall cause a notice of the total amount of dividends on deposit notes, to be paid in any year, to be published in the manner provided by the By-laws of the company, in at least one newspaper within the district where the party assured resides, if there be such newspaper within the district, and if not, the same shall be published in a newspaper published nearest the residence of the party assured ; 19, 20 V. c. 58, s. 5.

After 30 days' notice Directors may sue for.

4. Thirty days after such notice the directors may sue for, and recover, with costs, the amount of the deposit notes of the members who have refused or neglected, during the said space of time, to pay to the Treasurer of the company the sum of money which the directors have declared to be the dividend to be paid on such deposit notes. 6 W. 4, c. 33, s. 8.

Member failing to pay, not entitled to recover for loss.

22. Any member of such company failing to pay the said annual dividend at the time appointed by the directors, shall not be entitled to recover from the said company for any loss which he may sustain thereafter, until his annual payment has been made ; But nothing in this section shall prevent the directors from recovering from such member in default the amount of his deposit note or any declared dividend or assessment, with costs of suit hereinbefore provided. 14, 15 V. c. 21, s. 5.

Fund so formed to be invested at interest.

23. All such sums of money so paid shall form a fund for the payment of losses and expenses, which fund the said directors shall invest to bear interest in some Chartered Bank in this Province, in such manner as shall be determined by the By-laws to be made in that behalf by the directors. *Ibid*, s. 6.

In case amount of deposit notes is not sufficient to pay losses.

24. If the amount of all the deposit notes is insufficient to pay the losses occasioned to two or more sufferers by any one fire, or by two or more fires at the same time, the sufferers shall receive a proportionate dividend of the whole amount of the said notes, according to the sums for which they have been respectively insured ; and a further sum which shall be assessed on all the members of the said company, and which shall not exceed two dollars on every four hundred dollars insured, and shall be less, if a less sum will suffice : 4 W. 4, c. 33, s. 18.

Amount that may be demanded over deposit notes, limited.

2. And the members of the company shall not thereafter be required to pay for any losses or damages occasioned by any one fire, more than the said sum of two dollars, on every four hundred dollars insured with the said company, over and above the amount of their deposit notes, nor more than that sum for any such loss or damage, after the said notes have been paid, and the amount expended ; but any member, by paying the full

full amount of his deposit note and surrendering his policy, before any further loss or expense has occurred, may be discharged from all his obligations towards the company ; 6 W. 4, c. 33, s. 9.

3. The sufferers shall have precedence in their claims, according to the date of their respective losses ; but all losses by any one and the same fire shall have no precedence the one over the other. 4 W. 4, c. 33, s. 18. Precedence of sufferers.

25. Any such company may insure by the same policy, and at one time, for any term not exceeding five years, and any policy of insurance issued by the company, and signed by the President, and countersigned by the Secretary, and in the form in the schedule A of this Act, shall be valid and binding on the company, in all cases where the insured party has, at the time the damage occurs, the title or estate described by him at the time of effecting the insurance, to the land on which any property damaged by fire is situate ; but if the insured has a less title or estate in such property, or if the same is incumbered otherwise than described as aforesaid, the policy shall be void ; and the description of every such title or estate or incumbrance, shall be written on the back of the policy, and signed by the President and Secretary of the company. *Ibid*, s. 19. Term of Insurance.  
Form of policy.

26. It shall not be necessary to the validity of any policy of insurance issued by any company under this Act, that such policy be executed in duplicate, or be signed by the party insured ; and whenever it is deemed expedient by the directors of such company not to execute any policy in duplicate, the words "in duplicate" in the form (schedule A), appended to this Act, may be omitted. 19, 20 V. c. 58, s. 3. Policy need not be executed in duplicate.

27. No allowance shall be made to any member for any gilding, historical or landscape painting, or carved work, account books, papers, money or jewels, destroyed or damaged by fire. 4 W. 4, c. 33, s. 20. No allowance to be made for certain articles.

28. When any property insured is alienated by sale or otherwise, the policy thereon shall be void, and shall be surrendered to the directors to be cancelled ; and upon such surrender, the member making it shall receive the note deposited at the time the policy was issued, upon paying his portion of all losses and expenses that have occurred before surrender : Alienation of article insured to annul the policy.

2. But the grantee or alienee, having the policy assigned to him, may have the same confirmed to him for his proper use and benefit, upon application to the directors, and with their consent, within thirty days after such alienation, on giving his note, payable on demand, to the directors for so much of the sum for which the deposit note of the alienor was given, as Put alienee may have policy assigned and confirmed.

then remain unpaid; and by such ratification such alienee shall become entitled to all the rights and privileges, and subject to all the liabilities to which the alienor was subject. 4 W. 4, c. 33, s. 21.

In case of alteration in houses, &c., insured.

**29.** If any alteration is made in any house or building by the proprietor thereof, after he has effected insurance thereon with the company, whereby it may be exposed to greater risk from fire than at the time the policy was made, such policy shall be void, unless an additional premium and deposit, after such alteration, is agreed upon and paid by the party insured to the directors; but no alteration or repair to any building, not increasing such risk, shall in any wise affect the policy. 4 W. 4, c. 33, s. 22.

Consent of Directors must be obtained to a double Insurance.

**30.** If any insurance on any house or building is made with any such company, and with any other insurance company, office or person, at the same time, the policy issued by the company first mentioned shall be void, unless such double insurance has been agreed to by the directors, and their consent to the same signified by an indorsement on the policy, signed by the president and secretary; and generally, all the laws of Lower Canada concerning insurance against fire, and not contrary to this Act, shall extend to and affect all insurances made by any company under this Act. 4 W. 4, c. 33, s. 23.

Application of this Act.

**31.** The provisions of the preceding sections shall be held to include and have reference to all property, as well personal as real, which companies, organized under this Act are allowed to insure, and to this effect shall be construed and interpreted by all courts and Judges before whom the same are brought in question. 19, 20 V. c. 58, s. 1.

Party interested in suit under this Act is nevertheless a competent witness.

**32.** The interest any person may have in the issue of any suit to which any company formed under this Act is a party by reason of his being a member of such company, shall not render him an incompetent witness in such suit on behalf of or against such company, nor shall such interest be sufficient cause for the recusation of a Judge before whom any case to which any such company is a party is heard. 19, 20 V. c. 58, s. 2.

#### CITY OF MONTREAL.

This Act to apply to company established in Montreal.

**33.** The freeholders and other persons residing in the city of Montreal may establish a Mutual Fire Insurance Company, for insuring property situated within the limits of the said city, and not elsewhere, under the name of "The Mutual Fire Insurance Company of the City of Montreal," and all the provisions of this Act, in so far as they are not inconsistent with this section, shall apply to the said company: 22 V. c. 59, s. 1. (1859.)

2. The Directors of the said company may declare during the year, and whenever they deem it necessary, the amount of assessment to be paid by the parties insured, to meet the expenses and losses of the said company; *Ib.* s. 2.

Directors may declare amount of assessment whenever they think proper.

3. The annual meeting for the election of the directors of the said company shall be held on the second Monday in October, in each year, or on the following day, if such second Monday be a holiday, and at an hour to be fixed by the directors. *Ib.* s. 3.

Annual meetings.

COUNTY OF MONTREAL.

34. Nothing in this Act shall derogate from any special provision made by any Act respecting the Mutual Fire Insurance Company of the county of Montreal. See 8 V. c. 84, and 16 V. c. 59.

Special provisions relating to Montreal County Insurance Company not affected hereby.

SCHEDULE A.

“ No.

“ This policy witnesseth, that A. B., of the county of \_\_\_\_\_, in Lower Canada, hath become (or being) a member of the *Mutual Fire Insurance Company* of \_\_\_\_\_ (and \_\_\_\_\_) hath effected insurance, with the said company, for the sum of \_\_\_\_\_, on the following property: (*Description, place in which situate, &c.*) for the term of \_\_\_\_\_ years, from the date thereof; and the same A. B., hath deposited in the hands of the directors of the said company his note payable to their order on demand, for the sum of \_\_\_\_\_, of which sum he hath paid to the said directors the sum of \_\_\_\_\_, being at the rate of \_\_\_\_\_ per cent. on the said sum; and that by reason of the premises the said A. B. hath become entitled to all the advantages and subject to all the liabilities, to which persons insured by this company are entitled and subject, under the laws of this Province.

“ In witness whereof (the said A. B., *if the insured signs it*) and the president of the said company, have signed this policy (in duplicate, *if it is so executed*) and the secretary hath countersigned the same, at \_\_\_\_\_ in the county of \_\_\_\_\_, in Lower Canada, this \_\_\_\_\_ day of \_\_\_\_\_ one thousand \_\_\_\_\_

“ A. B. C. D., President.

“ E. F., Secretary.”

4 W. 4, c. 33, schedule, as amended by subsequent Acts.

## C A P . L X I X .

## An Act respecting Building Societies.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

A certain declaration required to be made, to constitute a Building Society.

1. Whenever any twenty persons or upwards in any part of Lower Canada have agreed to constitute themselves a Building Society, and have signed and executed, under their respective hands and seals, a declaration of their intention to become such Building Society, and have deposited the same with the Prothonotary of the Superior Court for the District wherein such society is to be formed, and to have its principal office or place of business, (who for receiving such deposit shall be entitled to receive a fee of fifty cents) such persons and such other persons as may afterwards become members of such society, and their several and respective heirs, executors, curators, administrators, successors and assigns, shall be a body corporate and politic, by such name and style, as a Building Society, as by the said declaration is declared :

Purpose for which such Society shall be constituted.

2. Such society shall be constituted for the purpose of raising, by monthly or other periodical subscriptions of the several members of the said society, in shares not exceeding the value of four hundred dollars for each share, (and by subscriptions not exceeding four dollars per month for each share,) a stock or fund for enabling each member to receive out of the funds of the society the amount or value of his share or shares therein, for the purpose of erecting or purchasing one or more dwelling houses, or other freehold or leasehold estate, such advance to be secured by mortgage or otherwise to the said society until the amount or value of his share or shares is fully paid to the said Society, with the interest thereon, and with all fines or liabilities incurred in respect thereof :

Rules for the government of the society to be made by its members.

3. The several members of such society may, from time to time, assemble together, and make, ordain and constitute such proper and wholesome rules and regulations for the government and guidance of the same, as to the major part of the members thereof so assembled together seem meet, so as such rules be not repugnant to the express provisions of this Act, or to the laws in force in Lower Canada ; and may impose and inflict reasonable fines, penalties and forfeitures upon members of the society offending against such rules, to be respectively paid to such uses for the benefit of the said society, as the said society by such rules shall direct ; and may also from time to time amend and alter such rules as occasion may require, or annul or repeal the same, and make new rules in lieu thereof, subject to the provisions hereinafter made ;

4. But no member shall receive from the funds of any such society any interest or dividend by way of annual or other periodical profit upon any share in the society until the amount or value of his share or shares has been realized; except on the withdrawal of such member according to the rules of the society then in force. 12 V. c. 57, s. 1.

Members to receive no profits until the amount of their shares is realized.

Exception.

2. Every such society may receive from any member any sum of money by way of *bonus* on any share, for the privilege of receiving the same in advance prior to its being realized, besides interest for the share so received or any part thereof, without being held thereby to contravene any law relating to usury. *ibid*, s. 2.

Society may receive a *bonus* for advance made to members.

3. Each such society shall, from time to time, elect and appoint any number of the members of the said society to be a board of directors (who shall choose a president and vice-president,) the number and qualification thereof to be declared in the rules of such society; and may delegate to such directors the execution of all or any of the powers given by this Act; and such directors being so elected shall continue to act during such time as shall be appointed by the rules of such society, the powers of such directors being first declared in and by the said rules; and in all cases where directors are appointed for any particular purpose, the powers delegated to them shall be reduced to writing and entered in a book by the secretary of the society:

Appointment of Board of Directors.

2. A majority of the number of such directors, present at any meeting thereof must concur in any act of such directors in order to make such act valid, and they shall, in all things delegated to them, act for and in the name of such society; and all acts and orders of such directors, under the powers delegated to them, shall have the like force and effect as the acts and orders of the society at any general meeting thereof could have had under this Act;

Majority of directors must concur in all proceedings.

3. But the transactions of the directors shall be entered in a book belonging to the society, and shall from time to time and at all times be subject and liable to the review, allowance and disallowance of such society, in such manner and form as such society have by their general rules directed. *ibid*, s. 3.

Minute book or proceedings.

4. Every such society shall, by one or more of their said rules, declare all and every the interests and purposes for which such society is established; and shall also in and by such rules direct all and every the uses and purposes to which the money from time to time subscribed, paid or given to or for the use or benefit of the said society, or arising therefrom or in anywise belonging to the society, shall be appropriated and applied;—and in what shares or proportions and under what circumstances any member of such society, or other person, shall become entitled to the same, or any part thereof:

Society to declare certain particulars in their rules.

Application of moneys restricted.

2. But the application of such money shall not in anywise be repugnant to the uses, interests or purposes of such society, or any of them to be declared as aforesaid;—and all such rules during their continuance shall be complied with and enforced; and no such moneys as aforesaid shall be diverted or misapplied either by the directors or treasurer, or any other officer or member of the society entrusted therewith under such penalty or forfeiture as the society may, by any rule inflict for such offence. *ibid*, s. 4.

Rules to be entered in a book to be open for inspection.

5. The rules for the management of each such Society shall be entered and recorded in a book to be kept for that purpose, which book shall be open at all reasonable times for the inspection of the members of such Society, but nothing in this section shall prevent any alteration in or amendment of any such rules in the whole or in part, or the making any new rules for the management of the Society, in such manner as by the rules of the Society may from time to time be provided. 12 V. c. 57, s. 5.

Such entry to be deemed sufficient notice and to make rules binding.

6. All rules from time to time made and in force for the management of any such society and entered and recorded as aforesaid, shall be binding on the several members and officers of the society, and the several contributors thereto, and their representatives, all of whom shall be held to have full notice thereof by such entry and record as aforesaid; and the entry of such rules in the book or books of the said society as aforesaid, or a true copy of the same, examined with the original and proved to be a true copy, shall be received as evidence of such rules respectively, in all cases. 12 V. c. 57, s. 6.

How only rules may be repealed or amended.

7. No rule entered as aforesaid shall be altered, rescinded or repealed, unless at a general meeting of the members of the society, convened by public notice written or printed, signed by the secretary or president of the society in pursuance of a requisition for that purpose by more than one half of the members of such society, which requisition shall state the objects for which the meeting is called, and shall be addressed to the president and directors; whereupon each member shall be notified of the proposed alterations through the post office, within fifteen days; but three fourths of the members present at such meeting must concur in such alterations or repeal. 12 V. c. 57, s. 7.

Place of meeting, &c., to be specified.

8. The rules of every such society shall specify the place or places at which it is intended that the society shall hold its meetings, and shall contain provisions with respect to the powers and duties of the members at large, and of such officers as may be appointed for the management of the affairs of the society. 12 V. c. 57, s. 8.

Appointment of officers.

9. The directors of every such society shall from time to time at any of their usual meetings, elect and appoint such officers of

of the society, and grant such salaries and emoluments as they may deem fit and pay any necessary expenses incurred in the management of the society; and shall elect such officers for such space of time and for such purposes as shall be fixed and established by the rules of the said society, and may from time to time discharge them, and appoint others in the room of those who vacate or die or are discharged :

2. Every such officer or other person appointed to any office in any wise concerning the receipt, management or expenditure of any sum of money collected for the purposes of the said society, shall, before being admitted to take upon him the execution of any such office or trust, enter into a bond in such form and for such amount as the directors may determine, with two sufficient sureties, for the just and faithful execution of such office or trust; and for rendering a just and true account according to the rules of the said society for paying obedience to the same and in all matters lawful: 12 V. c. 57, s. 9.

Certain officers to give security for the faithful discharge of their duties.

10. Any such society may take and hold any real estate, or securities thereon, *bonâ fide* mortgaged, assigned or hypothecated to the said society, either to secure the payment of the shares subscribed for by its members, or to secure the payment of any loans or advances made by, or debts due to such society, and may also proceed on such mortgages, assignments or other securities, for the recovery of the moneys thereby secured, either at law or in equity or otherwise; and such society may invest in the names of the president and treasurer for the time being, any of its surplus funds in the stocks of any of the chartered banks or other public securities of the province, and all dividends, interest and proceeds arising therefrom shall be brought to account and applied to and for the use of the society according to the rules thereof. 12 V. c. 57, s. 10.

Society may hold real estate mortgaged to them.

Investment of surplus funds.

11. Any such society may, from time to time, lend and advance to any member or other person, money from and out of its surplus funds, upon the security and mortgage (*hypothèque*) of real estate, and for such period as to the society or its directors seems satisfactory or expedient, and may receive therefor such sum of money, by way of bonus, besides interest thereon, as may be agreed upon, without being subject on account thereof to any forfeiture or penalty, and may from time to time vary such investments at their discretion. 20 V. c. 54, s. 1.

Society may make loans on certain conditions.

12. Whenever any such society has received from any shareholder a mortgage or hypothec, or an assignment or transfer of any real estate belonging to him or her, to secure the payment of any advance, and containing an authority to the society to sell such real estate in case of non-payment of any stipulated number of instalments or sums of money (as every

Society may sell property mortgaged to them on non-payment of instalments, &c., secured thereby.

every such society is hereby authorized to do) and containing also power to the said society to apply the proceeds of such sale to the payment of the advances, interest and all other charges due to the said society, and after perfect payment thereof and of all costs and expenses incident thereto, to pay over the balance to the owner of such estate;—such stipulations and agreement shall be valid and binding to all intents and purposes whatsoever, and such society may cause the same to be enforced by an action or proceeding in the usual course in any court of law in Lower Canada, having competent jurisdiction, and such action may be brought in the corporate name of any such society. 14, 15 V. c. 23, s. 1, and 18 V. c. 116, s. 3.

Actions at law may be brought in the corporate name.

Nature of securities upon which society may advance moneys.

**13.** Every such society may advance, in the usual manner, moneys on any real estate whatsoever of any member of the said society, as well for the actual purchase of the same and for the erection of buildings thereon, as generally upon the security of any real estate belonging to any such member at the time of his borrowing such moneys, and may take a mortgage, hypothec or assignment of all such real estate whatsoever in security for such advances, on the same conditions and with the same privileges in all respects as any other real estate by this Act authorized to be mortgaged, hypothecated or assigned; and all securities heretofore taken for moneys advanced in the manner above mentioned, shall be valid and binding on the parties to all intents and purposes whatsoever, as if taken under this Act :

Who may be members of Building Societies.

2. All or any person or persons whosever, whether capitalists or otherwise, may become members of any such society; and copartners and corporate bodies may hold shares therein, in same manner as single individuals. 14, 15 V. c. 23, s. 4.

What must be alleged in actions to realize property mortgaged.

**14.** In any action or proceeding instituted by any such society for the purpose of realizing or bringing to sale any property hypothecated, mortgaged or assigned to the society as aforesaid, it shall not be necessary to set forth the special matters in the declaration,—but it shall be sufficient to allege that the defendant hypothecated, mortgaged or assigned (as the case may be) the real estate, describing the same, to the society, and that the amount, (or sufficient part of the amount) stipulated by such party to be paid, has become and remains due and owing, whereby by virtue of this Act an action hath accrued to the society, to have the said estate and property sold :

What evidence will suffice in such action.

2. In order to maintain such action, it shall be sufficient, in addition to the customary evidence of the hypothec, mortgage or assignment of such property or estate, to prove by any one witness, whether in the employment of, or a shareholder in such society or not, or by any other means, that the defendant is in arrear and indebted to the said society in or exceeding a sum

sum on the accruing of which, by the terms of such hypothec, mortgage, assignment or agreement, the said society has the right to have the said property or estate sold; and thereupon the court shall give judgment for the said amount, and by such judgment order the property to be sold by the sheriff of the district wherein it lies, after three insertions in the course of four months in the *Canada Gazette*; and it shall not be necessary for the sheriff to go through any formalities in seizing the said lands or otherwise;

3. All the laws of Lower Canada, with respect to the protection of immoveable property under seizure, and with respect to the filing of oppositions to, and after the sale of lands or immoveable property, to the payment, return and distribution of the money, to the re-sale of such immoveable property at the *folle enchère* of any purchaser, and to the obtaining possession of any such immoveable property after sale, shall be applicable to the proceedings authorized by this Act; and the provisions of all laws of Lower Canada regulating the sale of real estate, and the judicial proceedings relative thereto, shall, in so far as applicable and it is not otherwise provided for by this Act, extend to all proceedings to be had under this Act; and if it be not otherwise herein directed, all such proceedings, in so far as may be, shall be conducted in like manner as proceedings under ordinary writs of execution, and the deed to be given by the sheriff shall have the like effect as a deed given under an ordinary writ of execution; except that the sheriff of the district shall, in addition to his disbursements, be entitled to deduct only one per centum commission from the gross proceeds of the sale. 14. 15 V. c. 23, s. 2.

Laws in relation to real estate under seizure to apply to proceedings under this Act.

15. Every such society may forfeit and declare forfeited to the society, the shares of any member who neglects or is in arrear to pay such number of instalments as may be fixed by any stipulation, or by-law; and every such society may pursue the same course, exercise the same power, and take and use the same remedies to enforce the payment of any debt or demand due to such society, as any person or body corporate may by law take or use for such purpose. *ibid*, s. 3.

Cases in which shares may be declared forfeited.

16. If any person appointed to any office by any such society, and being entrusted with and having in his hands or possession, by virtue of his office, any moneys or effects belonging to such society; or any deeds or securities relating to the same, dies or becomes bankrupt or insolvent, his heirs, executors, curators, administrators or assigns, or other person having a legal right, shall, within fifteen days after demand made by the order of the directors of such society or the major part of them, assembled at any meeting thereof, deliver over all things belonging to the said society, to such persons as the said directors shall appoint, and shall pay out of the estates, assets or effects of such person, all sums of money remaining due

Provision in the event of the death or insolvency of any officer of such society.

due which such person received by virtue of his office, before any of his other debts are paid or satisfied, and all such assets, estates and effects shall be bound to the payment and discharge thereof accordingly; except that the same shall not be paid or satisfied to the prejudice of mortgages or privileges on real estate, or of liens or privileges on personal estate only, duly executed previous to the appointment of such officer. 12 V. c. 57, s. 11.

All the property, &c., of such society to be vested in the society by its corporate name.

**17.** All real and personal property, moneys, goods, chattels and effects whatever, and all titles, securities for money or other obligatory instruments and evidences or muniments, and all other effects whatever, and all rights and claims belonging to or had by any such society, shall be vested in the society by its corporate name and style, declared in the declaration mentioned in the first section of this Act as that under which such society shall be known;—and shall for all purposes of action or suit, as well criminal as civil, in law as in equity, in any wise touching or concerning the same, be deemed and taken to be, and shall in every such proceeding (when necessary) be stated to be, the property of the society by the name and style aforesaid, without further description, and by the said name and style the society may sue and be sued, bring or defend any action, suit or prosecution, criminal as well as civil, in law or in equity, touching or concerning the property, right or claim, of or belonging to the society, and in all cases concerning any property, right or claim of the said society, may sue and be sued, plead and be impleaded: 12 V. c. 57, s. 12,—and 18 V. c. 116, s. 3.

Pending actions not affected.

**2.** But nothing in this Act shall abate or discontinue or affect any action, prosecution or proceeding brought on behalf of any such society by the president and treasurer thereof; and the same after this Act is in force shall be continued in the corporate name of the society. 18 V. c. 116.

The secretary to be a competent witness.

**18.** In all such actions, suits and prosecutions to which any such society is a party, the secretary of such society shall be a competent witness, notwithstanding he be also treasurer, and that his name has been used in such action, suit or prosecution as such treasurer. 12 V. c. 57, s. 13.

Liability of directors limited.

**19.** The president, vice-president and directors of every such society shall in their private capacity be exonerated from all responsibility in relation to the liabilities of such society. 12 V. c. 57, s. 14.

General statement of affairs to be annually prepared by treasurer.

**20.** The rules of every such society shall provide that the treasurer or other principal officer thereof shall once at least in every year prepare a general statement of the funds and effects of the society, specifying in whose custody or possession the said funds or effects are then remaining, with an account

account of every sum of money received and expended by or on account of the society since the publication of the preceding periodical statement; and every such periodical statement shall be attested by two or more members of the said society appointed auditors for that purpose, who shall not be directors; and shall be countersigned by the secretary of the society; and every member shall be entitled to receive from the said society a copy of such periodical statement, without charge. 12 V. c. 57, s. 15.

PERMANENT BUILDING SOCIETIES.

**21.** Permanent building societies, enabling persons to become members thereof at any time for investment therein or to obtain the advance of their shares by giving security therefor, and to fix and determine with any such society the time and amount at and by which such members shall repay such advanced shares and obtain the release of the said security, without being liable to the contingency of losses or profits in the business of the said society, may be formed and subsist under this Act. 22 V. (1859) c. 58, *preamble*, s. 1.

This Act to extend to Permanent Building Societies.

**22.** Any permanent building society established and conducted on the principles hereinbefore mentioned, which has fulfilled and observed the requisite conditions for the establishment of a building society under the foregoing provisions of this Act, shall be a building society within the meaning of this Act; and any person who has approved the rules and regulations of any such building society entered and recorded in a book, as in the fifth section required, and has subscribed his name as a shareholder for one or more shares, shall, from the time of such approbation and subscription, be a member of such building society; and the production of the book containing the rules for the management of such society, kept as in the said section required, signed by such person, or by his duly authorized attorney, and duly witnessed, shall be sufficient evidence of membership in such building society. 22 V. (1859) c. 58, s. 1.

Permanent Building Societies having fulfilled the conditions required under this Act to be Building Societies within the meaning thereof.

**23.** Any permanent building society may alter, amend, repeal or make any regulation, rule or by-law for the working of the society at a public meeting of the members thereof, duly convened according to this Act and the rules of such society. *ibid*, s. 2.

Such societies may amend, &c., their rules and how.

**24.** No such society, by its rules, regulations and by-laws authorized to borrow money, shall borrow, receive, take or retain, otherwise than in stock and shares in such society, from any person or persons, any greater sum than three fourths of the amount of capital actually paid in on unadvanced shares and invested in real securities by such society;—and the paid in and subscribed capital of the society shall be liable for the amount so borrowed, received or taken by any society. *ibid*, s. 3.

To what extent such society may borrow money.

Holders of shares fully paid up may withdraw or invest the amount.

**25.** When any share in any such society has been fully paid up according to the rules of the society, or has become due and payable to the holder thereof, the holder of such share may either withdraw the amount of such share from the said society, according to the rules and regulations thereof, or invest the amount of such share in the society, and receive therefrom, periodically, such proportion of the profits made by such society as shall be provided for by a by-law to be passed for the purpose; and the amount of such share so invested shall become fixed and permanent capital or shares in the said society not withdrawable therefrom, but transferable in the same manner as other shares in the said society. *ibid*, s. 4.

Society may loan money on advanced shares.

**26.** Any such society may advance to members on the security of investing on unadvanced shares in the said society, and may receive and take from any person or body corporate, any real or personal security of any kind whatever as collateral security for any advance made to members of the society. *ibid*, s. 5.

Society may hold certain real estate.

**27.** Any such society may hold absolutely real estate for the purposes of its place of business, not exceeding the annual value of six thousand dollars. *ibid*, s. 6.

Society not bound to see to the execution of trusts to which any shares may be subject.

**28.** No such society shall be bound to see to the execution of any trust, whether expressed, implied or constructive, to which any share of its stock is subject; and the receipt of the party in whose name any such share stands in the books of the society, (or if such share stand in the name of more parties than one, the receipt of one of the parties) shall be a sufficient discharge to the society for any payment of any kind made in respect of such share, notwithstanding any trust to which such share is then subject, and whether or not the society has had notice of such trust; and the society shall not be bound to see to the application of the money paid upon such receipt. *ibid*, s. 7.

Nothing in this Act to affect the Montreal Building Society.

**29.** Nothing in this Act shall apply to or affect "The Montreal Building Society," incorporated under the Act eighth Victoria, chapter ninety-four, or in any wise to affect the said Act. 12 V. c. 57, s. 16.

Interpretation of certain words.

**30.** In this Act the word "Society" means a building society established under this Act; the word "Rules" shall include rules, orders, by-laws and regulations; the words "Real Estate" means and includes immoveable estate and property generally; and the word "Personal Estate" means and includes all moneys, goods, chattels and other property not being real property; and the word "Securities" includes privileges, mortgages (equitable as well as legal,) *hypothèques* and incumbrances upon real estate, as well as other rights and privileges upon personal estate and property:

2. This Act shall extend to aliens, denizens and females, Application—  
both to make them subject thereto and to entitle them to all the  
benefits given thereby ;

3. This Act shall be construed in the most beneficial manner And construc-  
for promoting the ends thereby intended. 12 V. c. 57, s. 17, tion of this Act.

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## C A P . L X X .

## An Act respecting Joint Stock Companies for the Construction of Roads and certain other Works.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

## FORMATION OF COMPANIES.

For what purposes companies may be formed under this Act.

1. Any number of persons, not less than five, may form themselves into a Company under the provisions of this Act, for the purpose of constructing any planked, macadamized or gravelled road, not less than one mile in length, (whether such road be to be made over entirely new ground, or by improving any existing road not being a turnpike road, or partly by making a new road and partly by improving an existing one,) or any bridge or bridges, pier or piers, wharf or wharves, slide or slides at or near any falls or rapids on any River or Stream, for the safer and more convenient passing of timber, deals and other wood goods : 12 V. c. 56, s. 1, *part.*

Companies may also be formed for the acquisition of public works, &c.

2. Any such Company may also be formed for or its objects may extend to the acquisition of any public work or other purpose mentioned in the eighty-second section of chapter twenty-eight of the Consolidated Statutes of Canada ; and this Act shall be held to be the Act 12 V. c. 56, referred to in that Act, and shall in all respects be construed subject to its provisions. *Con. Stat. Can., c. 28, s. 82*

Number required for formation :—Instrument of association to be registered.

2. When any number of persons, not less than five, have subscribed a sufficient quantity of stock to amount to a sum adequate, in their judgment, to the construction or acquisition of any road or other work and purposes for which the Company is formed, and have executed an instrument according to the form in the Schedule to this Act, of which an Act *de dépôt* shall be thereafter made before some Notary Public for Lower Canada,—and have paid to the Treasurer of such intended Company ten per cent. upon the capital stock intended to be raised for the purposes contemplated by such Company,—and have registered such instrument, together with a receipt from the Treasurer of such Company and of the Cashier of some incorporated bank (in which the money has been deposited in cash or in Provincial Securities to the credit of the said Company, and to be drawn out when at least one-fourth of any road or work to be made or performed by the Company, has been completed to the satisfaction of the Commissioners of Public Works,) and not before, for such first instalment of ten per cent., with the Registrar of every County through or into which such road is intended to pass, or where such other work shall be situate,—such Company shall thenceforth be an Incorporated Company,

Company incorporated—

Company, by the name désignated in the instrument so registered as aforesaid, and by such name they and their successors shall have perpetual succession, and be capable at law of suing and being sued, of impleading and being impleaded, answering and being answered unto, defending and being defended in all Courts of Law and places whatsoever, in all manner of actions, suits, complaints, matters and causes whatsoever; and they and their successors may have a common seal, and the same may make, alter and change at their will and pleasure, and may, by such name, purchase, take, have, hold and convey, sell, and depart with, any lands, or real property whatsoever, useful or necessary for the purposes of such Corporation :

its name and powers.

2. And by the instrument of association, the Shareholders or Members of any such Company, may enter into such agreements and stipulations to and with each other as are not contrary to the Laws of Lower Canada, or the provisions of this Act, and the same shall be binding on such Members and their assigns or *ayants cause*, becoming Members of the Company. 12 V. c. 56, s. 3, and *Con. Stat. Can.*, c. 28, s. 82.

Further agreements and stipulations may be made in the instrument of association.

3. Any Religious Community or Corporation may hold stock in any Company incorporated under this Act, or lend money to any Company, and may appoint a person or persons to vote for them upon the shares so held, or to exercise any of its other rights of a member of the Corporation, in such manner as such Community or Corporation and the Company may agree upon. 12 V. c. 56, s. 31.

Religious communities may hold stock in or lend money to companies under this Act.

4. No Company shall be formed under this Act to construct any line of road for which a charter has heretofore been granted, unless such Chartered Company has forfeited its Charter by not complying with the conditions thereof. 12 V. c. 56, s. 1, *part*.

Companies may not be formed for a certain purpose.

5. Every road or other work, and all the materials, from time to time, provided for constructing, maintaining or repairing the same, and all toll-houses, gates, and other buildings constructed or acquired by any Company acting under the provisions of this Act and used for their benefit and convenience, shall be vested in the Company and their successors. 12 V. c. 56, s. 22.

Property, &c., to be vested in the company.

#### ELECTION OF DIRECTORS—THEIR POWERS AND DUTIES.

6. The affairs, stock, property and concerns of the company shall, for the first year, be managed and conducted by five directors, to be named in the instrument of association, and thereafter to be annually elected according to the provisions in the said instrument, or if there be none, then according to the provisions of any by-law which the first named Directors or their

Affairs to be managed by the directors.

Election of directors.

their successors shall pass for that purpose ; and upon every election of directors, each stockholder shall be entitled to one vote for every share he holds, in the company :

Quorum of directors.

2. Any majority of the directors shall be a *quorum*, and may exercise all the powers of the directors or of the company, except in so far as it may be otherwise provided by the instrument of association or by the by-laws of the company. *ibid*, s. 5.

Election of president, appointment of officers, &c.

7. The directors may elect one of their number to be the president, and appoint such officers and servants as they deem necessary for performing the duties required of them, and may take security from them for the due performance of their duty, and that for their duly accounting for all moneys coming into their hands to the use of the company. *ibid*, s. 17.

Directors to make an annual report.

8. The directors shall report annually, under the oath of the treasurer, during the month of January in each year, to the municipality having jurisdiction within the locality through which their road passes or in which any work is constructed by them,—the cost of their work,—the amount of money expended,—the amount of their capital stock, and how much is paid in,—the whole amount of stock expended on such work—the amount received during the years for tolls, and from all other sources, stating each separately,—the amount of dividends paid, and the amount expended for repairs, and the amount of debts due by the company, specifying the object for which such debts respectively were incurred :

Company to keep regular books of account.

2. And the company shall also keep regular books of account in which shall be entered a correct statement of their assets, receipts and disbursements, which books shall be at all times open to the examination of any person who may for that purpose be appointed by the municipality having jurisdiction as aforesaid ; and the person so appointed may take copies or extracts from the same, and require and receive from the keeper of such books, and also from the president and each of the directors of the company, and the officers and servants thereof, all the information as to such books and the affairs of the company generally, as he may deem necessary for the full investigation into and report upon the affairs of the company, and the profits by them derived from the road or work. *ibid*, s. 21.

Value of shares,—how they may be transferred.

9. Each share in the company shall be twenty dollars, and shall be regarded as personal property, and shall be transferable upon the books of the company, in the manner provided by any by-law to be made by the directors in that behalf, and not otherwise so far as regards the rights of the company, nor shall any transfer be made of any share on which any call remains due and unpaid. *ibid*, s. 7.

**10.** The directors for the time being may make calls of the stock subscribed for, in the manner and at the intervals provided by the instrument of association; and the company may, in any court having jurisdiction to the amount demanded, sue for and recover from any stockholder, the amount of any call or calls of stock which he has neglected to pay, after the notice agreed upon by the instrument of association, or provided by the by-laws of the company if not so agreed upon :

Payment of calls on stock.

Recovery thereof provided for.

**2.** And in such action it shall be sufficient to allege that the defendant is a stockholder of the company, and that a call or calls were made upon the stock in the manner required by the instrument of association or by-laws, and were not paid, and to prove by any one witness (whether in the service of the company or not) such facts as will support the said allegations, without alleging or proving the election or appointment of the directors or any other special matter, and without naming such directors in the declaration or other proceeding in the case. *ibid*, s. 8.

What it is sufficient to allege in suits for calls.

**11.** If any call made by the directors upon the stockholders in the manner provided by the instrument of association or by-laws of the company, is not paid in when due, the directors, instead of suing for the same, may, by resolution to that effect, sell the shares on which such calls are due and unpaid, and transfer the same to the purchaser as the owner thereof might have done; and after deducting all calls due, interest and costs of sale, they shall pay over the remainder of the proceeds of the sale to the owner of the shares sold. *ibid*, s. 9.

Directors may sell stock on which the calls are unpaid.

**12.** If at any time after the formation of the company, the directors are of opinion that the original capital subscribed will not be sufficient to complete the work contemplated, the directors may, under a resolution passed by them for that purpose, either borrow upon the security of the company or by mortgage or hypothec of the road or work and tolls to be collected thereon, a sufficient sum of money to complete the same, or they may authorize the subscription by an instrument referring to the original instrument of association and to be deposited with a Notary and registered as aforesaid, of the number of additional shares named in the resolution, a copy whereof under the hand of the president, and seal of the company, shall be annexed to such additional instrument. *ibid*, s. 6.

If necessary, company may borrow money on mortgage or increase the capital stock.

NOTICE TO THE PROPER MUNICIPAL COUNCIL, &C.

**13.** The company shall give notice of their formation and of the name of their president and secretary, and of their intention to construct any such road or work, during four consecutive Sundays immediately after their formation, at the door of the church or churches of the parish or township or of the parishes or townships in which such road or work is to be constructed,

Certain notice to be given of formation and intention of company.

after divine service in the morning; and if there be no church in any such parish or township; then the notice shall be given at the most frequented place there. *ibid*, s. 1, part.

In what case and how an opposition to the formation of the company may be filed by those interested.

**14.** If the company propose to plank or macadamize any old front road or by-road, the majority of the persons liable to contribute to the making and keeping in repair of such road may file an opposition to the formation of the company for that purpose with the secretary-treasurer of the county municipality within the limits whereof such old front road or by-road exists, on or before the Monday next after the last of the said four Sundays; and the secretary-treasurer shall give notice of the opposition to the secretary of the company. *ibid*, s. 1, part.

Proceedings on such opposition.

County council to decide as to matter in dispute.

**15.** The county municipal council shall hear the company by their president or secretary and the opposants, on the opposition, at the next sitting of the council, and after hearing the parties shall determine whether it is expedient to authorize the company to macadamize or plank the said front road or by-road, or shall make any alteration in the direction of the front road or by-road they shall deem expedient, and such alteration shall be binding on the company, if they afterwards make the road; and in the latter case the president of the company shall, within eight days, state whether it is the intention of the company to continue their operation, notwithstanding such alteration; and if the majority of the persons liable to contribute to the making and keeping in repair of the said front road or by-road, neglect to file their opposition on or before the Monday next after the last of the said four Sundays, the company may proceed forthwith. *ibid*, s. 1, part.

In case of neglect to file opposition within a certain time.

In case it is proposed to construct work on private property.

**16.** Whenever the company propose to macadamize or plank any road or construct any work through or over any private property, notice of such intention shall be given as above mentioned, and the owner of the property may file with the secretary-treasurer of the county municipality, an opposition in his own name to the formation of the company for that purpose, and the council of the county wherein the private property is situate shall proceed on the opposition in the manner above mentioned with respect to front roads or by-roads. *ibid*, s. 1, part.

County council to decide on opposition in such case.

**17.** If the municipal council on such opposition and during such sitting, pass any by-law prohibiting such intended road or work, the road or work shall not be made constructed or performed by the company. *ibid*, s. 1, part,—and 18 V. c. 100, s. 18.

In what case roads may be constructed within towns, &c.

**18.** No road shall be constructed or pass within the limits of any city, or within the limits of any incorporated town or village, except by special permission under a by-law of such city, town or village, to be passed for that purpose. 12 V. c. 56, s. 1, part.

**19.** The six next preceding sections are subject to the provisions of the said chapter, twenty-eight of the Consolidated Statutes of Canada, and do not apply to the cases excepted from their operation by the eighty-second section of that Act. Con. Stat. Canada c. 28, s. 82.

Application of above six sections.

CONDITIONS AND LIMITATIONS WITH RESPECT TO THE CONSTRUCTION, &C., OF ROADS, &C.

**20.** No Company shall construct any road or work, through, over, along or upon any private property or property of the Crown, without having first obtained the permission of the owner or occupier thereof, or of the Crown, so to do, except as herein provided :

As to construction of works on Crown or private property.

**2.** No road shall be made of a steeper grade than one foot elevation to twenty feet along the road, without the sanction of the Commissioners of Public Works ;

Grade.

**3.** No bridge or slide shall be constructed over any navigable river except with the sanction and approval of the Governor in Council, and upon such conditions, and restrictions for securing the freedom of the navigation and otherwise protecting the interests of the public, as he deems it right to insist upon ; nor within the limits of any exclusive privilege granted to any person or Company during the continuance of such privilege, without the express consent in writing of such person or Company first had and obtained for that purpose. 12 V. c. 56, s. 1, *part.*

Restrictions as to construction of bridges and slides.

**21.** No private property shall be taken for any work without the consent of the owner, if the owner owns all the land required for the work, and himself constructs the work within six months from the time he is notified that a Company has been formed for constructing the same :

In what case private property may not be taken.

**2.** No property of the Crown shall be taken under this Act without the approval of the Governor in Council, and no land shall be taken without the consent of the owner for the construction of any slide unless the construction thereof be approved by the Commissioners of public works. *ib.*, s. 1, *part.*

Crown property not to be taken without approval of the Governor.

**22.** The Company may explore the ground or country lying between the termini of any road, or supposed to be adapted for the site of the work intended to be constructed by them, and may designate, take, and hold to and for their use, the requisite lands upon the line and within the limits of any road, or for any work, according to the provisions hereinafter contained for acquiring the same ; and may cut, make and keep in repair upon such neighbouring lands, such ditches, drains and water-courses as are necessary for effectually draining and carrying off the water from any road or work, making compensation therefor

Right to explore and enter upon private property.

therefor as hereinafter provided ; and for that purpose, the Company and their agents, servants and workmen, may enter into and upon the lands and grounds of any person or persons, body or bodies corporate or politic. *ib.*, s. 4.

What breadth of land may be taken without owner's consent.

**23.** The breadth of land to be taken without the consent of the proprietor for any road under this Act shall not exceed sixty-six English feet, except that an additional piece of land, not exceeding ninety feet square English at each end of the road, may be taken as a site for any toll-house to be erected by the Company :

What land may be taken for a pier, wharf or slide.

**2.** The land to be taken for any pier, wharf or slide shall not exceed the length, (measuring along the river,) necessary for the construction of such work, or the depth of fifty-four feet English, measuring at right angles to the river from the ordinary mark of high water, except so much more land as may be necessary for a road not exceeding thirty English feet in width from the wharf, pier or slide to the nearest highway ; but this shall not prevent any Company from being incorporated for the construction of a road as well as of a wharf, pier or slide. *ib.*, s. 2, and 20 V. c. 48, s. 1.

Proviso.

Bridges on line of road to be deemed part of road.

**24.** All bridges on the line of road between the termini of the road, shall be deemed part of such road, unless specially excepted in the instrument of association. 12 V. c. 56, s. 1, *part.*

Company to keep fences in repair.

**25.** The company shall make and keep in repair the party fences and ditches along the existing roads which they take under their control, according to the *procès-verbaux* of the said roads ; and whenever any road constructed by the Company shall be carried through any private property, the Company shall make and keep in repair the fences on such property in the manner agreed upon between the Company and the owner of the property, or in manner determined by the Arbitrators to whom the matter may be referred. 12 V. c. 56, s. 1, *part.*

#### TRANSFER AND CONVEYANCE OF LANDS—WHO MAY CONVEY.

Who may convey lands to companies under this Act.

**26.** All bodies politic, corporate or collegiate, corporations aggregate or sole, communities, *grèvés de substitution*, guardians, curators, executors, administrators and all other trustees or persons whatsoever, not only for and on behalf of themselves, their heirs and successors, but also for and on behalf of those whom they represent, whether infants, issue unborn, lunatics, idiots, *femes-covert*, or other persons or parties seized, possessed of or interested in any lands which the company requires for the purposes for which they are incorporated, may contract for, sell and convey to such company all or any part of such lands so required by the company for such purposes ; and all contracts, agreements, sales, conveyances and assurances so made, shall

be

be valid and effectual in law to all intents and purposes whatsoever; and all bodies politic, corporate or collegiate, or communities, and all persons whatsoever, so conveying, are hereby indemnified for what they, or any of them, respectively do by virtue of this Act. 12 V. c. 56, s. 10.

**27.** Any body politic, community, corporation, or other party whomsoever, who cannot in common course of law sell or alienate any lands required by the company for the purposes of this Act, shall agree upon a fixed annual rent as an equivalent, and not upon a principal sum, to be paid for the said lands; and in case the amount of rent is not fixed by voluntary agreement or compromise, it shall be fixed in the manner hereinafter prescribed, and all proceedings shall in that case be regulated as hereinafter prescribed:

Parties unable to sell may agree upon a fixed annual rent.

2. For the payment of the annual rent, and every other annual rent agreed upon or ascertained and to be paid by the company for the purchase of any lands, or for any part of the purchase money of any land which the vendor agrees to leave in the hands of the company, the road or other work and property of such company, and the tolls to be levied and collected thereon, shall be liable and chargeable, in preference to all other claims or demands thereon whatsoever, the deed creating such charge and liability being duly registered. *ibid*, s. 11.

Tolls on road, &c., to be chargeable with such rents in preference to all other claims.

**28.** Whenever there is more than one party proprietor of any land or property *par indivis*, any agreement made in good faith between the company and any party or parties proprietor or being together proprietors of one third or more of such land or property, as to the amount of compensation for the same or for any damages thereto, shall be binding as between the remaining proprietor or proprietors *par indivis* and the company; and the proprietor or proprietors who have so agreed may deliver possession of such land or property to the company, or empower them to enter upon the same, as the case may be. *ibid*, s. 12.

If there be more than one proprietor of any property.

ARBITRATIONS.

**29.** After having given the notice mentioned in the thirteenth section of this Act, and after the decision of the Municipal Council has been given in favor of the company, the company may apply to the several owners of or parties hereby empowered to sell or convey the lands through which their road or other work is intended to be carried, or which may suffer damage from the making or constructing of such road or work, or the exercise of any of the powers granted to the company by this Act, and may agree with such owners or parties, respectively, touching the compensation to be paid to them by the company for the purchase thereof, and for the respective damages, and may make such agreements and contracts with the parties touching the said lands or the compensation to be paid for them, or for the

Company may make agreements with respect to the damages caused by the construction of their works.

the damages, or as to the mode in which the compensation is to be ascertained as to such parties and the company seems expedient :

In case of disagreement.

2. And in case of disagreement between the company and the said owners or parties or any of them, then all questions which arise between them and the company shall be settled in the manner hereinafter prescribed. *ibid*, s. 13, *part*.

Company to serve a notice containing an offer and naming an arbitrator.

30. The company shall serve a notice upon the opposite party, containing--a description of the lands to be taken, or of the powers intended to be exercised with regard to any lands (describing them)--a declaration that the Company are ready to pay some certain sum (or rent, as the case may be) as compensation for such lands or for the damages arising from the exercise of such powers--and the name of a person whom they appoint as their Arbitrator if their offer be not accepted :

Certificate of surveyor to accompany notice.

2. Such notice shall be accompanied by the certificate of a sworn Surveyor disinterested in the matter and not being the Arbitrator named in the notice, that the land (if the notice relate to the taking of land) is required for the road or other work for making or constructing which the company is incorporated, that he knows such land or the amount of damages likely to arise from the exercise of such powers; and that the sum so offered is in his opinion a fair compensation for such land and for such damages; and in making the estimate for such compensation, the Surveyor shall, as shall also the Arbitrators hereinafter mentioned, take into consideration and allow for the benefit to accrue to the party to whom compensation is to be made from the road or work to be constructed by the company ;

Company may desist and serve new notice.

3. In any case wherein the company has given and served the notice aforesaid, the company may desist from such notice, and afterwards give new notice with regard to the same or other lands, to the same or any other party; but the company shall in any such case be liable to the party first notified for all damages or costs by him incurred in consequence of such first notice and desistment ;--And no change of ownership after the company has given and served the notice, shall affect the proceedings, but the party notified shall be still deemed the owner, except as to the payment of the sum awarded. *ibid*, s. 13, *part*.

Change of ownership not to affect proceedings.

Proceedings in case the opposite party is absent or unknown.

31. If the opposite party is absent from the district in which the land is situate (if the notice relate to the taking of land) or from the district in which the power sought to be exercised, is to be exercised, or be unknown to the Company, then upon application either to any Judge of the Superior Court, having jurisdiction in the district, accompanied by such Surveyor's certificate as aforesaid, and by an affidavit of some Officer of the Company that the opposite party is so absent, or that after diligent inquiry the party on whom the notice ought to be served

served, cannot be ascertained, such Judge shall order a notice as aforesaid (but without the certificate) to be inserted at least three times during one calendar month in the *Canada Gazette* and in some other newspaper to be named by such Judge, in either or in both languages in his discretion. *ib.*, s. 13, *part.*

**32.** If within ten days after the service of the notice, or within one month after the first publication thereof, the opposite party do not notify to the Company that he accepts the sum offered by them, or notify to them the name of a person whom he appoints as Arbitrator, then any Judge of the Superior Court may, on the application of the Company, appoint some sworn Surveyor to be sole Arbitrator for determining the compensation to be paid by the Company. *ib.*, s. 13, *part.*

In case of failure to appoint arbitrator the Court may appoint one.

**33.** If the opposite party do, within the time aforesaid, notify to the Company the name of the person he appoints as Arbitrator, then the two Arbitrators shall jointly appoint a third, or if they cannot agree upon a third, (of which fact the allegation of either of them shall be evidence) then any Judge of the said Court shall, on the application of the said party or of the Company, (previous notice of at least one clear day having been given to the Arbitrator of the other party,) appoint a third Arbitrator. *ib.*, s. 13, *part.*

Two arbitrators to appoint a third.

If they fail to agree Judge to appoint.

**34.** The said Arbitrators or sole Arbitrator, being sworn before a Justice of the Peace (who is hereby empowered and required to administer such oath), faithfully and impartially to perform the duties of their office, shall proceed to ascertain the compensation to be paid by the Company, in such way as they or he or a majority of them deem best, and the award of the Arbitrators or of any two of them or of the sole Arbitrator, shall be final :

Duties of arbitrators.

2. But no award shall be made or any official act done by the majority, except at a meeting held at a time and place of which the other Arbitrator has had at least one clear day's notice, or to which some meeting at which the third Arbitrator was present has been adjourned ; but no notice to the Company or opposite party shall be necessary, but they shall be held sufficiently notified through the Arbitrator they have appointed or whose appointment they have required. *ib.*, s. 13, *part.*

Meetings of arbitrators.

**35.** The award given by any sole Arbitrator shall never be for a less sum than that offered by the Company :

Award of a sole arbitrator.

2. And if in any case where three Arbitrators have been appointed, the sum awarded is not greater than that offered by the Company, the cost of the arbitration shall be borne by the opposite party and deducted from the compensation, otherwise they shall be borne by the Company ; and in either case they may, if not agreed upon, be taxed by any Judge of the Superior Court. *ib.*, s. 13, *part.*

Costs of arbitration.

Arbitrators may examine witnesses on oath.

**36.** The Arbitrators or a majority of them, or the sole Arbitrator, may examine on oath or solemn affirmation the parties or such witnesses who voluntarily appear before him or them, and may administer such oath or affirmation; but this shall not prevent the Arbitrators from acting and deciding upon their personal knowledge of the merits of the case, or from using such knowledge as they think just and right:

False swearing to be perjury.

2. And any wilfully false statement made by any witness, under oath or affirmation, shall be deemed wilful and corrupt perjury, and punishable accordingly. *ib.*, s. 13, *part.*

Award to be made by a certain day.

If not so made.

**37.** The Judge by whom any third Arbitrator or sole Arbitrator is appointed, shall, at the same time, fix a day on or before which the award shall be made, and if the same is not made on or before that day or some other day to which the time for making it has been prolonged, either by the consent of the parties or by the order of some Judge of the said Court as it may be for reasonable cause shewn, on the application of such sole Arbitrator or one of the Arbitrators, after one clear day's notice to the others, then the sum offered by the Company shall be the compensation to be paid by them. *ib.*, s. 13, *part.*

In case of vacancy among arbitrators.

**38.** If the Arbitrator appointed by the Company or by the opposite party, or any third Arbitrator, whether appointed by the two Arbitrators or by a Judge, dies or becomes disqualified or unable to act, then, on proof thereof to the satisfaction of any Judge of the Superior Court, such Judge shall authorize the Company, or the opposite party, or the two Arbitrators, to appoint another person in the place of the one deceased, disqualified or unable to act, or shall himself appoint another person as third Arbitrator as the case requires, but no recommencement or repetition of any prior proceedings shall be necessary. *ib.*, s. 13, *part.*

What shall not disqualify an arbitrator.

**39.** It shall be no disqualification to the surveyor or other person offered or appointed as valuator or as arbitrator, that he is employed by the company or by the opposite party, or that he has previously expressed an opinion as to the amount of compensation, or that he is related or of kin to any member of the company provided he be not himself personally interested in the amount of such compensation:

When cause of disqualification may be urged and how validity thereof determined.

2. No cause of disqualification shall be urged against any arbitrator appointed by the judge after his appointment, but shall be made before the same, and its validity or invalidity summarily determined by the judge, and no cause of disqualification shall be urged against any arbitrator appointed by the company or by the opposite party after the appointment of a third arbitrator; and the validity or invalidity of any cause of disqualification urged against any arbitrator before the appointment of a third arbitrator shall be summarily determined by any

any judge of the superior court on the application of either party, after one clear day's notice to the other, and if such cause is declared to be valid, the appointment shall be null, and the party offering the person so adjudged to be disqualified shall be held to have appointed no arbitrator. *ibid*, s. 13, *part*.

40. No award shall be invalidated by any want of form or other technical objection, if the requirements of this Act have been complied with, and if the award states clearly the sum awarded; and the lands or other property, right or thing for which such is to be the compensation; nor shall it be necessary that the party or parties to whom the sum is to be paid be named in the award; and the arbitrators shall have full power to award that any fences or ditches between the lands taken and other lands of the opposite party, shall be made and maintained by the company, and in such manner as shall be mentioned in the award. *ibid*, s. 13, *part*.

Award not to be invalidated for want of form.

LANDS HELD BY INDIANS.

41. If any land belonging to or in possession of the tribe of Indians be taken, or any power be exercised with regard to such lands by any company incorporated under this Act, compensation shall be made to them therefor, in the same manner as is provided with respect to other parties; and whenever it is necessary that arbitrators be chosen for settling the amount of such compensation, the chief officer of the Indian Department shall name an arbitrator on behalf of the said Indians, and the amount awarded shall be paid to the said chief officer for the use of such tribe. *ibid*, s. 16.

Lands held by Indians, how compensation may be made therefor.

TAKING POSSESSION OF LANDS.

42. Upon payment or legal tender of the compensation or annual rent awarded or agreed upon by the parties themselves, to the party entitled to receive the same, or upon the deposit of the amount of such compensation in the manner hereinafter mentioned, the award shall vest in the company the power forthwith to take possession of the lands, or to exercise the right or to do the thing for which such compensation or annual rent has been awarded:

Company empowered to take possession of land on payment or tender of award.

2 And if any resistance or forcible opposition is made by any person or party to their so doing, any judge of the superior court may, on proof to his satisfaction that the requirements of this Act have been complied with, issue his warrant to any sheriff or bailiff or other proper person, to put the company in possession and to put down such resistance or opposition, which such sheriff or bailiff or other proper person, taking with him sufficient assistance; shall accordingly do;

In case of resistance.

3. Such warrant may also be issued by any such judge (and shall be addressed and executed as aforesaid) on the application

In what case the lands may

be taken possession of by company before award made.

application of the company before any award or agreement has been made, upon the affidavit of any engineer or superintendent of works in the employ of the company, that the immediate possession of any land, or the power immediately to do any thing mentioned in the notice to the party interested, is necessary to the carrying on of the works of the company, and upon the company giving security to the satisfaction of the judge in such sum as he shall direct (not being less than twice the sum mentioned in the certificate of the sworn surveyor) to pay or deposit the amount to be awarded as compensation in such case, with interest from the date of the warrant, and all costs, within thirty days after the award has been made. *ibid*, s. 14.

Compensation awarded to stand in the stead of the lands, as to incumbrances.

13. The compensation awarded, or agreed upon by the company, and any party who might, under this Act, validly convey the lands, or then in lawful possession thereof as proprietor, for any lands which might be taken under this Act without the consent of the proprietor, shall stand in the stead of such land; and any claim to, or mortgage, hypothec or incumbrance upon the said land or any portion thereof, shall, as against the company, be converted into a claim to the said compensation, or to a like proportion thereof, and if the amount of such compensation exceeds eighty dollars, they shall be responsible accordingly whenever they pay such compensation, or any part thereof, to a party not entitled to receive the same, saving always their recourse against such party:

#### EXTINCTION OF INCUMBRANCES.

How lands may be cleared of incumbrances.

2. If the company has reason to fear any such claim, mortgage, hypothec or incumbrance, or if any party to whom the compensation or annual rent, or any part thereof, is payable, refuses to execute the proper conveyance and guarantee, or if the party entitled to claim the same cannot be found, or is unknown to the company, or if for any other reason the company deems it advisable, they may pay such compensation into the hands of the prothonotary of the superior court for the district in which the land is situate, with the interest thereon for six months, and deliver to the prothonotary any authentic copy of the conveyance, or of the award if there be no conveyance, (and such award shall thereafter be deemed to be the title of the company to the land therein mentioned,) and proceedings shall thereupon be had for the confirmation of the title of the company, in like manner as in other cases of confirmation of title, except that, in addition to the usual contents of the notice, the prothonotary shall state that the title of the company, (that is the conveyance or award,) is under this Act, and shall call upon all persons entitled to, or to any part of the lands, or representing, or being the husbands of any parties so entitled, to file their oppositions for their claims to the compensation, or any part thereof;

Proceedings for confirmation of title.

3. All such oppositions shall be received and adjudged upon by the court, and the judgment of confirmation shall forever bar all claims to the lands or any part thereof, (including dower not yet open,) as well as all mortgages, hypothecs or incumbrances upon the same ;

Effect of judgment of confirmation.

4. The court shall make such order for the distribution, payment or investment of the compensation and for the securing of the rights of all parties interested, as to right and justice appertain according to the provisions of this Act and to law ; and the costs of the said proceedings or any part thereof, shall be paid by the company or by any other party, as the court deems it equitable to order ;

Court to order distribution of compensation.

5. If judgment of confirmation is obtained in less than six months from the payment of the compensation to the prothonotary, the court shall direct a proportionate part of the interest to be returned to the company, and if from any error, fault or neglect of the company, it is obtained until the six months are expired, the court shall order the company to pay to the proper party the interest for such further period as will be right ;

In case judgment be obtained within six months.

6. If the amount of the compensation do not exceed eighty dollars it may be paid by the company to the party in whose possession as proprietor the land was at the time the company took possession thereof, or to any person who may lawfully receive money due to such party ; and proof of such payment and the award, shall be a sufficient title to the company, and shall for ever discharge them from all claims of any other party to the compensation or any part thereof, saving always the recourse of the other party against the party who has received the compensation. *ibid*, s. 15.

In case compensation do not exceed a certain amount.

#### TOLLS.

11. Subject always to the provisions of chapter twenty-eight of the Consolidated Statutes of Canada, in the cases to which they apply, the tolls authorized to be levied by any company incorporated under the provisions of this Act, upon any road constructed by them, shall not for each time of passing, whether loaded or otherwise, exceed the following rates, viz :

Amount of tolls limited.

Two cents and one half cent per mile; (reckoning from the gate at which the toll is to be paid to the next gate in the direction in which the vehicle or animal on which it is to be paid has come,) for any vehicle drawn by two horses or other cattle ;

For any vehicle drawn by more than two horses or other cattle, five sixths of a cent per mile for every additional one ;

For every vehicle drawn by one horse or other beast of burthen, one cent and two thirds of a cent per mile ;

For

For each sheep or head of swine, five twelfths of a cent per mile ;

For every horse without its rider, and for every ox, cow, or other head of horned cattle, five sixths of a cent per mile ;

For every horse and rider, five sixths of a cent per mile ;

Composition for tolls may be made.

But any individual may compound with the company at such reasonable rates as shall be determined upon by the company, for passing over any of the roads or bridges, or for using any of the wharves, piers, or slides constructed by the company. 12 V. c. 56, s. 20,—*Con. Stat. Can. c. 28, ss. 82, 93.*

Certain persons &c., exempt from tolls.

**45.** All persons, horses or carriages going to or attending or returning from any funeral, or any person with horse or carriage going to or returning from divine service on the Lord's day or on any *fête d'obligation*, shall pass the gates on any road made or improved under this Act, free of toll; provided such persons belong to the parish in which such road is constructed. 12 V. c. 56, s. 35.

Proviso.

Directors may fix the tolls.

**46.** Subject to the limitations aforesaid, the President and Directors of any company may, from time to time, fix and receive the tolls to be received from all persons passing and re-passing with horses, carts, carriages and other vehicles, and for cattle driven upon, over and along any road, or from persons passing over any bridge, with or without carriages or animals or using any work constructed, made and used by such company under the provisions of this Act :

How soon tolls may be taken.

2. And so soon as one or more miles of any such road have been completed, tolls may be taken therefor, but on no other work shall tolls be taken until the same is completed. *ibid.*, s. 18.

But rate of tolls must be confirmed by the Governor.

**47.** But no by-law, rule or regulation of any company, fixing, regulating or altering the rate of tolls or charges on any work or affecting others than the members or officers of company, shall have force or effect until it has been confirmed by the Governor in council. *ibid.*, s. 19.

Company may erect toll-gates toll-houses, &c.

**48.** Every company may erect such number of toll-gates or side-bars in, along, or across the road, and upon or at any work constructed under this Act, respectively, and fix such tolls not exceeding the rates aforesaid, to be collected at each gate or bar, as they deem expedient (which tolls may be altered from time to time as circumstances may require,) and may erect and maintain such toll-houses, toll-gates, and other buildings as seem necessary or convenient for the management of the business of the company :

2. But no toll shall be exacted for merely crossing any road ; *ibid*, s. 23. No toll for crossing road.

49. Whenever any road constructed or held under this Act intersects a road constructed by another chartered company, no higher rate of toll shall be demanded from the persons travelling along the said last mentioned road, for the distance travelled between such intersection and either of its termini, than the rate per mile charged by the company last mentioned for travelling along the entire length of their road so intersected. *ibid*, s. 36. In case roads built under this Act intersect.

PENALTIES AND THEIR RECOVERY.

50. If any person in any way injures, cuts, breaks down or destroys any part of any road, bridge or other work, or any toll-gate or toll-house, building or other erection in, upon, or near any road or work, and belonging to or used for the convenience of any Company under this Act, every such person so offending, and being lawfully convicted thereof, shall be deemed guilty of a misdemeanor, and shall be punished by fine and imprisonment. 12 V. c. 56, s. 25, *part*. Penalty for injuring works ;

51. If any person removes any earth, stone, plank, timber or other materials used or intended to be used in or upon any such road for the construction, maintenance or repair thereof, or drives any loaded wheel carriage or other loaded vehicle upon that part of any such road, lying between the stones, plank, or hard road, and the ditch, further than may be necessary in passing any other vehicle or in turning off or upon such road,---or causes any injury or damage to be done to the posts, rails or fences, or hauls---or draws or causes to be hauled or drawn, upon any part of the roads constructed as aforesaid, any timber, stone, or other thing carried principally or in part upon wheeled carriages or sleighs, so as to drag or trail upon such road to the prejudice thereof,---or if any person leaves any waggon, cart, or other carriage whatever, upon such road without some proper person in the sole custody or care thereof, longer than may be necessary to load and unload the same, except in case of accident, and in cases of accident for any longer time than is necessary to remove the same,---or lays any timber, stones, rubbish, or other thing whatever upon such road, to the prejudice, interruption and danger of any person travelling thereon,---or if any person after having blocked or stopped any cart, wagon, or other carriage in going up a hill or rising ground, causes to suffer or suffer to lie and remain on such road, any stone or other thing with which such cart or carriage has been blocked or stopped,---or if any person pulls down, damages, injures or destroys any lamp or lamps posts, erected or placed near the side of such road or toll-houses,---or wilfully extinguishes the light of any such lamp,---or if any person wilfully pulls down, break, injure or damage any table of tolls, put up or fixed at any Removing materials ;  
Damaging side of the road ;  
Trailing timber, &c ;  
Leaving waggon, &c., without some one in charge ;  
Placing obstacles ;  
Injuring lamps ;  
Damaging toll-tables ;

any toll-gate or bar on any part of such roads, or wilfully defaces or obliterates any of the letters, figures or marks thereon, or on any finger post, or any mile post or stone,---or if any person throws any earth, rubbish or other matter or thing into any drain, ditch, culvert or other water-course, made for draining any such road,---of if any person without permission, carries away any stones, gravel, sand or other materials, dirt or soil from any part of any such road, or digs any holes or ditches on the allowance for the same,---or forcibly passes or attempts to pass any of the toll-gates set up by any such Company,---or to use the work constructed by the Company without having first paid the toll fixed by the Directors of such Company to be received at any such gate ;---Such person shall, upon conviction thereof in a summary way before any Justice of the Peace in or near the place where the injury has been done, be sentenced to pay all damages sustained by the Company, to be ascertained by the Justice upon the hearing of the complaint, and also to pay a fine of not more than ten dollars nor less than one dollar; such damages and fine to be paid either in money, or in the discretion of the Justice, in labor to be performed upon the road, (if the offence relate to a road, but not otherwise) under the direction of the Company, and within a time to be limited by the Justice, and in default thereof the offender shall be committed to the Common Gaol of the District where such offence has been committed, for any time not exceeding one month. 12 V. c. 56, s. 25.

Stopping up drains ;  
Digging holes ;  
Passing gates without paying tolls ;  
Fines and penalties in such cases.  
Committal in default of paying fine.

**52.** If any person after proceeding on any such road with any wagon, carriage or other vehicle, or animal liable to pay toll, turns out of the road into any other road, and enters the road beyond any of the gate or gates without paying toll, whereby such payment is evaded, such person shall for every such offence, pay the sum of two dollars, which shall be expended on the road or towards the discharge of any debt due by the Company ; and any one Justice of the Peace for the district in which such part of the road is situate, shall on conviction of such offender, fine such offender in the said penalty, and shall cause the same to be levied as aforesaid. 12 V. c. 56, s. 27.

Punishment of persons evading tolls.

**53.** If any person occupying or possessing any enclosed land near any toll-house or toll-gates erected in pursuance of this Act, knowingly permits any person to pass through such land, or through any gate, or way thereon, with any carriage or animal liable to the payment of toll, whereby such payment is evaded,---every person so offending, and also the person riding or driving any animal or carriage whereon such payment is evaded, being thereof convicted before any one Justice as aforesaid, shall, for every such offence, severally incur a penalty not exceeding four dollars, which shall be laid out in improving such road. 12 V. c. 56, s. 25.

**54.** The fines and forfeitures authorized to be summarily imposed by this Act, shall be levied and collected by distress and sale of the offender's goods and chattels, under a warrant of distress for that purpose to be issued by the Justice before whom the conviction has been had; and in case there are no goods or chattels to satisfy such warrant, the offender shall be committed to the common gaol of the district for any period not exceeding one month. *ibid*, s. 26.

How penalties may be enforced.

ACTIONS UNDER THIS ACT.

**55.** In any action or proceeding by or against any such company upon any contract or for any matter or thing whatsoever, any stockholder or any officer or servant of the company shall be competent as a witness, and his testimony shall not be inadmissible on the ground of interest or of his being such servant or officer. *ibid*; s. 33.

Who may be witnesses in certain cases.

**56.** If any action is brought against any person for any matter or thing done in pursuance of this Act, such action shall be brought within six calendar months next after the fact committed, and not afterwards, and the defendant in such action may plead the general issue only, and give this Act and the special matter in evidence on the trial. *ibid*, s. 34.

Limitation of actions.

RIGHTS OF MUNICIPALITIES.

**57.** The council of any municipality, through which any such road passes or in which any such work as aforesaid is or is to be constructed, may subscribe for, acquire, hold, depart with and transfer, stock in such company, and may from time to time direct the warden, mayor, or other chief officer thereof, on behalf of such municipality, to subscribe for such stock in the name of such municipality, and to act for and on behalf of such municipality in all matters relative to such stock and the exercise of the rights of such municipality as a Stockholder, and the warden, mayor, or other chief officer shall, whether otherwise qualified or not, be deemed a Stockholder in the company, and may vote and act as such, subject always to the rules and orders in relation to his authority made in that behalf by such municipality by their by-laws or otherwise, but acting according to his discretion in cases not provided for by such municipality; and such municipality may pay for or pay all instalments upon the stock they subscribe for and acquire, out of any moneys belonging to such municipality and not specially appropriated to any other purpose, and may apply the moneys arising from the dividends or profits on the said stock or from the sale thereof, to any purpose to which unappropriated moneys belonging to such municipality may lawfully be applied. *ibid*, s. 29.

Municipalities interested in construction of work may subscribe for stock in the company.

**58.** The council of any municipality through which any such road passes or within which any such work as aforesaid is or is

Or may loan money to the company.

is to be constructed, may loan money to the company authorized to make such road or construct such work, out of any moneys belonging to the municipality and not appropriated to any other purpose, and may effect such loan upon such terms and conditions as may be agreed upon between such company and the municipality making such loan, and may recover the money so loaned, and appropriated the money so recovered to the purposes of such municipality. *ibid*, s. 30. See also *Consolidated Statutes Lower Canada*, cap. 24, s. 12, par. 9.

FORFEITURE OR TRANSFER OF CORPORATE RIGHTS.

**59.** Every such Company shall be bound to complete each and every road not more than five miles in length, and any other work undertaken by them, and for the completion whereof they have become incorporated, within two years from the day of their becoming incorporated, and any longer road at the rate of five miles for each two years from the said time, in default whereof they shall forfeit all the corporate and other powers and authority which they have in the meantime acquired, and all their corporate powers shall thenceforth cease and determine. 12 V. c. 56, s. 24.

Work or road to be completed within a certain time on pain of forfeiture of privilege.

**60.** The Commissioner of Public Works shall, at the same time that he approves of the construction of any slide, appoint the time within which the Company shall be bound to complete such slide, and any Company failing to make and complete such slide within the time so appointed, shall, at the expiration of such time, forfeit all their rights and powers with respect to the making of such slide, and to the land taken for the purpose of making the same, which shall thereupon revert to the party from whom the same was taken on payment by him to the Company of the then present value thereof, to be ascertained by arbitration as hereinbefore provided. 12 V. c. 56, s. 1, *part*.

Commissioner of Public Works to fix the time for the completion of the slides.

**61.** After any road, bridge or other work constructed or held by any such Company, has been completed, and tolls been taken thereon, the Company shall keep the same in good and sufficient repair; and if any such road, bridge or work is by such Company allowed to fall into decay and get out of repair, the Company may be indicted at any Court of General Sessions of the Peace or other Court of Superior Jurisdiction within the district where such road, bridge or work is so out of repair, and upon conviction, the Court, before whom the prosecution is had, shall direct the Company to make the necessary repairs, for the want whereof such prosecution has been commenced, within such time as to such Court seems reasonable:

Company bound to keep their works in good repair.

In default of repairs, company to be dissolved and

2. In default of the repairs being made in the manner and within the time prescribed by the judgment, the company shall be declared dissolved, and the road, bridge or work shall thenceforth

thenceforth be vested in Her Majesty, Her Heirs and Successors, to and for the use of the public, in like manner as any public and common highway or public work, and shall thenceforth be subject to all the laws affecting public highways and public works, and the powers of the Company shall thenceforth vest in the Governor in Council. 12 V. c. 56, s. 37.

works vested in Her Majesty.

**62.** After twenty-one years from the time of completing any road or other work, Her Majesty may purchase the stock of the Company at the current value thereof at the time of purchase, (to be ascertained by arbitrators to be appointed and to act in the manner hereinbefore provided in other cases, if the Company and the Governor cannot agree upon the value,) and may hold the same for the use and benefit of the Province; and the Governor in Council shall thenceforth stand in the place and stead of the Company, and possess all the powers and authority by the said Company theretofore possessed and exercised. 12 V. c. 56, s. 32.

After 21 years Crown may purchase the stock and rights of the company.

**63.** In this Act the expressions "the Company" "such Company" or the like, mean a Company incorporated as provided by this Act, and the roads, bridges or other works therein referred to are those constructed or held by any such Company,—unless the context requires another construction.

Meaning of certain expressions.

## TITLE 10.

## PROFESSIONS.

## CAP. LXXI.

## An Act respecting the Medical Profession, and the sale of Drugs.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

College of Physicians and Surgeons—  
who are mem-  
bers thereof.

1. All persons being at the time when this Act comes into effect, members of the College of Physicians and Surgeons of Lower Canada, and their successors, appointed as hereinafter prescribed, shall be and remain a body politic and corporate by the name of "*The College of Physicians and Surgeons of Lower Canada*," subject to the provisions of this Act, and the then governor and officers of the corporation shall remain such, subject to the said provisions :

Powers of the  
said corpora-  
tion.

2. The said corporation shall, by the said name, have perpetual succession and a common seal, with power to change, alter, break or make new the same ; and by the name aforesaid may sue and be sued, implead and be impleaded, answer and be answered unto in all courts and places whatsoever, and may have, hold, receive, enjoy, possess and retain for the purposes of this Act and for the benefit of the said college, all sums of money as have been at any time given or bequeathed to and for the use of the said college ; and by the said name may, without any letters of mortmain, purchase, take, hold, and enjoy any real estate, or any estate or interest derived or arising out of real estate for the purposes of the said college, and for no other purpose ; and may sell, grant, lease, or otherwise dispose of the same ; but the real estate so held by the said corporation shall at no time exceed in value the sum of four thousand dollars. 10, 11 V. c. 26, s. 2, and 12 V. c. 52, s. 1.

Designation of  
Members.

2. The persons composing the said corporation shall be called "*Members of the College of Physicians and Surgeons of Lower Canada*." 10, 11 V. c. 26, s. 3.

Affairs to be  
managed by a  
Board of Go-  
vernors.

3. The affairs of the college shall be managed by a board of governors, thirty-six in number, fifteen of whom shall be elected by the college generally from among its members, in the districts of Quebec and Gaspé, neither more nor less than eight of whom shall be resident in the city of Quebec, fifteen from among its members,

members, in the district of Montreal; neither more nor less than eight of whom shall be resident in the city of Montreal; three shall be taken from among the members of the corporation resident in the district of Three Rivers, and three from among those resident in the district of St. Francis; and at each election of the board of governors, every member of the said corporation shall have the right of voting by proxy. 10, 11 V. c. 26, s. 4,—1 V. c. 52, s. 2.

4. The said board of governors shall be "The Provincial Medical Board," in which capacity they shall meet for the examination of candidates not less than twice in each year at such time and place as they deem most fit; and on which occasion seven shall be a *quorum* for the transaction of business. 10, 11 V. c. 26, s. 5.

Board of Governors to be the Provincial Medical Board.

5. Subject to the exceptions hereinafter made, no person shall practise physic, or surgery, or midwifery, in Lower Canada, unless he has obtained a license from the said Provincial Medical Board, who are hereby authorized to issue such license: 10, 11 V. c. 26, s. 6, and 12 V. c. 52, s. 3.

No person to practise physic, &c., without a license from the Board.

6. But any person who has obtained a medical degree or diploma in any University or College in Her Majesty's dominions, shall be entitled to such license without examination as to his qualification; 10, 11 V. c. 26, s. 7, amended by 12 V. c. 52, s. 4.

Certain persons entitled to a license without examination.

7. And nothing in this Act shall prevent any person duly licensed or legally authorized to practise physic and surgery in Upper Canada, from practising the same in Lower Canada; 10, 11 V. c. 24, s. 9, *part*.

Persons licensed in Upper Canada may practise in Lower Canada.

8. Nor shall any thing in this Act deprive the persons mentioned in the Acts fourteen and fifteen Victoria, chapter one hundred and five, and eighteen Victoria, chapter two hundred and forty-four, respectively, of the privileges conferred on them by the said Acts. 14, 15 V. c. 105,—18 V. c. 244.

Privileges granted by special enactments reserved.

9. If any person practises Physic or Surgery or Midwifery in Lower Canada, contrary to the provisions of this Act he shall thereby incur a penalty of twenty dollars, for each day on which he so practises, and such penalty shall be recoverable on the oath of any two credible witnesses, before any Justice of the peace for the district in which the offence is committed, and in default of the payment of such penalty on conviction, the offender may be committed to the Common Jail of the district, until the same is paid. 10, 11 V. c. 26, s. 9.

Penalty on persons practising physic or midwifery contrary to the provisions of this Act.

10. The penalty imposed by the next preceding section shall be recoverable with costs, and may be sued for and recovered by the said College of Physicians and Surgeons of Lower Canada,

By whom penalty may be sued for and recovered.

Canada, by its corporate name, and being recovered shall belong to the said Corporation for the uses thereof; and neither in any such suit or in any other civil or criminal action to or in which the said Corporation is a party or interested, shall any Member of the Corporation be deemed incompetent as a witness by reason of his being such Member. 12 V. c. 52, s. 6.

Who may be admitted to study physic.

8. No person shall be admitted as a student of physic, surgery or midwifery, unless he has obtained a certificate of qualification from the Provincial Medical Board. 10, 11 V. c. 26, s. 8.

Powers of College of Physicians, &c.

9. The said College of Physicians and Surgeons shall have power,---

To regulate course of study.

1. To regulate the study of Medicine, Surgery, Midwifery and Pharmacy, by making rules with regard to the preliminary qualification, duration of study, *curriculum* to be followed, and the age of the candidate applying for a license to practise; But such rules shall not be contrary to the provisions of this Act;

To examine credentials of applicants.

2. To examine all credentials purporting to entitle the bearer to a license to practise in Lower Canada, and to oblige the bearer of such credentials to attest (on oath to be administered by the Chairman for the time being) that he is the person whose name is mentioned therein, and that he became possessed thereof honestly;

To keep registers.

3. To cause every member of the profession practising in Lower Canada, to enregister his name, age, place of residence, nativity, the date of his license and the place where he obtained it, in the books of the College;

To fix period for eligibility as members.

4. To fix the period of probation which persons must undergo before being eligible for election as Members of the College, which period shall not be less than four years; and to make all such rules and regulations for the government and proper working of the Corporation and the election of a President and Officers thereof, as to the members thereof seem meet, which said rules and regulations must, before they come into effect, be submitted to the Governor for approval and be sanctioned by him. 10, 11 V. c. 26, s. 10.

Qualifications to study physic.

10. The qualifications to be required by the Board of Governors in a person about to commence the study of Medicine in Lower Canada, shall be: A good moral character, and a competent knowledge of latin, history, geography, mathematics and natural philosophy; a general knowledge of the French and English languages shall also be indispensable. 10, 11 V. c. 26, s. 11.

Qualifications to obtain a

11. The qualifications to be required in a candidate for examination to obtain a license to practise shall be,---that he is  
not

not less than twenty-one years of age ; that he has followed his studies uninterruptedly during a period of not less than four years under the care of one or more general practitioners duly licensed ; and that during the said four years he has attended at some University, College or Incorporated School of Medicine within Her Majesty's Dominions not less than two six months' courses of general anatomy and physiology---of practical anatomy---of surgery---of practice of Medicine---of Midwifery---of chemistry---and of *Materia Medica* and pharmacy,---one six months' course of the Institutes of Medicine,---one three months' course of medical jurisprudence,---and one three months' course of botany, if obtainable, in Lower Canada ;---also, that he has attended the general practice of an Hospital in which are contained not less than fifty beds under the charge of not less than two Physicians or Surgeons for a period not less than one year, or two periods of not less than six months each ; and that he has also attended two three months' or one six months' course of clinical medicine, and the same of clinical surgery :

license to practise.

2. And to remove all doubts with regard to the number of Lectures which the Incorporated Schools of Medicine of Quebec and Montreal are bound to give yearly, it shall be sufficient that the said Schools of Medicine, respectively, cause to be delivered yearly one hundred and twenty lectures on the subjects by law provided, in the English language or in the French language, without its being necessary that any lecture should be delivered in both languages, each lecture, in whichever language delivered, being reckoned as one of the one hundred and twenty. 10, 11 V. c. 26, s. 12.

Doubts removed as to number of lectures which constitute a course:

12. Every person obtaining a license to practise from the College of Physicians and Surgeons of Lower Canada, shall be styled a Licentiate of the said College, and be consequently in due course of time eligible to be elected a member of the same, and every person so elected shall be at once eligible for election as a Governor ; and the said election either as member of the said College, or as Governor thereof, shall be made in such manner and under such rules and regulations as the said Corporation shall make in that behalf, the said rules and regulations being sanctioned by the Governor, after being submitted to him for approval as aforesaid. 10, 11 V. c. 26, s. 13.

Persons obtaining licenses from the College to be styled licentiates thereof.

13. The board of governors shall regulate the fees to be paid by candidates about entering on the study of medicine, but the amount of such fees shall not exceed the sum of five dollars ; and also the fees to be paid by persons who obtain from the said board a license to practise medicine, provided that the said fee do not exceed the sum of ten dollars ; which fees the governors shall have the power to dispose of in such manner as they deem most proper for the interests of the college. *ibid*, s. 14.

Fees to be paid by candidates.

Females practising midwifery must obtain a certificate.

**14.** Nothing in this Act shall prevent any competent female from practising midwifery in Lower Canada, except that any such female must prove her competency before any two members of the College of Physicians and Surgeons, and obtain their certificate to that effect, before she can lawfully practise as aforesaid in the cities of Montreal, Quebec or Three Rivers *ibid*, s. 15.

Limitation of actions of physicians and surgeons.

**15.** The claim (*demande*) of any person entitled to practise physic, surgery or midwifery, for professional services, attendance or medicine in Lower Canada, shall be prescribed by the lapse of five years from such attendance, service or medicine furnished, without any act having been done to interrupt the prescription, and not before. *ibid*, s. 16.

No one entitled to sell or distribute medicines by retail without license.

**16.** Except such persons as may lawfully practise physic in Lower Canada, no person whatsoever shall, on any pretence, sell or distribute medicines by retail within Lower Canada, without license first had and obtained from the Governor, which license shall not be granted but upon certificate of the person applying for the same having been examined and approved by such persons as the Governor may appoint for the purpose of examining and inquiring into the knowledge of such persons in pharmacy, a copy of which certificate must be annexed to the license, which must be enregistered in the office of the clerk of the peace of the district where the person licensed resides : 28 G. 3, c. 8, s. 1.

Patent Medicines.

**2.** But nothing in this Act shall prevent retailers or others from selling drugs for which a Royal patent has been obtained *ibid*, s. 3.

C A P . L X X I I .

An Act respecting the Bar of Lower Canada.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

INCORPORATION AND DIVISION INTO SECTIONS.

1. All advocates, Barristers, Attorneys, Solicitors and Proctors at law in Lower Canada, shall form a Corporation under the name of *The Bar of Lower Canada* ; which said Corporation shall, until otherwise provided, be divided into four sections, that is to say : one section for the *old* district of Montreal, one for the district of Quebec, one for the *old* district of Three-Rivers and one for the *old* district of St. François ; the Advocates, Barristers, Attorneys, Solicitors and Proctors at law residing in the district of Gaspé, forming part of the section of the district of Quebec. 12 V. c. 46, s. 1,—16 V. c. 130, s. 4.

Advocates, &c., to be a corporation.

Divided into four sections.

2. The said corporation may sue and be sued in all courts of Justice in Lower Canada, may acquire moveable and immoveable property, by purchase, donation, bequest or otherwise, to the value of twenty thousand dollars ; and each of the sections thereof may sue and be sued separately in any court of Justice in Lower Canada, under the name of *The Bar of Lower Canada, section of the district of* , in all matters relating to each such section respectively, and may acquire moveable and immoveable property to the value of twenty-four thousand dollars :

Powers of corporation, and the sections thereof.

2. All actions brought by or against any of the said sections respectively, shall only affect the section concerned therein ; and in all actions against the said corporation or against any of the said sections, service of process at the domicile of the secretary of the general council hereinafter mentioned, or at the domicile of the secretary of the council of the section concerned, as the case may be, shall be valid ;

Actions only to affect the section against or by whom they are brought.

3. The said corporation and each of the said sections shall have a common seal ; on that of the corporation shall be inscribed the words *Bar of Lower Canada*, and on that of each of the said sections, the words *Bar of Lower Canada, section of the district of* ;

Corporation and sections, to have seals.

4. The members of the said corporation shall not be individually liable for any debt contracted by the said corporation or any of the said sections. 12 V. c. 46, s. 2.

Members not personally liable for debts of.

3. The corporation may make all such By-laws, rules and orders, as it deems necessary for the interior discipline and honor

By-laws, &c., to be made

made by the corporation.

honor of the members of the bar,—to regulate the admission of candidates to the study or practice of the law,—for the management of the property of the corporation,—and generally all By-laws, rules and orders of general interest to the said corporation and the members thereof, and necessary to ensure its well working, which said By-laws, rules and orders, the said corporation may change, alter, modify or repeal whenever it shall deem necessary :

2. The said By-laws, rules and orders, shall not be contrary to the laws of Lower Canada, nor to the provisions of this act. *ibid*, s. 3.

Powers of corporation to be exercised by general council.

4. The powers conferred on the corporation by this Act, shall be exercised by a general council, composed of all the officers and members forming the councils of sections hereinafter mentioned, and the said councils together shall nominate and appoint from among themselves, by ballot, a president, a secretary, and a treasurer, who shall be the president, secretary and treasurer of the said general council of the corporation. *ibid*, s. 4.

#### COUNCILS OF SECTIONS AND THEIR OFFICERS.

Composition of the councils of the different sections.

5. The council of each section shall be composed of a *Bâtonnier*, a syndic, a treasurer, and a secretary, and eight other members for each of the sections of the district of Quebec, and the district of Montreal, of three other members for the section of the district of Three-Rivers, and of five other members for the section of the district of St. Francis ; and the majority of each of the said councils, respectively, shall form a *quorum* ; and all questions submitted to the said councils, (except in the cases hereinafter otherwise provided for,) shall be decided by a majority of the votes of the members present. 12 V. c. 46, s. 5, and 16 V. c. 130, s. 5.

Who shall preside at meetings of the sections.

6. At the first meeting for the election of the council of any section, the senior advocate (reckoning by the date of his commission) then present, shall preside, and shall have the casting vote ; and at all other meetings of sections the *Bâtonnier* shall preside, or in his absence, any other member to be chosen by the meeting. 12 V. c. 46, s. 9.

Elections of councils to be by ballot.

7. The election of the council of any section shall be by ballot, and shall be held on the first day of May in each year, unless such day be a Sunday or *fête d'obligation*, and then on the next day thereafter not being a Sunday or *fête d'obligation*, and the council shall, immediately after the election, enter upon the execution of its functions :

Quorum necessary for election.

2. No such election shall take place unless there be at least twenty members of the section present at the meeting if it be held for either of the sections of Québec and Montreal, and eight

eight members if it be held for either of the said sections of Three-Rivers and St. Francis, and in case the election does not take place on the day appointed, for want of a *quorum* or for any other cause, it shall be made at any other meeting specially called by the secretary, or in his absence, by the syndie, on the order of the *Bâtonnier* going out of office, or on the requisition of six members of the section. 12 V. c. 46, s. 8,—16 V. c. 130, s. 5.

8. A meeting of each section shall be held every six months, in the council-room of the section, on days fixed by the by-laws of the said councils respectively :

When meetings of sections shall be held.

2. Special meetings may be held, which shall be called by the secretary, or in his absence by the syndie, on the order of the *Bâtonnier*, or on the requisition of six members of the section. 12 V. c. 46, s. 10.

Special meetings—how called.

9. The councils of sections shall cause to be executed in their respective sections, and independently of each other, all the By-laws, rules and orders of the general council, and may make such By-laws, rules and orders as they may deem necessary :

Councils of sections may make By-laws for certain purposes.

1. For acquiring, disposing of and managing the property within their respective sections ;

2. For regulating the time and place of holding meetings of the members of the respective sections, and the mode of proceeding thereat ;

3. And generally all By-laws, rules and orders, relative to matters concerning such sections ;

4. The said By-laws, rules or orders not to be contrary to the provisions of this Act, nor to any of the By-laws, rules or orders passed by the general council, nor to any law in force in Lower Canada. *ibid*, s. 6.

10. The council of each section, shall in and with regard to such section, have power,—

Powers of councils of sections.

*First.* For the maintenance of the discipline and honor of the body, and as the importance of the case requires,—to pronounce, through the *Bâtonnier*, a censure or reprimand against any member guilty of any breach of discipline or of any action derogatory to the honor of the bar ; and the council may deprive such member of the right of voting, and even of the right of assisting at the meetings of the section, for any term not exceeding one year, and may also, according to the nature of the offence, punish such member by suspending him from his functions for any period not exceeding one year, subject to the approval of the general council as hereinafter provided ;

To pronounce censures ;

*Secondly.*

To reconcile differences ;

*Secondly.* To prevent and reconcile and settle all differences between members of the section, more especially all differences concerning professional matters ;

To hear complaints ;

*Thirdly.* To prevent, hear, reconcile and determine, all complaints and claims made by third parties against members of the bar in the section, in matters connected with their professional duties ;

To admit candidates ;

*Fourthly.* To admit candidates to the study or to the practice of their profession, and to decide upon their capacity and good morals ;

To represent the profession.

*Fifthly.* To represent the members of the bar, whenever the interests or the rights of the profession require it. *ibid*, s. 7.

Duty of secretary.

**11.** The secretary of each section shall carefully record the deliberations and proceedings of the meetings of his section, and of the council of his section, and shall keep minutes thereof in a book to be kept for that purpose ; he shall be keeper of the archives of his section :

2. He shall deliver all copies, certificates and other papers which may be required, and such copies so issued and certified by the secretary, and sealed with the seal of the section, shall be admitted and received as authentic in all the courts of Justice in Lower Canada. *ibid*, s. 14.

Duty of treasurer.

**12.** The treasurer of each section shall have the keeping of the common fund of his section, shall receive and pay all sums, the receipt or expenditure whereof is authorized, and shall render an account of his administration once in every year, at the meeting held for the election of the council of his section. *ibid*, s. 15.

In case of vacancies among officers.

**13.** In case of the absence, illness or death of any officers of any councils, his place shall be filled up as follows, that of the *Bâtonnier* by the oldest member of the council reckoning by date of admission to the profession, and that of any other officer by an officer to be chosen temporarily by the council ;--and in case of the absence, illness or death of any of the members of the council, the council may fill up their places in the same manner by the same number of other members to be chosen from among the members of the section. *ibid*, s. 17.

#### GENERAL MEETINGS OF ALL THE COUNCILS OF SECTIONS.

General meetings of councils of sections.

**14.** During the six months immediately following, the annual elections of the councils of sections, the said councils shall meet together at least once, in Quebec or Montreal, alternately, as may be determined by the *Bâtonniers* of the several sections ; in order to elect by ballot from among themselves, a president,

president, a secretary and a treasurer of the general council of the corporation, and to make the by-laws, rules and orders which by the *ninth* section of this Act they are authorized to make :

2. The *quorum* of the general council shall be fifteen, and all questions which arise at the said meeting shall be determined by the majority of the members present. 12 V. c. 46, c. 12. Quorums.

15. The duties of the secretary and of the treasurer of the general council shall, with respect to the said general council and the corporation, be analogous to those of the secretary and treasurer of each section with respect to their section ; and all copies of minutes of the proceedings of the said general council, certified by the secretary thereof, under the seal of the corporation, shall be received as authentic in all Courts in this Province. 12 V. c. 46, s. 16. Duties of secretary and treasurer of the general council.

16. The president of the general council shall have the casting vote at all meetings of the general council. 12 V. c. 46, s. 13, *part*. President to have casting vote.

17. The *Bâtonnier* of each section shall also have the casting vote at all meetings and debates, both of the council and of the members of the section ; the *Bâtonnier* of each section may call special and extraordinary meetings whenever he deems it expedient ; he shall be vigilant in enforcing the observance of the by laws, rules and orders, and in maintaining order at meetings ; he may call to order such members as are out of order, and also censure and reprimand such members. 12 V. c. 46, s. 13, *remainder*. Bâtonnier to have the casting vote at meetings of the section.

OF ACCUSATIONS AGAINST MEMBERS OF THE BAR.

18. In all cases where a member of the bar is accused of any offence, before the council of the section to which he belongs, the accusation shall be decided by the absolute majority of the members of the council of the section, who shall declare *viva voce* whether the member accused is guilty or not guilty : Accusations against members, how decided.

2. But no judgment of any council of the section suspending any member from his functions shall have force or effect until ratified by the general council at a meeting composed of at least one half of the members of the general council and by a vote of at least two-thirds of the members present. 12 V. c. 46, s. 18. Judgment in such case must be confirmed.

19. The manner of proceeding on all accusations brought by the Syndic shall be as follows : How such accusations shall be proceeded.

2. Whenever the Syndic receives, on the oath of one or more credible persons, (which oath the said Syndic shall administer)

a complaint against any member of his section, affecting the honor, dignity, interests or duties of the profession, he shall submit the said complaint without delay, to a meeting of the council specially called for that purpose, and if it is considered by the council, that the matter requires investigation, he shall order an accusation to be brought against such member ;

Act of accusation.

3. The Syndic shall then draw up the act of accusation in the form of schedule No. 2, hereunto annexed, which said act shall be transmitted to the secretary, who shall cause a copy thereof to be made, duly certified by him, and shall serve the said copy on the accused party, with an order in the name of the *Bâtonnier* of the section, requiring the said accused party to appear in person before the council, on the day and at the hour and place mentioned in the said order, which said order shall be in the form of schedule No. 3, hereunto annexed ;

Service thereof.

4. The service of the act of accusation and of the order to appear, shall be made by a messenger or by any other person appointed for that purpose, who shall deliver copies thereof to the accused party in person ; and the said messenger or other person shall make a return on oath of such service ;

By-laws in such matters.

5. The general council shall determine by its by-laws the manner in which the proceedings relative to the said accusations shall be conducted before the said councils of sections. 12 V. c. 46, s. 19.

Council may compel the attendance of witnesses.

20. Each council shall have the right to require witnesses to appear before it, by *subpœnas* in the form of schedule No. 4, hereto annexed, in the name of the *Bâtonnier*, under the seal of the section, and signed by the secretary, and shall have the same powers with respect to compelling the attendance of witnesses to give evidence as are exercised by the civil courts in Lower Canada ; and the said *subpœnas* or other orders shall be served in such manner as may be determined by by-laws to be made by the general council. 12 V. c. 46, s. 20.

Secretary to administer oaths.

21. The secretary, or any other member of the council of the section, shall administer the oaths required by this Act, to the said witnesses or to any other person ; and any person guilty of any wilful false statement, in any oath required by this Act, shall be liable to the penalties by law imposed for perjury. 12 V. c. 46, s. 21.

Member accused may retain counsel.

22. Any member accused as aforesaid may retain two counsel who shall not, however, be chosen from among the members of the council of the section before which such accusation is brought. 12 V. c. 46, s. 22.

**23.** Any member of the council who absents himself from any of the meetings of the said council without legitimate cause, shall incur a fine of one dollar, for every such absence. 12 V. c. 46, s. 23. Members absent from meeting.

**24.** In case of the suspension, *interdiction or expulsion*, of a member of a section, the secretary of such section shall give notice thereof to the secretaries of the other sections, and such member, so suspended, *interdicted or expelled*, shall not practise in any court of justice in Lower Canada during the term of such suspension, *interdiction or expulsion*. 12 V. c. 46, s. 31. Notice of suspension.

EXAMINATION AND ADMISSION TO STUDY OR PRACTICE.

**25.** Each Council of a section shall appoint a committee of five of its members, three of whom shall form a *quorum*, which said committee may from time to time and to its number such members of the profession as it may think proper, to examine candidates for the study or practice of the profession; and it shall be the duty of the members so appointed, or of any three of them, or of those added to their number: Committee for the examination of candidates.  
Their duty.

*First.*—To inquire into the acquirements, capacity and morals of every candidate for the study of the profession, and to make their report to the *Bâtonnier*, who, if the report be favorable, shall give such candidate a certificate of his admission as above mentioned, under his signature, countersigned by the Secretary and under the seal of the section, and if the report be unfavorable, such candidate shall not be admitted to the study of the profession; With respect to candidates for admission to study

Except that if such candidate is refused by the Council of any section, he may present himself to the General Council, who may admit or reject him as it deems expedient;

*Secondly.*—To examine every candidate for admission to practice, on his legal attainments and his qualifications, and to inquire into his morals and the regularity of his clerkship;—and if such candidate is found capable and qualified, and to have conformed to all provisions of this Act, the *Bâtonnier* of the section, on the report made to him in writing to that effect, shall grant the said candidate a diploma, admitting him to the profession; which diploma shall be in the form of the Schedule No. 1, hereto annexed, and shall be sufficient, without a commission from the Governor, to authorize the party, obtaining such diploma, to practise as an Advocate, Barrister, Attorney, Solicitor and Proctor at Law, in all Courts of Justice in Lower Canada, on the said candidate so admitted, taking an oath well and truly to perform his professional duties, which oath shall be administered by the Secretary of the section, who shall make a note thereof on the back of the diploma; With respect to candidates for admission to practise.  
Form of diploma.

Diploma to be registered.

The said diploma shall be enregistered at length, with the Council of the section from which the said diploma issued, and also with the General Council, and for such enregistration the party obtaining such diploma, shall pay one dollar ;

Notice to be given of intention to apply for admission.

Notice in writing shall be given by the candidate to the Secretary of the section, at least one month previous, that he intends to present himself to study, or to be admitted to practise, which notice shall be posted up by the Secretary in the place where the meetings of the section are generally held, and shall mention the day on which the examination of such candidate or aspirant will take place. 12 V. c. 46, s. 24.

Qualifications required of candidates for admission to study.

**26.** No person shall be admitted to the study of the profession, unless it appears to the Council or to such of its members as are appointed to inquire into the qualification of Candidates or to such members as are added to their number, as above provided, that the candidate is sufficiently acquainted with the English or the French language and with the Latin language, and that he has received a liberal education ; and such candidate, after having received the certificate mentioned in the said section, shall cause his certificate to be registered in a register kept for that purpose by the Secretary, for which registration he shall pay one dollar, and one dollar for the certificate of registration ; and the time of the clerkship of such student shall be reckoned only from the date of such registration. 12 V. c. 46, s. 26.

Fee.

Qualifications required for admission to practise.

**27.** No person shall be admitted as an Advocate, Barrister, Attorney, Solicitor and Proctor at law, unless he has attained the full age of twenty-one years, and has studied regularly and without interruption under a notarial agreement as a clerk or student with a practising Advocate during five consecutive and whole years :

In certain cases shorter service under articles will suffice.

2. Except that, if the student has gone through a regular and complete course of study in any incorporated college or seminary, four years of clerkship shall be sufficient ; and if the student has followed a regular and complete course of study in an incorporated college or seminary, and also a regular and complete course of law in any incorporated college or seminary, three years of clerkship shall be sufficient ; 12 V. c. 46, s. 27.

3. And three years clerkship shall also be sufficient if the student has followed a regular and complete course of law in any incorporated University or College in which a Law Faculty is established, as provided by the Statutes or regulations of the said University or College, and has taken a degree in law in such University or College, and such course of study may be followed simultaneously with his time of service with a practising Attorney under his articles. 16 V. c. 130, s. 6.

**28.** No candidate shall be admitted to practise in any section in which he has not studied; and if he studied partly in one section and partly in another, he shall be admitted only in the section in which he terminated his clerkship; and he shall produce a certificate of study from the Council of the section in which he performed a part of his clerkship, which certificate shall be given to him by the *Bâtonnier* under the seal of the section. 12 V. c. 46, s. 25.

Candidates to be admitted to practise in the section in which they studied.

**29.** The repeal, by Schedule A, of any Act exempting any student or person from the operation of any of the foregoing sections shall not prejudice the right of such student or person to admission to the practice of the profession or as a student, under any such repealed Act. 16 V. c. 130, &c.

The rights of certain students, &c., under special enactments not affected.

**30.** The secretary of each section shall keep a book in which the names of all students for the profession who have caused their articles of clerkship to be registered, with the date of such registration, shall be entered according to date, and in which book he shall also enter, separately, the names of all the members of the profession in his section, with the date of their admission; and no person shall practise as an advocate, barrister, attorney, solicitor and proctor at law in any Court of Justice in Lower Canada unless his name is entered in the said book by the secretary of the section in which such person intends practising. 12 V. c. 46, s. 29.

Duty of secretary as regards the registration of students.

**31.** The following fees shall be paid to the secretary of each section; for each certificate of admission to the study of the profession, five dollars; for each diploma, fourteen dollars; which sums shall be paid over by the said secretary to the treasurer of the section, to form part of the common fund of the section. *ibid*, s. 32.

Fees to secretary.

ANNUAL SUBSCRIPTIONS OF MEMBERS.

**32.** Every member of the profession in each section other than those of the districts of Montreal and Quebec, shall pay annually on the first of May, into the hands of the treasurer, four dollars, to be paid into the common fund of the section to which such member belongs. *ibid*, s. 33.

Annual subscription to funds of sections.

**33.** In the section of the bar of the district of Montreal only, in lieu of the sum of four dollars, there shall be paid the sum of six dollars by each member of the profession in that section: 16 V. c. 130, s. 7.

Annual subscriptions in district of Montreal.

2. And all members of the bar of the section of Montreal, paying such subscription of six dollars annually, shall have the use of the library and books of the said section, subject only to such rules as the council of the section may enact for the regulation of the said library and the payment of the said subscription and for enforcing the payment thereof, even by disqualifying members

Members of Montreal section entitled to the use of the Library of the section.

members in arrear from voting at meetings of the section so long as they are in arrear; and the said council is hereby authorized to make such rules and from time to time to change the same as it deems proper. *ibid*, s. 8.

Annual subscription in district of Quebec.

**34.** In the Section of the District of Quebec only, in lieu of the sum of four dollars, there shall be paid the sum of six dollars. 20 V. c. 140, s. 1.

May be increased by By-law of the said section.

**35.** And the said Section, at any meeting to be specially called for the purpose, may make and ordain from time to time a By-law or By-laws whereby the sum annually to be paid by the members of the said section respectively, may be augmented beyond the sum of six dollars, or reduced to a less sum; and any sum so fixed upon shall be paid and payable by the members of the said section and recoverable in the manner and by the means provided by this Act; The alteration in the amount so to be paid shall apply to the year first succeeding such alteration. 20. V. c. 140. s. 2.

Members of the said section to have the use of the Library.

**36.** All members of the Bar of the said Section paying the annual subscription, shall have the use of the Library and books of the said Section, subject only to such rules as the Council of the said Section and the Committee may enact for the regulation of the said Library, and for the payment of the subscription, and for enforcing the payment thereof, even by disqualifying any member from voting at any meeting of the said Section so long as any part of his annual subscription shall remain unpaid; and the said Council is hereby authorized to make such rules and from time to time alter the same as to it may seem fit. 20 V. c. 140, s. 4.

Committee to take charge of the Library.

**37.** The council of the said Section may appoint annually a Committee of not less than five, to be chosen from amongst the members of the said Section, whose duty it shall be to superintend and take charge of the Library belonging to the said Section, and to make rules pertaining to the management thereof. 20 V. c. 140, s. 3.

#### OF THE FUNDS OF THE CORPORATION AND OF THE SECTIONS.

Of what the funds of the general council shall consist.

**38.** The common fund of the Corporation or of the General Council, shall be formed of the sums paid into the same by the Councils of the different sections out of the funds of the said sections, as the said General Council judges necessary, to meet the expenses of the said Corporation or of the General Council:

2. The sums so paid into the common fund by each of the said sections, shall be in proportion to the number of members in each of the said sections, and the General Council shall not in any case require the Council of any section to pay more than one fourth of its annual revenue into the general fund. 12 V. c. 46, s. 34.

**39.** The Treasurers of the several sections shall, in every year, make an exact return of the receipts and expenditure of their respective sections; the Treasurer-General shall also, in every year, make a similar return to the General Council, who shall transmit a copy thereof to the Council of each section. 12 V. c. 46, s. 35.

Treasurers to make an annual statement.

**40.** The Council of each section shall examine the accounts of its Treasurer, and no sum shall be expended without an order from the Council, signed by the *Bâtonnier*. 12 V. c. 46, s. 36.

Council to examine the accounts.

**41.** All fines and contributions imposed under this Act, and in conformity with its provisions, shall be recoverable, with costs, before any Court of Justice having civil jurisdiction in the District in which the Defendant resides on a simple certificate of the *Bâtonnier*, countersigned by the Secretary of the section; and it shall be sufficient, in the declaration for the recovery of such contributions or fines, to set forth the amount demanded, and to mention in a summary manner the period during which such fines have been incurred or such contributions have become due, without specially alleging the particular facts of the case. 12 V. c. 46, s. 37.

How fines, &c., under this Act shall be recovered.

**42.** No omission on the part of the Councils of sections, in forming the General Council or in making the By-laws, Rules and Orders, and no neglect on the part of any section to proceed to the election of its Council and Officers, shall prevent the other sections from proceeding under this Act to the election of their respective Councils or from carrying this Act into operation, with respect to such sections as are organized, nor shall any such omission cause the dissolution of the Corporation nor of any such Council. 12 V. c. 46, s. 38.

Failure to proceed under this Act shall be not to affect the others.

#### FORMATION OF NEW SECTIONS.

**43.** Notwithstanding any alteration in the limits of any District for judicial purposes the several sections of the Bar in Lower Canada shall not be affected by such alteration, but shall continue with the local limits and jurisdiction they respectively had on the tenth day of June, 1857, until altered by Proclamation; but the Governor may, by Proclamation, whenever circumstances in his opinion render it expedient, constitute a section or sections of the Bar, in and for any District or Districts which he thinks proper to assign as the local limits of any such section, and the local limits of any previously existing Sections may be reduced accordingly by such Proclamation, but its organization and powers shall not be affected except so far as they depend on such local limits; and any such Proclamation shall take effect, as regards each section from the day to be appointed therein for that purpose: 20 V. c. 44, s. 148.

Present sections to remain as heretofore until altered by Proclamation.

Governor may constitute new sections.

Provisions of this Act to apply to such new sections.

2. And upon, from and after the date of any such Proclamation, the District or Districts therein mentioned shall, under the name of "*Bar of Lower Canada, Section of the District (or Districts of* ", constitute a separate section of the Bar, and all the provisions of this Act, so far as it is not otherwise herein provided, shall apply to such section; 22 V. (1859) c. 5, s. 1.

Council.

3. The Council of every such section shall consist of three members of the Bar, besides a *Bâtonnier*, Syndic, Treasurer and Secretary; 22 V. (1859) c. 5, s. 2.

First election of council.

4. The first election of the Council in any such section shall take place within three months after the date of such proclamation, at a meeting to be held at the Court House of the District of the section for which such election is to take place, which meeting shall be called by at least five members of the Bar practising within the limits of the section, by public notice to be inserted in the *Canada Gazette* at least fifteen days before such meeting, and by a public notice posted up at the Court House of the section where such meeting is to take place, at least eight days before such meeting;

If the section includes more than one district.

5. If the limits of such section include two or more Districts, the place at which the election shall be held, shall be named in such proclamation, and the notice of such meeting shall be posted up at the Court House of each District within the limits of such section; and the ordinary meetings of the Council and of the members of any such section shall be held at the place where such first election takes place; 22 V. (1859) c. 5, s. 3.

Quorum required for election.

6. No such election shall take place unless there be present at the meeting so called, at least eight members of the Bar practising within the limits of the section. 22 V. (1859) c. 5, s. 4.

#### SCHEDULE No. 1.

PROVINCE OF CANADA, }  
DISTRICT OF. }

To all whom these presents shall concern—Greeting :

I, the undersigned, *Bâtonnier* of the bar of Lower Canada, section of the district of \_\_\_\_\_, in conformity with the provisions of the *seventy-second* chapter of the Consolidated Statutes for Lower Canada, in pursuance of the certificate to me delivered by three, (or several, *as the case may be*), of the examiners of the said section, dated the \_\_\_\_\_, whereby it appears that A. B., of \_\_\_\_\_, under the requirements of \_\_\_\_\_ of

of the said Act, after having served a regular clerkship, as prescribed by law, has undergone before them, on the day of \_\_\_\_\_, the examination necessary to his admission to the profession of Advocate; and that from such examination it appears that he is in all respects worthy and qualified to be so admitted, have given and granted to him, and do by these presents, give and grant to him, according to the provisions of the said Act, the present diploma, conferring on him the right of practising as an Advocate, Barrister, Attorney, Solicitor and Proctor at Law, in all Courts of Law in Lower Canada.

Given at the City (or Town) of \_\_\_\_\_, under my signature and the seal of this section, and countersigned by the secretary thereof, on the \_\_\_\_\_ day of the month of \_\_\_\_\_, in the year of our Lord, one thousand eight hundred and \_\_\_\_\_

(Signed,) C. D.,  
*Bâtonnier.*

[L. S.] E. F.,  
*Secretary.*

SCHEDULE No. 2.

PROVINCE OF CANADA, }  
DISTRICT OF \_\_\_\_\_ }

To the *Bâtonnier* and the members of the council of the bar of Lower Canada, \_\_\_\_\_ section of the district of \_\_\_\_\_

A. B., Esquire, Syndic, elected for the section of the bar of Lower Canada, called section of the district of \_\_\_\_\_, hereby informs the said section, that C. D., Esquire, one of the members of the said bar, residing in the said section of the district of \_\_\_\_\_, is accused on the oath of persons worthy of credit, by E. F., of \_\_\_\_\_, &c. &c., as follows, that is to say: that the said C. D., (*here recite the offence.*)

Wherefore the said A. B. prays that an order may issue from the section, summoning the said C. D. to appear before the said section, in order that proceedings may be then had on the present information, as to law and justice may appertain, this day of \_\_\_\_\_, 18 \_\_\_\_\_

(Signed,) A. B.,  
*Syndic.*

## SCHEDULE No. 3.

PROVINCE OF CANADA, }  
DISTRICT OF }

By the *Bâtonnier* and members of the council of the Bar of  
Lower Canada, section \_\_\_\_\_ of the district of \_\_\_\_\_

To C. D., Esquire, Advocate, Barrister, Attorney, Solicitor  
and Proctor at Law, of \_\_\_\_\_ in the said section of the  
district of \_\_\_\_\_, Greeting

You are hereby required to appear in person before us, in  
our chambers, in the city of \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, at

\_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, then and there to answer the  
charge, a copy whereof is above written, brought against you  
by A. B., esquire, syndic of the said section of \_\_\_\_\_

And you are informed, that in case of your non-appearance  
before us on the day and hour, and at the place hereinabove  
mentioned, proceedings will be had by default on the said  
charge.

Given at \_\_\_\_\_, under the seal of the said section of the dis-  
trict of \_\_\_\_\_, the signature of our *Bâtonnier* and countersigned  
by our secretary, this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_.

(Signed,)

F. G.,  
*Bâtonnier.*

R. S.,  
*Secretary.*

[L. S.]

## SCHEDULE No. 4.

PROVINCE OF CANADA, }  
DISTRICT OF }

By the *Bâtonnier* and members of the council of the Bar of  
Lower Canada, section of the district of \_\_\_\_\_

To A. B., of \_\_\_\_\_, Greeting :

We hereby command you, and each of you, to appear in per-  
son before us, in our chambers, in the city (or town) of \_\_\_\_\_,  
the \_\_\_\_\_, of \_\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, to  
bear evidence and speak the truth on all matters within your  
knowledge respecting a charge brought before us by \_\_\_\_\_,  
esquire, syndic of the bar of Lower Canada, for the section of  
the District of \_\_\_\_\_ against C. D., esquire, a member of the  
said \_\_\_\_\_

said bar. And herein fail not under a penalty of a fine of dollars.

Given in the city (or town) of \_\_\_\_\_, under the seal of our section and the signature of our secretary, this \_\_\_\_\_ of 18 \_\_\_\_\_

[L. S.] (Signed,) L. M., Secretary.



## CAP. LXXIII.

## An Act respecting the Notarial Profession.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

## INCORPORATION, &amp;c.

Four Boards of Notaries for Lower Canada.

1. There shall be in Lower Canada four Boards of Notaries, one for the district of Quebec, to be called, "The Quebec Board of Notaries,"—one for the district of Montreal, to be called, "The Montreal Board of Notaries,"—one for the districts of Three-Rivers and St. Francis, to be called, "The Board of Notaries for Three-Rivers," and one for the district of Kamouraska, including the district of Gaspé, to be called, "The Kamouraska Board of Notaries," the districts hereby intended being the old districts, as bounded before the tenth day of June, 1857 :

Each Board to be a corporation.

2. Each of the said Boards of Notaries shall be a corporate body in itself, and as such be entitled to all the privileges vested by law in corporate bodies generally ; and they shall each have power to acquire, hold, possess and enjoy real and personal estate not exceeding in value twenty thousand dollars ;

Service of process on Boards.

3. In all actions instituted against any of the said Boards, service of process at the office or domicile of the secretaries of the respective Boards shall be good and sufficient. 10, 11 V. c. 21, s. 1,—16 V. c. 215, s. 1,—and 13, 14 V. c. 39, s. 1.

Composition and quorums of Boards.

2. Each Board of Notaries shall be composed of members elected in the manner hereinafter prescribed ; and the number of such members shall be twelve for the Quebec and Montreal Boards respectively, and nine for the Boards of Notaries for Three-Rivers, and eight for the Board of Notaries for Kamouraska and Gaspé, and the Quorum for the despatch of business shall be eight for the Quebec and Montreal Boards, respectively, six for the Board for Three-Rivers, and five for the Board for Kamouraska and Gaspé. 10, 11 V. c. 21, s. 2,—and 16 V. c. 215, ss. 1, 2.

Election of members to be by ballot and every three years.

3. The members of each Board of Notaries shall be elected by the Notaries within its jurisdiction at a general meeting, and the election shall be by majority of votes and by ballot, each ballot containing a number of names not greater than the number of members to be elected ; and a general meeting shall be held for the purpose of making such elections, every three years, which shall be the period during which the members shall remain in office, but the same members may be re-elected. 10, 11 V. c. 21, s. 8.

4. If at the time appointed for the election of any Board of Notaries, such election is not had in conformity to this Act, the Governor in council may appoint the members of such Board by an instrument under his hand and seal; and any Board of Notaries so appointed by the Governor, and the members thereof, shall have the same powers and duties as if elected at a general meeting of Notaries: 10, 11 V. c. 21, s. 9.

If election is not had at time fixed, Governor to appoint members.

2. The first meeting of any such Board shall be called by the Prothonotary of the district within a reasonable time, by a notice served on each Member of the Board either personally or at his domicile or office, (*étude*;) informing him of his election and of the day, hour and place of the said first meeting of the Board, at which such Prothonotary shall preside until the Board shall have elected its President, of which election he shall draw up a minute and deliver the same to the President elect: and if it shall happen that the meeting cannot be held on the day appointed, the Prothonotary shall appoint a future day for holding it. *ibid*, s. 8, *part*.

First meeting of Board to be called and presided over by the Prothonotary.

MEETINGS AND OFFICERS.

5. The meetings of the Board of Notaries shall be held as follows: those of the Quebec Board of Notaries at the City of Quebec, those of the Montreal Board of Notaries at the City of Montreal, those of the Board of Notaries for Three-Rivers in the City of Three-Rivers, and those of the Kamouraska Board of Notaries, in the parish of St. Louis de Kamouraska, at the chief place of the said district of Kamouraska; on the days and at the hours appointed by the said Boards respectively, and in such places as may be selected for the purpose; but there shall not be less than three meetings in each year for the examination of applicants for admission as Students or as Notaries

Places and times at which meetings of the Boards are to be held.

2. In each year there shall be one general meeting of the Notaries within the jurisdiction of each Board, which said meeting shall take place on the first Thursday of November, at two o'clock in the afternoon, and if the said Thursday happens on a holiday, the meeting shall take place on the following day

Annual general meetings.

3. Extraordinary general meetings may be held whenever circumstances require them, or the Board deems them advisable, and such meetings shall be called by advertisements in two newspapers; and inserted in both languages at least fifteen days previously; and all Notaries, within the jurisdiction of the Board, shall be invited to attend either for the purpose of making the appointments mentioned in the *sixth* section, or to advise together on matters of interest to the profession:

Extraordinary general meetings.

4. Any meeting of any Board of Notaries, or any general meeting of the Notaries, within its jurisdiction, may be adjourned

Adjournment of meetings.

adjourned by consent of the majority of the Notaries present thereat, to such day and hour as may be agreed upon. 10, 11 V. c. 21, s. 7, and 16 V. c. 215, ss. 1, 8.

Board to elect at first general meeting—

**6.** The members of each Board shall elect at the first annual general meeting of such Board :

A President ;

*First.*—A president, who shall only vote when the votes are equally divided,—shall call special meetings of the Board when he deems it expedient, or on the requisition of two members stating the purpose of the meeting, or on that of the syndic hereinafter mentioned, and shall preserve order at all meetings ;

A Secretary ;

*Secondly.*—A Secretary, who shall draw up and enregister the proceedings of the Board,—shall have custody of all Records and deliver copies thereof,—shall collect the facts relative to any charge brought against a Notary, and report the same to the Board ; and who may, with the approbation of the Board of Notaries for his district, appoint a deputy to represent him in case of illness or of absence ; and the said deputy shall be appointed by a written instrument under the hand of the Secretary, which instrument shall be entered in the book of proceedings of the said Board ;

A Treasurer ;

*Thirdly.*—A Treasurer, who shall have charge of the common fund hereinafter mentioned,—shall receive and pay moneys upon the order of the Board, and shall account for the same as the Board shall direct ;

And a syndic.

*Fourthly.*—A syndic, who shall be the prosecutor on any charge brought against a Notary ;

Officers may vote as ordinary members.

2. In addition to the special powers hereby assigned to the officers aforesaid, each of them shall, if he is a member of the Board, vote as such in the same manner as the other members, at all meetings of the Board, except that with regard to any matter relating to any charge against a Notary, the Syndic conducting the prosecution shall not vote ;

Exception.

*Pro tempore* appointments.

3. In case any officer aforesaid is absent or prevented from acting, his place may be supplied by the appointment of another *pro tempore* by the majority of the members present at any meeting at which there shall be a quorum ; 13, 14 V. c. 39, s. 2.

Who may be chosen officers.

4. The president shall always be chosen from among the members of the Board, but the other Officers may be chosen either from among the members of the Board or from among the Notaries within its jurisdiction ;

Removal of officers.

5. The Board may remove any Officer at pleasure and appoint another in his stead ; but no Officer shall be so removed except by the vote of at least two thirds of the members of the Board. 10, 11 V. c. 21, s. 4.

7. The election of the president and officers aforesaid shall be renewed by the members of each Board of Notaries every three years, the same persons being nevertheless capable of being re-elected, and the senior in age having the preference in any case of equality of votes :

Election of officers to be triennial.

2. Any Notary refusing to accept the office of member of a Board or to perform the duties of president, secretary, syndic or treasurer, shall thereby incur a penalty of twenty dollars, unless he has already filled one of the said offices ;

In case of refusal to accept office.

3. Any Notary appointed a member or elected as an officer of the Board, who does not attend regularly at the meetings of the Board, or who neglects to fulfil the duties of his office, shall incur a penalty not exceeding ten dollars, unless he has been prevented from attending through illness or other serious causes, touching which a quorum of the said Board shall decide ; and any member or officer of a Board guilty of such refusal or neglect, after having been elected and after having accepted office, shall also incur a penalty of ten dollars ; and the Board may by a by-law to be previously passed for that purpose, determine what shall be considered neglect or refusal to fulfil the duties of members or officers of the Board. 13, 14 V. c. 39, s. 4.

Penalty on officer or member of the Board neglecting his duties.

8. If any vacancy occurs in any Board of Notaries, whether by the death of any member thereof or by his removal out of the jurisdiction of such Board, or otherwise, the remaining members of the Board, at the next meeting thereof, may fill such vacancy by electing another member by the votes of a majority of the members present 10, 11 V. c. 21, s. 32.

Vacancies in Board how filled.

POWERS OF THE BOARDS.

9. Each of the said Boards of Notaries shall have power and authority :—

Powers of Boards as to—

*First*.—To maintain internal discipline among the Notaries within its jurisdiction, to award censure and enforce such discipline ;

Internal discipline ;

*Secondly*.—To prevent or reconcile all differences between Notaries and all complaints and claims by third persons against notaries concerning their functions,—to express their opinion respecting the damages thence arising, and to repress by censure or means of discipline, whatever offence may be the subject thereof, without prejudice to any right of action, if any such accrues ;

The prevention of differences ;

*Thirdly*.—To grant or refuse, after public examination, all certificates of qualification required by applicants for admission, either as Student or Notaries, and to deliberate thereon as they think proper ;

Admission to study or practise ;

*Fourthly*.—

Summoning of Notaries;

*Fourthly.*—To summon before it, when necessary, any Notaries within its jurisdiction ;

Altering of quorums for examination of candidates, &c.

*Fifthly.*—To alter from time to time, if any such Board thinks proper, the quorum for the examination of candidates for the study of or admission to the profession, and the granting or refusal of the necessary certificates for that purpose, and also for receiving complaints, claims and petitions from Notaries and third parties, on the various subjects within the powers of the Boards of Notaries, and for the despatch of other routine business of a similar nature ; But such quorum shall not be made less than five for the Quebec and Montreal Boards of Notaries respectively, nor less than three for the Three-Rivers Board of Notaries ; and whenever any decision is required to be taken on any matter so brought before the Board, the quorum shall be the same as provided in the second section of this Act ;

Punishment of offending Notaries.

*Sixthly.*—To cause any such Notary to be punished according to the nature of his offence, by removal or suspension from office, or by depriving him of his vote at general meetings, or by excluding him from the Board for a time not exceeding three years for the first offence, nor more than six years for a second or subsequent offence ;

Proceedings relative to the suspension of a Notary.

But if however, the charge brought before the Board against any Notary appears sufficiently serious to call for his suspension from the exercise of his functions or his removal from office in cases of fraud or corruption, the Board shall associate with it, by lot, a number of Notaries equal to the number of members of the Board, from among those within its jurisdiction, who shall be bound to serve, under a penalty of twenty dollars ; and the Board thus composed may, by a majority of the whole, pronounce its opinion as to such suspension and the duration thereof, or as to such removal from office ; but no opinion shall be pronounced unless two thirds at least of all those summoned to attend the meeting be present ; and in any such case the opinion so pronounced shall be submitted to the superior court for judgment thereon in the manner provided by the fourteenth section of this act, and nothing in this section shall deprive the party injured of any remedy he has against the Notary ;

Board to fix the time for the general meetings.

*Seventhly.*—To fix the time of the general meetings of notaries for the appointment of the officers mentioned in the *sixth* section of this Act, and for all other meetings to be held under the third and fourth sections of this Act ;

To make By-laws.

*Eighthly.*—To make such By-laws and orders as from time to time are found requisite for the administration of all matters under their control, and for the due putting into execution of this Act, but no such By-law or order shall have any force or effect unless the same has been adopted at a general meeting of the Notaries interested. 13, 14 V. c. 39, s. 3,—20 V. c. 44, s. 141.

**10.** Each Board of Notaries shall make a tariff of the prices to be paid for all Notarial Deeds, Acts or Instruments, and the fees to be allowed to Notaries for each sitting (*vacation*) and attendance (*transport*); which tariff *before it shall be in force*, must be homologated and confirmed by the Superior Court in the district:

Board to make a tariff of fees.

2. Any Notary contravening any of the regulations of the said tariff by demanding from parties more than the price and fees thereby established, after fifteen days from the time when the said tariff has been homologated and published, shall for each such offence incur a penalty of twenty dollars. 10, 11, V. c. 21, s. 30.

Contravention of tariff how punished.

**11.** The mode of proceeding at each Board of Notaries shall be as follows, that is to say:

Mode of proceeding on infractions of discipline.

1. The *Syndic* shall bring before the Board all infractions of discipline, (and he shall do so either *ex officio*, if the facts be within his personal knowledge, or at the instance of the parties interested, or at that of any Member of the Board,) and the said complaining parties shall prove the grounds of their complaint on oath before the President of the Board of Notaries having jurisdiction within the locality, or in his absence before a Justice of the Peace, and the said President or Justice of the Peace may administer such oath;

2. The *Syndic* shall summon any Notary inculpated to appear before the Board within a reasonable delay, (which shall not be less than that allowed on Writs of summons to appear before the Superior Court in the district.) by a letter stating the object of the citation, to be signed by the *Syndic* and transmitted by the secretary, who shall keep a note thereof, and shall prove the service of the letter upon the Notary inculpated either in person or at his domicile or office (*étude*.) and such service may be made by any bailiff of the said court;

Syndic to summon the Notary inculpated.

3. The Board shall not proceed on any matter concerning any individual, except after having heard or duly summoned, the Notary inculpated or interested and such other parties as desire to be heard, who in all cases may be represented or assisted by a Notary or Advocate;

Proceedings at trial.

4. The minutes of the proceedings of the Board shall mention the reasons on which the same are founded, and shall be signed by the President and by the Secretary, and shall contain the names of the members present, and shall be notified, if need be, to those whom they concern, in the manner prescribed with regard to citations, and the fact of their having been so shall in such case be noted in the margin of the minute;

What the minutes thereof shall contain.

Majority of quorum must make citation.

No citation shall be made except by order of the majority of a *quorum* of the Members of the Board, and such order shall be entered on the register of the Board. *ibid*, s. 6.

Notaries may be appointed to inspect the repertories, &c., of inculpated Notaries.

**12.** Every Board of Notaries may, as often as they think proper, elect from among the members thereof, or from the other Notaries of the district, one or more Notaries not exceeding three, who, after receiving sufficient notice of their appointment, and being sworn at some sitting of a court of civil jurisdiction, to the faithful and impartial discharge of the duties imposed on them by this Act, and which they shall be bound to perform under a penalty of twenty dollars, shall visit the offices, records, minutes, repertory and index of inculpated Notaries, (when such inculpation appears so serious as to deserve to be punished *by fine or by suspension or dismissal*, in cases of forgery, fraud or corruption) in order to establish whether such inculpated Notaries have conformed to the laws of this province, and the requirements of this Act, and to obtain information on all matters and things mentioned in the instructions which they shall receive from the Board of Notaries, to whom they shall make a faithful and circumstantial report :

Penalty on Notary refusing them access to his papers.

**2.** Every Notary who refuses either to permit the visit of the Notary so delegated, or to grant him access to his papers, shall for every refusal incur a penalty of forty dollars to be recovered in a summary manner before the nearest Justice of the Peace ;

Remuneration of Notary so appointed.

**3.** But no Notary so delegated to make any such visit shall be required to make more than one visit in three years ; and he shall be entitled to receive, out of the common fund of the Board of Notaries in whose jurisdiction he acts, such sum as the said Board thinks proper ; provided such sum do not exceed five dollars for every day usefully employed in making the said visit, including daily expenses and disbursements, and including also the said report. 13, 14 V. c. 39, s. 12.

Notaries liable to a penalty in certain cases.

**13.** Any Notary convicted of having passed any Deed, Contract or Instrument, without entering therein the number thereof, and the day, year and place on and at which it was passed, and the christian and surnames, additions and places of residence of the parties and witnesses thereto,—or who uses abbreviations not allowed by law,—or neglects to insert all sums and dates in words at length, or to read over the instruments to the parties, and to make mention of his having done so, and also of their having signed the same, or declared themselves unable to sign,—or to cause all marginal notes and additions to be approved and authenticated,—or to state the number of words struck out or marginal notes added,—or who makes any interlineation, erasures or additions, *or leaves any blanks or unfilled spaces* in the body of the instrument,—or contravenes or fails to observe any of the other forms prescribed by law, with regard to notarial instruments,—

or

or neglects to keep his minutes, repertory and index in proper order and in a good state of preservation,—or passes any instrument to which an interdicted person is a party without the assistance of the curator or counsel of such interdicted party when the interdiction has been duly notified,—shall for each such offence incur a penalty not less than eight dollars nor more than twenty dollars, over and above all damages which may be recovered by any party interested, and if the case requires it, may be suspended for a period not exceeding three months ;

2. And any Notary who (except when authorized by law or under the order of a Judge or some other competent authority) allows any minute to go out of his possession, or neglects to sign any minute or complete the same, shall thereby incur a penalty of not less than twenty dollars nor more than one hundred dollars, or may be suspended for any space not less than three months nor more than a year, according to circumstances, and may even be removed from office in case of forgery, fraud or corruption,—over and above his liability for all damages, (if any,) incurred by the parties. 13. 14 V. c. 39, s. 8.

Penalty on Notary allowing minutes to go out of his possession, &c.

14. The suspension or removal from office of any Notary, consequent upon the opinion pronounced by any Board of Notaries, shall in all cases be adjudged by the Superior Court in the district, on petition to that effect, and at the instance either of the parties interested or of the *Syndic* of the Board acting *ex officio*, and the said *Syndic* shall transmit to the court, with the said petition, all the proceedings at the *enquête* taken before the Board of Notaries with relation to the suspension or removal from office of such Notary. 10 11 V. c. 21, s. 22.

Suspension, &c., to be adjudged by the Superior Court.

FUNDS OF BOARDS.

15. Each Board of Notaries may establish a common fund, which shall not exceed the expenses established and approved of as necessary at any general meeting, and apportioned among the several Notaries of the district ; and in order to assist in forming the said fund and to meet the expenses of each Board, there shall be paid in each year by each practising Notary, to the Treasurer of the Board for his district within one month after the appointment of the said Treasurer, a fixed contribution of two dollars, for the recovery of which, in default of payment, the *Syndic* may bring an action before any court having jurisdiction to that amount.

Fixed annual contribution to be paid into the funds of each Board.

2. Any Notary, who refuses or neglects to pay his contribution, shall be liable to be censured, reprimanded, or called to order, or to be suspended from the exercise of his functions, until he has discharged the said debt, the whole according to circumstances and after the notices prescribed and given by the Board, and if the Board thinks proper to suspend any Notary for contravening the

Notary refusing to pay may be suspended.

the provisions of this section, such Board shall add to its number any other Notaries within its jurisdiction as prescribed by the *sixth subsection of the ninth section of this Act* ;

Additional contributions.

3. The fixed contribution shall not prevent any Board of Notaries from submitting to the vote of the general and annual meeting of the Notaries an additional contribution to meet the expected or unforeseen expenses during the year, which contribution shall be paid by each Notary, in the same manner and under the same penalties as the fixed contribution ;

Statement of expenditure, &c.

4. A statement of the receipts and expenditure of each Board of notaries shall be submitted in each year to the Board by the treasurer thereof. 13, 14 V. c. 39, s. 6.

#### ADMISSION TO STUDY OR PRACTICE.

Qualifications necessary for admission to study.

16. No person shall be admitted as a student with any Notary, unless he has previously passed a public examination before one of the Boards of Notaries as to his qualifications and abilities, and has made proof of having pursued for five years a regular course of study in some one or more of the seminaries or colleges named in the *nineteenth section of this Act*, or has otherwise received a classical education, and has proved the same by a certificate thereof, which shall be annexed to his articles, or by his examination before the said Board :

Copy of articles to be filed with Secretary.

2. A copy of such articles and of every assignment thereof, shall be filed in the office of the Secretary of such Board within thirty days from the date thereof, on pain of nullity. 10, 11 V. c. 21, s. 17.

Regular classical education defined.

17. The regular classical education mentioned in the next preceding section of this Act, shall comprise the same branches as are taught during five years in the seminaries or colleges mentioned in the *nineteenth section of this Act*. 13, 14 V. c. 39, s. 14.

When candidate may present themselves for examination.

18. Any candidate may present himself for examination and admission to the notarial profession, at the regular and ordinary meeting of the Board of Notaries held within the shortest period from the expiration of his articles of clerkship, whether such meeting takes place before or after the expiration of the said articles of clerkship :

2. But no candidate shall, (if the Board of Notaries agree thereto,) be excluded from permission to present himself for examination in order to admission to the notarial profession, at any extraordinary or special meeting of the Board, which in the opinion of the said Board will be the nearest in date to the expiration of the articles of clerkship, whether the said extraordinary or special meeting takes place previous to or after such expiration. 19, 20 V. c. 56, s. 1.

19. No person shall be admitted as a Notary in Lower Canada, unless he proves, before one of the Boards of Notaries, that he has *bonâ fide*, served a regular clerkship (under articles in writing, deposited among the minutes of some practising Notary,) during five consecutive years, with a Notary duly appointed, and practising as such in Lower Canada,—or during four consecutive years, if such person proves that he has gone through a regular course of studies, including *Belles Lettres*, rhetoric and philosophy, (comprising logic, ethics, or mathematics and physics,) in one or more of the seminaries or colleges of Quebec, Montreal, St. Hyacinth, Nicolet, or Ste. Anne de la Pocatière, or in any other college legally established in Lower Canada or elsewhere, in which the said courses of study are taught,—and produces a certificate to that effect from the principal of such seminary or college ;—nor unless such person shall produce proof of his good conduct during his clerkship, and of his qualifications, of all which the Board shall give him a certificate, which shall not be granted until after such person has undergone a public examination as to his knowledge of the law and of notarial practice, to which examination he shall be bound to submit, and shall draw up upon the spot any clause, instrument or contract which may be required of him :

Qualifications necessary for admission to practise as a Notary.

2. And in order to such examination the applicant shall give notice to the Secretary of the Board at least one month previously, to the end that such Secretary may advertise in both languages during three weeks, by notice posted up in the office of the Board of Notaries before which the candidate is to undergo his examination, the day and hour when the examination will take place, so that any person may then and there state any reasons he may have to urge against the admission of such applicant ; and on giving the said notice to the Secretary, the applicant shall pay into the hands of that officer such sum, as will be requisite to defray the cost of publishing such advertisement ;

Notice to be given by candidate.

3. The Board of Notaries may summon before it, by an order under the hand and seal of the president, and countersigned by the Secretary, any person whom the applicant, or those opposing his admission, wish to call in support of their allegations concerning the life, morals and qualifications of the applicant, and for this purpose the president may administer all necessary oaths ;

Witnesses may be summoned.

4. If the applicant has complied with all the requirements of the law and is found by the Board of Notaries to be duly qualified, he shall be entitled to obtain a certificate in the form of schedule A, which he shall cause to be registered in the office of the registrar of this Province ; 10, 11 V. c. 21, s. 14, and 16 V. c. 215, s. 7.

Certificate of qualification.

Definition of word, "consecutive" as used in this section.

5. The word "consecutive," as applied to the clerkship required by this section, means that there shall not have been an interruption of more than three months in the service of the candidate, and an interruption of not more than three months in the service of any candidate for admission to the notarial profession, shall not prevent his examination or constitute in any manner an objection to his being admitted, let the interruption have occurred at what time it may. 16 V. c. 3, ss. 1, 2.

Provision relative to students who have completed a regular course of legal studies.

20. Any law student who, having conformed to the other provisions of the law regulating the admission to the study of the notarial profession, has before or simultaneously with his period of service under a practising notary, pursued a complete and regular course of legal studies in any school or faculty of law, legally established, in any college or university in Lower Canada, in conformity with the statutes of such college or university, shall only be bound to serve three years of clerkship, and shall be admitted to the notarial profession after he has submitted to an examination before the Board of Notaries for the district in which he has studied, and upon production of a certificate from the rector, principal, superior, or other chief officer of such college or university, setting forth that such student has really and *bonâ fide* pursued the complete and regular course of study required by this Act, and has succeeded in passing the examinations required by the statutes of such college or university: 22 V. c. 8, s. 1.

To whom this section applies.

2. And this section shall apply to law students for the notarial profession, who were regularly indentured under articles before the 30th day of June, 1858. *ibid*, s. 2.

In case a quorum of Board of Examiners cannot be obtained.

21. Any person who has *bonâ fide* served under articles of clerkship duly executed, with any Notary practising as such in Lower Canada, and who, previous to the execution thereof, has complied with all other conditions and formalities prescribed by law in order to admission to the study of the notarial profession, but has not undergone the examination required by law *before admission as a student*, in consequence of the want of a quorum of Members of the Board for the district in which he resides, but who has, after the execution of the said articles, at the first meeting of the said Board at which such a quorum for examination was present, passed the necessary examination, may be admitted to the practice of the notarial profession at the expiration of four or five years, as the case may be, according to the term of study fixed by his articles of clerkship, to be computed from the date of the execution of the said articles and not from the date of admission to the study of the profession by the Notarial Board: 18 V. c. 111, s. 1.

Repeal of special Acts not to invalidate rights accrued under them.

2. And the repeal by schedule A of any Act respecting admission to the notarial profession, shall not deprive any person of any right to be admitted accrued to him under such Act.

**22.** After his appointment, the person who has obtained a certificate of admission as a Notary, shall be sworn before one of the Judges of the Superior Court, to the faithful performance of the functions of his office ; and he shall not be so sworn, except on his producing the certificate of his admission ; and he shall cause the whole to be registered in the Board of Notaries from which he received his certificate, together with his signature, which he shall not alter thereafter, unless he be thereunto authorized by the Superior Court in his District with the consent of the Board of Notaries :

Person admitted as a Notary to be sworn.

**2.** If any person is admitted as a Notary, and practises as such without having complied with the requirements of this section, he shall for such offence incur a penalty of not less than twenty dollars, nor more than one hundred dollars. 10, 11 V. c. 21, s. 15, and 13, 14 V. c. 39, s. 13.

Penalty on failing to comply with this Act.

**23.** Every person obtaining a certificate of admission as a Notary, shall also, before acting as such, cause to be enregistered with the Board of Notaries, for the District in which he is to practise, a declaration of the place therein at which he intends to establish his office (*étude*), under a penalty of fifty dollars. 10, 11 V. c. 21, s. 16.

Declaration of domicile.

**24.** Every Notary who removes from one District to reside in another shall, within one month thereafter, cause to be enregistered in the manner aforesaid, with the Board of Notaries for his District, a declaration of his new place of residence, under a penalty of one hundred dollars. 10, 11 V. c. 21, s. 19.

In case of removal to another district.

**25.** Any Notary, who changes his residence for the purpose of residing within the jurisdiction of another Board of Notaries, shall, under a penalty of fifty dollars, within one month after he first establishes his office within the jurisdiction of such other Board, cause the certificate of his admission as a Notary, with that of his oath of office and the registration of the same, to be enregistered with the Board of Notaries, for the District in which he establishes his new domicile. 10, 11 V. c. 21, s. 23.

Notary to cause his certificate to be again enregistered.

EXECUTION OF INSTRUMENTS BY NOTARIES.

**26.** Every Notary in Lower Canada shall continue to number consecutively all deeds, contracts or instruments executed before him, and remaining of record in his office (*étude*), and shall note the number of each and every such deed, contract or instrument, in the margin of his repertory, opposite to the entry of such deed, contract or instrument, as well as in every copy thereof :

Notaries to number their deeds.

**2.** All discharges, ratifications and other accessory instruments, executed and entered at the end of the principal Deed,

How accessory instruments

shall be dealt with.

as being relative thereto and forming part thereof, shall be entered in the repertory according to their dates, with the other minutes, merely referring to the number of the principal Deed, after the entry of such accessory instrument;—and every Notary shall keep, in addition to the repertory required by law, an index to all minutes of his Deeds, both principal and accessory, under a penalty not exceeding twenty dollars. 13, 14 V. c. 39, s. 7.

Notifications, protests, &c., to be *prima facie* evidence of their contents.

**27.** All notifications, protests and services thereof, made by any Notary at the request of a party who has not accompanied such Notary nor signed the Deed, shall be authentic and be evidence in themselves of their contents until called into question or disavowed by the person in whose name such notification, protests and services have been made or any other to whom it appertains; and Notaries shall continue, in the same manner as Advocates and Attorneys, to sign in the name of petitioning parties, and without any other special power, memorials or petitions required for the calling together of meetings of relatives and friends, (*assemblées de parents*) in cases of tutelage, curatorship, (*tutelle, curatelle*), sales of real property of minors and interdicted persons, divisions or licitations (*partages ou licitations*) and other like matters concerning family affairs and successions. 13, 14 V. c. 39, s. 11.

Notaries may deliver certified extracts from their minutes.

**28.** Notaries may, when thereunto required, deliver extracts<sup>s</sup> duly certified by them from their minutes, and the Prothonotaries<sup>s</sup> of the Superior Court, may deliver extracts from the minutes<sup>s</sup> lawfully in their custody and possession, and such extracts shall be authentic and shall be evidence of their contents until inscribed *en faux*; but the said extracts shall contain the date and nature of the Deed, the christian and surnames, additions and place of residence of the parties, the place where the deed was passed, and the name of the Notary who received the same, and shall contain at full length the clauses or parts of clauses required by the person demanding such extracts for the purpose of ascertaining and preserving his rights, and lastly the day on which such extract is delivered, mention whereof shall be made on the minute. 13, 14 V. c. 39, s. 10, and 20 V. c. 44, s. 142.

#### DEPOSITING AND SAFE KEEPING OF NOTARIAL ACTS.

Minutes, &c., transmitted under 20 V. c. 44, s. 140, to remain Records of Prothonotary's office.

**29.** The Notarial Minutes, Repertories and Indexes and other Notarial Documents and paper transmitted to the Prothonotary of the Superior Court under the one hundred and fortieth section of the Act 20 Vict. c. 44, shall remain as part of the records of the office of such Prothonotary. 20 V. c. 44, s. 140—see 18 V. c. 165, s. 2.

Minutes of Notaries dying,

**30.** The minutes, repertory and index of any Notary practicing in any District in Lower Canada who dies or becomes incapable

incapable of acting as such, or refuses to practise and to deliver copies of his notarial deeds, or who has been interdicted or removed from office, or has left his domicile in Lower Canada, or who wishes to withdraw from practice, shall be deposited by him, or by the party in whose custody he deposited them, or by his heirs or legal representatives, in the office of the Prothonotary of the Superior Court for the District in which such Notary resided. 20 V. c. 44, s. 141,—see 18 V. c. 165, s. 2.

&c., to be transmitted to the Prothonotary of the district.

**31.** On the refusal or neglect of any such Notary, or of the party in whose custody such Notarial documents, are to deposit the same, the said Prothonotary may sue for the recovery and possession of the said Minutes and repertories by an action of revendication before any Judge of the Superior Court in the said District, either in Term or in Vacation :

In case of refusal, Prothonotary may sue for possession thereof.

2. Any Notary desirous of withdrawing from practice, may deposit his minutes and repertory in the office of the Prothonotary of the Superior Court in the District wherein such Notary resides ;

Notary withdrawing from practice.

3. The heirs or legal representatives of any Notary deceased, interdicted or absent from Lower Canada, who neglect to comply with the foregoing requirements, shall incur a penalty of forty dollars for each month, during which such neglect continues reckoning from the day on which they have been called upon to make such deposit; without prejudice to the right of any party to recover damages for any injury by him sustained by reason of such neglect ;

Penalties on heirs, &c., not complying with this section.

4. Whenever any Notary, interdicted or absent, is again admitted to practise, he shall be entitled again to obtain possession of his minutes and papers, as shall also any Notary who has voluntarily ceased to practice, and has deposited his minutes and repertory as aforesaid, and afterwards wishes again to commence practising ;

In case Notary returns to practice.

5. But any Notary, who has been absent from Lower Canada for ten years, without having, during that time, resided at least two years therein, shall not again practise on his return, until he has passed an examination as to his moral character and ability, to the satisfaction of the Board of Notaries for the District in which he intends to reside ;

Re-examination in certain cases.

6. In all cases where, by this Act or by the Law of Lower Canada, the minutes, repertory and index of the Acts and instruments passed by any Notary are required to be deposited as aforesaid, it shall be the duty of the Prothonotary of the Superior Court, with whom the same ought to be deposited, to prosecute the deposit thereof ;

Duty of Prothonotary.

7. The widow of a deceased Notary during her lifetime, or the legal representatives of such deceased Notary during the

Right of deceased Notary's widow.

ten years next after the decease of such Notary, if his widow dies before the expiration of the said ten years, or the representatives and assigns of any absent Notary, or the Notary who cannot practise or who has refused to practise and to deliver copies of his Acts or who has been interdicted, removed or dismissed, shall every six months receive from the Prothonotary of the Superior Court in the District in which such deposit has been made, one half of the fees and emoluments received by the Prothonotary for searching and delivering copies of any deed deposited in his custody ;

Copies signed by Prothonotary to be authentic.

8. All copies of minutes so deposited, certified as such and signed by the Prothonotary having the custody thereof, shall be deemed authentic and shall be received in evidence in the same manner as copies signed by the Notary who passed the minutes. 13, 14 V. c. 39, s. 9,--20 V. c. 44, s. 142,--see 18 V. c. 165, s. 3.

#### MISCELLANEOUS PROVISIONS.

Secretary of Board entitled to certain fees.

**32.** The Secretary of each Board of Notaries or his deputy shall be intitled to receive and demand the following fees, viz :

1. For the certificate of capacity and qualification which he delivers to any Candidate, two dollars, besides the expenses of advertising ;

2. For the entry of every declaration in the cases provided for by this Act, fifty cents ;

3. For every summons, twenty-five cents ;

Fees to which the Prothonotary is entitled.

4. The Prothonotary of the Superior Court for any district shall be entitled to receive for each copy thereof, at the rate of ten cents per hundred words, and fifty cents for the certificate of any copy delivered by him of any deed in his custody ;

5. And twenty cents for searching for any deed or other document, provided the year in which the same was executed is furnished, and if the year be not given, twenty cents for every year over which the search extends. 13, 14 V. c. 39, s. 5.

Notary not be Prothonotary.

**33.** No practising Notary shall hold the office of Prothonotary of the Superior Court. 25 G. 3, c. 4--10, 11 V. c. 21, s. 27,--See 12 V. c. 46, s. 39.

Assaulting or obstructing Notaries.

**34.** Any person assaulting or otherwise obstructing a Notary in the due execution of his duty as such shall be guilty of a misdemeanor, and may on conviction thereof be sentenced to the same punishment as if he or they had been convicted of an assault upon a Peace Officer or a Revenue Officer in the execution of his duty. 10, 11 V. c. 21, s. 29.

**35.** All penalties imposed by this Act may be sued for and recovered by the *Syndic* of the Board of Notaries within the jurisdiction whereof the offence was committed; and being recovered shall be paid by the *Syndic* into the hands of the Treasurer of the said Board, and shall make part of the common fund thereof. *ibid*, s. 31.

Recovery of penalties.

#### ALTERATION OF DISTRICTS, AND CONSTITUTION OF NEW BOARDS.

**36.** Notwithstanding any alteration for judicial purposes in the limits of any district, the several Boards of Notaries in Lower Canada shall not be affected by such alteration, but shall continue with the local limits and jurisdiction they had on the tenth day of June, one thousand eight hundred and fifty-seven, until altered by Proclamation :

Present Boards may be altered by Proclamation.

2. But the Governor may, by Proclamation, whenever circumstances in his opinion render it expedient, constitute a Board or Boards of Notaries, in and for any district or districts which he thinks proper to assign as the local limits of any such Board, and the local limits of any previously existing Boards may be reduced accordingly by such Proclamation, but its organization and powers shall not be affected except so far as they depend on such local limits ;

New Boards may be constituted by Proclamation.

3. Any such Proclamation shall take effect, as regards each Board, from the day to be appointed therein for that purpose ; and each Board of Notaries, so constituted by Proclamation, shall have all the powers, rights and privileges vested in or belonging by law to any previously existing Board of Notaries. 20 V. c. 44, s. 148, and 22 V. (1859,) c. 5, s. 5.

Day from which Proclamation shall take effect.

**37.** Every such Board shall be composed of nine members, and the quorum for the despatch of business shall be six. 22 (1859) V. c. 5, s. 6.

**38.** The first election of members of any such Board shall take place within three months after the date of such proclamation, at a meeting to be held at the Court House of the district for which such Board is to be established, which meeting shall be called by the Prothonotary of the district, by public notice to be inserted in the *Canada Gazette* at least fifteen days before such meeting, and by a public notice posted up at the Court House of the district where such meeting is to take place, at least eight days before such meeting :

First election of members of Board.

2. If such Board be for more than one district, the place at which the election shall be held, shall be named in such proclamation, and the notice of such meeting shall be given by the Prothonotaries jointly, and shall be posted up at the Court House of each district for which such Board is to be established. 22 (1859) V. c. 5, s. 7.

In case the Board is for more than one district.

This Act to apply to the new Boards.

**39.** All subsequent elections shall be held at the times and in the manner prescribed by the Acts regulating the previously existing Boards of Notaries; and meetings of any Board of notaries established by proclamation shall be held at the place where the first election has taken place, and shall be called in the manner prescribed by this Act, but by insertion of a notice thereof in the French and English languages in the *Canada Gazette*; and the provisions of this or of any other Act affecting notarial students, shall in all respects apply to the Boards to be so established, except as herein specially provided. 22 (1859) V. c. 5, s. 8.

In certain cases Boards may be dissolved.

**40.** Whenever it is made known to the satisfaction of the Governor that within the limits of the jurisdiction of any Board of Notaries, established under the authority of a proclamation, that the number of Notaries, practising therein, has been so reduced as to be insufficient for the working of any such Board of Notaries, he may by proclamation dissolve such Board, and unite from and after a day to be mentioned in such proclamation, the limits under the jurisdiction of such Board, or any district embraced therein, to the limits of some other Board or Boards; and any Board so dissolved shall be subject to the laws and regulations governing the Board to which it is united and of which it shall become part. 22 (1859) V. c. 5, s. 9.

## SCHEDULE A.

### FORM OF A CERTIFICATE OF ADMISSION AS A NOTARY.

This is to certify to all whom it may concern, that A. B. of \_\_\_\_\_ in the district of \_\_\_\_\_, Esquire, hath duly passed his examination before "The Board of Notaries," and hath been found qualified to fill the office and perform the duties of a Notary Public in and for Lower Canada, he having complied with all the requirements of the law in that behalf. Wherefore the said A. B. is admitted to the said office, and is by law authorized to practise as a Notary Public in Lower Canada.

In witness whereof, we have signed this certificate, at \_\_\_\_\_, in the district of \_\_\_\_\_, in the Province of Canada, the \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_.

C. D.

(Signature of the President of the Board of Notaries.)

E. F.

(Signature of the Secretary of the same.)

10, 11 V. c. 21, Schedule.

C A P . L X X I V .

An Act declaring valid certain *Actes* passed before Notaries.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Whereas divers Notarial *Actes* and other Instruments have been executed in Lower Canada since the establishment of the Notarial Profession therein, in which the Notaries, before whom they were passed, have styled themselves Notaries for the Province of Quebec, Notaries for the Town and district of Montreal, or Public Notaries residing in such a parish or the undersigned Public Notaries, or have committed other errors of style of the same nature in the introduction, title or *intitulé* of their Notarial Acts ; and whereas since the re-union of the late Provinces of Upper and Lower Canada, Notarial *Actes* and other Instruments have been executed in Lower Canada, in which the Notaries before whom the same were executed have styled themselves Notaries of and for the Province of Canada, or have committed other errors of style of a like nature ; And whereas doubts have existed as to the validity and legal sufficiency of such Notarial Deeds and other Instruments and Documents ; for the removal of such doubts and to secure the rights, titles and interest of all persons concerned therein : Therefore

Preamble.

1. All *Actes*, Instruments and Documents whatsoever, which, since the establishment of the Notarial Profession in Lower Canada, have been there executed before two Notaries, or before one Notary and two witnesses, and wherein the Notaries before whom they were respectively executed, being Notaries for Lower Canada, have styled themselves Notaries for the Province of Quebec, Notaries for the Town and District of Montreal, or Notaries Public residing in such a parish, or the undersigned Public Notaries, or taken any other title or description generally whatsoever in the introduction, title or *intitulé* of their Notarial *Actes* ; And all Deeds, Instruments and Documents whatsoever, which, since the re-union of the said late Provinces, have been executed before two Notaries, or before one Notary and Witnesses, in Lower Canada, and in which the Notaries, before whom the same were respectively executed, being Notaries Public for that part of this Province last aforesaid, have styled themselves Notaries Public of and for the Province of Canada, or have omitted to state, or have incorrectly stated for what part of this Province they were respectively authorized to act as Public Notaries, shall nevertheless be as valid and binding in law to all intents and purposes, as if the said Notaries had styled themselves "Notaries Public for the Province of Lower Canada," or "Notaries Public for that part

Notarial *Actes*, declared valid although the Notaries may have wrongly stated their quality in the introductory part.

part

part of this Province which formerly constituted the Province of Lower Canada," and notwithstanding that any such *Actes*, Instruments and Documents have already been declared to be unauthentic, invalid and of none effect by reason of the aforesaid informalities, by any Judgment rendered or pronounced before the passing of the Act, 10, 11 V. c. 22, (28th July, 1847,) in any of Her Majesty's Courts in Lower Canada, in any action or suit brought with regard to such *Actes*, Instruments and Documents, or on any opposition, intervention, exception or other proceeding founded on any such *Actes*, Instruments and Documents :

No exception of *chose jugée* may be pleaded.

2. And no exception of *chose jugée* (*res judicata*) with respect to any such *Acte*, Instrument or Document, shall in any case be pleaded against any party bringing any such action after the day last above mentioned, on any such *Acte*, Instrument and Document, so declared unauthentic or invalid by any judgment previously rendered in any of the said Courts. 10, 11 V. c. 22, s. 1, *part*.

Parties may petition the Court and obtain a reversal of judgment.

2. The parties against whom any such judgment was rendered, before the day last above mentioned, and their heirs or legal representatives, may present a petition to the Court by which the same was so rendered, pleading this Act, and praying that the benefit thereof be allowed to such parties; whereupon, after due notice given to all parties interested in the presenting of such petition, the said judgment shall be null and void and set aside and vacated, and the said parties shall be re-instated in all their rights, actions and legal remedies, as if such judgment had never been rendered :

Saving the rights of third parties.

2. But nothing in this Act shall, in any wise, affect the rights of any party other than the parties to such Deeds, Instruments or Documents, or their heirs or legal representatives, in any case in which such rights may have become vested in any such third party, by reason of any judgment so rendered before the said day, and not otherwise; nor shall any thing in this Act affect any condemnation to pay costs under any judgment rendered by reason of such informalities in any of the cases in this Act mentioned. 9 V. c. 26, s. 2, and 10, 11 V. c. 22, s. 2.

Style to be hereafter adopted by Notaries.

3. And in order to avoid all difficulties as to the title, style and addition of Notaries for Lower Canada, Notaries for that part of the Province of Canada, who in their Notarial *Actes* have stated or state their quality of Notaries and the place in which their *Actes* have been executed, (such place being within the limits for which they were or are authorized to act as Notaries,) shall for all legal purposes be held to have sufficiently set forth their official capacity and to have complied with all the requirements of law with regard to the statement of their quality as Notaries, in *Actes* passed by or before them. 10, 11 V. c. 22, s. 3.

C A P . L X X V .

An Act respecting the Division of Lower Canada into Counties.

NOTE.—This Chapter is in the hands of the Deputy Surveyor General for revision and correction.

T I T L E . I I .

ADMINISTRATION OF JUSTICE.

C A P . L X X V I .

An Act respecting the division of Lower Canada into Districts for the Administration of Justice.

THE OLD DISTRICTS.

1. Up to the time of the passing of the Lower Canada Judicature Act of 1857, Lower Canada was divided for *all* purposes relative to the Administration of Justice, into the following Districts, viz :

The districts prior to 20 V. c. 44.

- |                                                                                                                                  |  |                                                                                                                                                                        |
|----------------------------------------------------------------------------------------------------------------------------------|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>1. Ottawa,</li> <li>2. Montreal,</li> <li>3. Three Rivers,</li> <li>4. Quebec,</li> </ul> |  | <ul style="list-style-type: none"> <li>5. Gaspé,</li> <li>6. Kamouraska, and</li> <li>7. St. Francis.</li> </ul> <p style="text-align: right;">12 V. c. 38, s. 10.</p> |
|----------------------------------------------------------------------------------------------------------------------------------|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

2. The said Districts are those into which Lower Canada is divided for *all* purposes relative to the Administration of Justice in Criminal matters, and shall remain so respectively, until it is otherwise ordered by any Proclamation issued under section *eight* or section *nine* of this Act.

To be those for criminal purposes, until otherwise ordered by Proclamation.

3. The said Districts are now, for *all* purposes relative to the Administration of Justice in Criminal matters, bounded and constituted as follows :

Boundaries of the said districts.

1. The District of Ottawa is bounded on the east by the eastern limits of the seigniory of Petite Nation, in the county of Ottawa, and the prolongation of the said limits to the county of Montcalm, and thence by the south-west line of the County of Montcalm, to the northern limits of the province, and on the south-east, south, west and north by the Grand or Ottawa River to the head of Lake Temiscaming, and a line thence drawn

Ottawa.

drawn due north to the limits of the province, *and on the north* by the said limits of the province and by the said county of Montcalm, comprising the Grand Calumet, and little Allumettes Islands, and all other islands in the said river opposite to the district and belonging to Lower Canada; This district is composed of the counties of Ottawa and Pontiac; 12 V. c. 38, s. 10.

Montreal,—  
boundaries.

2. The District of Montreal is bounded on the west, south-west and south by the District of Ottawa, the river Ottawa and the western limits of Lower Canada, on the north side of the River St. Lawrence, on the north by the northern limits of the province, to the north-east by the south-western line of the seigniory of Maskinongé, in the county of Maskinongé, as far as it extends, and thence by a due north-west line to the northern boundary of the province, on the north side of the River St. Lawrence, by the south-west line of the seigniory of Yamaska, and the south-western limits of the county of Yamaska, by the line separating the seventh from the eighth range of the township of Upton, and which, at that place forms the dividing line between the counties of Bagot and Drummond, by the western and southern lines of the township of Acton, in the county of Bagot, by the south-western limits of the remainder of the county of Drummond, and by the south-western line of the part of the township of Melbourne, in the county of Richmond, adjoining the said county of Drummond, on the south side of the River St. Lawrence; and on the east, south-east and south by the western and north-western limits of the said county of Richmond, by the north-western limits of the part of the county of Stanstead, situated between the said county of Richmond and the south-eastern extremity of the north-eastern line of the township of Bolton, in the county of Brome, by the seventeenth range of the said township of Bolton, and the southern limits of Lower Canada, in that extent; 34 G. 3, c. 6, s. 18,—3 G. 4, c. 17, s. 1,—*and* 12 V. c. 38, s. 10.

Montreal,—  
places included.

This District is composed of the counties of Berthier, Joliette, Montcalm, L'Assomption, Terrebonne, Two Mountains, Argenteuil, Shefford, Brome, (less the seventeenth, eighteenth, nineteenth, twentieth, twenty-first and twenty-second ranges of the township of Bolton,) Missisquoi, Richelieu, St. Hyacinthe, Rouville, Bagot, (less the township of Aston, which forms part of the district of Three Rivers, but which together with the eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth and twenty-first ranges of the township of Upton, have been detached from the district of Three Rivers, and annexed to the district of Montreal,) Iberville, Verchères, Chambly, Laprairie, St. Johns, Napierville, Chateaugai, Beauharnois, Huntingdon, Soulanges, Vaudreuil, Laval, Hochelaga, Jacques Cartier, and the city of Montreal; 9 G. 4, c. 73, No. 13,—10, 11 G. 4, c. 17, s. 2,—12 V. c. 132, s. 1.

3. The District of Three-Rivers is bounded on the south-west by the district of Montréal, on the north and south sides of the river St. Lawrence; on the north, by the northern boundary of the province; on the north-east by the north-eastern line of the seigniory of Dorvilliers, in the county of Champlain, as far as it extends, and thence, by a due north-west line, to the northern boundary of the province, on the north side of the river St. Lawrence, by the north-eastern line of the seigniory of St. Pierre les Becquets, in the county of Nicolet, as far as it extends, by the north-east line of the township of Blandford, until it reaches the county of Mégantic, and by the western and south-western limits of the said county of Mégantic, as defined by the Act 16 V. c. 152, No. 12; on the south side of the river St. Lawrence, and on the south-east, by the north-western limits of the county of Wolfe and the north-western lines of the townships of Kingsey and Durham, in the county of Drummond; 34 G. 3, c. 6, s. 1,—10, 11 G. 4, c. 17, s. 2,—3 G. 4, c. 17, s. 1.

Three-Rivers,  
—boundaries.

This District is composed of the counties of Champlain, St. Maurice, Maskinongé, Yamaska, Nicolet, Arthabaska (including the township of Chester) and Drummond (not including the townships of Kingsey and Durham), and the city and *banlieue* of Three-Rivers; 18 V. c. 168, s. 1,—3 G. 4, c. 17, s. 1.

Three-Rivers,  
—places included.

4. The District of Quebec is bounded on the south-west by the District of Three-Rivers, by the north-eastern limits of the county of Wolfe, by the north-eastern and eastern limits of the county of Compton, from the said county of Wolfe to the township of Clinton, one part of which is in the said county of Compton and the other part in the county of Beauce, following the northern, eastern and southern lines of the said township so as to exclude it from the said district of Quebec, until the south line rejoins the county of Compton, and by the remainder of the eastern limits of the said last county, to the boundary of the province, on the north and south sides of the river St. Lawrence; to the north, by the northern boundary of the province; to the north-east, by the eastern boundary of the province, on the north side of the river St. Lawrence, and by the south-western limits of the county of Kamouraska, on the south side of the river St. Lawrence; and to the south, by the southern boundary of the province; 34 G. 3, c. 6, s. 1,—3 G. 4, c. 17, s. 1.

Quebec boundaries.

This District is composed of the counties of Portneuf, Quebec, Montmorency, Charlevoix, Saguenay, Chicoutimi, L'Islet, Montmagny, Bellechasse, Lévis, Dorchester, Beauce (not including that part of the township of Clinton contained in the said county), Mégantic and Lotbinière, and the city of Quebec, including the parishes of Notre-Dame de Québec and St. Roch de Québec;

Quebec,—  
places included.

Gaspé,—boundaries.

5. The District of Gaspé is bounded on the south-west by the county of Rimouski, on the west, north-west and north by the said county of Rimouski and the river St. Lawrence, on the east by the said river and the gulf of St. Lawrence, and on the south by the Baie des Chaleurs and the southern boundary of the province; 34 G. 3, c. 6, s. 14,—7 V. c. 17, s. 2.

Gaspé,—places included, &c.

This District is composed of the counties of Gaspé and Bonaventure;

The settlements of St. Anne des Monts and Cap-Chat, in the county of Gaspé, are annexed to the District of Kamouraska for judicial purposes only, and are placed within the jurisdiction of the courts having cognizance of criminal matters in the said district of Kamouraska; 16 V. cc. 30 and 93.

Kamouraska,—boundaries.

6. The District of Kamouraska is bounded on the north-east by the District of Gaspé, on the north-west by the river St. Lawrence, on the south-west by the District of Quebec, and on the south and south-east by the southern and south-eastern boundaries of the province, and the western and north-western limits of the county of Bonaventure; 12 V. c. 38, s. 10.

Kamouraska,—places included, &c.

This District is composed of the counties of Kamouraska, Temiscouata and Rimouski;

The settlements of St. Anne des Monts and Cap-Chat, in the county and district of Gaspé, are annexed to the district of Kamouraska for judicial purposes only, and are subject to the jurisdiction of the courts having cognizance of criminal matters in the District of Kamouraska; 16 V. cc. 30 and 93.

St. Francis,—boundaries.

7. The District of St. Francis is bounded on the west and north-west by the districts of Montreal and Three-Rivers, on the north-east and east by the District of Quebec, and on the south by the southern boundary of Lower Canada; 3 G. 4, c. 17, s. 1,—3 W. c. 18, s. 2.

St. Francis,—places included.

This District is composed of the counties of Wolfe, Compton, Richmond and Stanstead, that part of the township of Clinton situate in the county of Beauce, the townships of Kingsey and Durham, in the county of Drummond, of the seventeenth, eighteenth, nineteenth, twentieth and twenty-first ranges of the township of Bolton, in the county of Brome, of the town of Sherbrooke, and of the townships of Orford and Ascot. 3 G. 4, c. 17, s. 1,—16 V. c. 152, Nos. 11, 36, 44.

The said districts so bounded to be known as the "Old Districts."

4. The said Districts so bounded as aforesaid are referred to in these Consolidated Statutes as the "Old Districts", the expression the "Old District of (*Montreal*," or as the case may be,) refers to such district with the boundaries above described, unless it is otherwise expressed.

RE-DIVISION OF LOWER CANADA INTO DISTRICTS.

5. Lower Canada is and shall be also divided into twenty Districts, in the manner set forth in the following Schedule, the first column whereof contains the name of each District;—the second column, the places which are comprised within the District;—and the third column, the name of the place at or near which the sittings of the Superior Court shall be held and at or near which the District court house and gaol shall be :

New division of L. C. for judicial purposes.

2. Provided that, if the name of the place which is the *chef-lieu* of any District be changed, such place shall nevertheless continue to be the *chef-lieu* under its new name. 20 V. c. 44, s. 1, amended by 22 V. c. 5, s. 74.

Proviso.

SCHEDULE.

NAMES OF DISTRICTS.	PLACES COMPRISED.	CHEFS-LIEUX.
Ottawa.....	Counties of Ottawa, and Pontiac.	Village of Aylmer.
Montreal.....	Counties of Hochelaga, Jacques Cartier, Laval, Vaudreuil, Soulanges, Laprairie, Chambly, and Verchères; and the City of Montreal.	City of Montreal.
Terrebonne.....	Counties of Argenteuil, Two Mountains, and Terrebonne.	Village of St. Scholastique.
Joliette .....	Counties of L'Assomption, Montcalm, and Joliette.	Village of Industrie.
Richelieu .....	Counties of Richelieu, Yamaska, and Berthier.	Borough of Sorel.

SCHEDULE.—

## SCHEDULE.—Continued.

NAMES OF DISTRICTS.	PLACES COMPRISED.	CHEFS-LIEUX.
Three Rivers....	Counties of Maskinongé, St. Maurice, (including the town of Three Rivers,) Champlain, and Nicolet.	City of Three Rivers.
Quebec.....	Counties of Pottneuf, Quebec, Montmorency, Levis, Lotbinière; and the City of Quebec.	City of Quebec.
Saguenay .....	Counties of Charlevoix, and Saguenay.	Parish of St. Etienne de la Malbaie or Murray Bay.
Chicoutimi.....	County of Chicoutimi.	Chicoutimi.
Gaspé.....	Counties of Gaspé, and Bonaventure.	New Carlisle, in the County of Bonaventure. Percé, in the County of Gaspé.
Rimouski.....	County of Rimouski.	Parish of St. Germain de Rimouski.
Kamouraska.....	Counties of Kamouraska, and Temiscouata.	Parish of St. Louis de Kamouraska.
Montmagny .....	Counties of L'Islet, Montmagny, and Bellechasse.	Village of Montmagny.
Beauce.....	Counties of Beauce, and Dorchester.	Parish of St. Joseph de la Beauce.
Arthabaska.....	Counties of Megantic, Arthabaska, and Drummond.	Parish of St. Christophe d'Arthabaska.

SHCEDULE.—Continued.

NAMES OF DISTRICTS.	PLACES COMPRISED.	CHEFS-LIEUX.
St. Francis.....	Counties of Richmond, (including the town of Sherbrooke,) Wolfe, Compton, and Stanstead.	Town of Sherbrooke.
Bedford.....	Counties of Shefford, Missisquoi, and Brome.	Nelsonville, in the township of Dunham.
St. Hyacinth....	Counties of St. Hyacinth, Bagot, and Rouville.	City of St. Hyacinth.
Iberville.....	Counties of St. John, Napierville, and Iberville.	Town of St. John.
Beauharnois.....	Counties of Huntingdon, Beauharnois, and Chateauguay.	Village of Beauharnois.

The Districts mentioned in the foregoing Schedule are those into which Lower Canada is now divided for *all* purposes relative to the Administration of Justice in Civil matters; and any or all of them may become a District or Districts for *all* purposes relative to the Administration of Justice in Criminal matters by virtue of a Proclamation or Proclamations to be issued under section *eight* or section *nine* of this Act.

The said districts to be for civil purposes only—until made districts for criminal purposes by Proclamation.

6. The Districts of Terrebonne, Joliette, Richelieu, Saguenay, Chicoutimi, Rimouski, Montmagny, Beauce, Arthabaska, Bedford, St. Hyacinthe, Iberville, and Beauharnois which were constituted by the Lower Canada Judicature Acts of 1857 and 1858, when referred to in these generally Consolidated Statutes, are called the New Districts.

The "New Districts."

7. There shall be the same officers connected with the administration of justice in each of the New Districts as in those subsisting immediately before the time when the said New Districts were constituted, and proper persons may in like

Officers of Justice in New Districts.

like manner be appointed to fill such offices; and all the provisions of law touching such offices respectively, as well with regard to the security to be given by the persons holding the same, or the appointment of deputies, as with regard to other matters, shall extend to the like officers in the New Districts, subject always to any provisions of this or any other Act: 20 V. c. 44, s. 94.

Proviso as to security.

2. Provided always, that the security to be given by any such officers as aforesaid, appointed in any of the New Districts, shall not be higher than that given by persons holding like offices in the districts of Kamouraska and Ottawa. 20 V. c. 44, s. 95.

When a Proclamation making all the new districts criminal districts may issue.

8. Whenever the Governor is satisfied that there is at the *chef-lieu* in every one of the said New Districts a proper court house and gaol for all purposes of the administration of justice, he may issue a Proclamation appointing the day on which sections of chapter of these Consolidated Statutes (sections 113 to 116 of 20 V. c. 44,) shall come into force in all the said New Districts in which they are not then in force, and appointing a day in which such New Districts shall be fully established for all purposes whatever, and appointing the times at which the terms of the Court of Queen's Bench are to be in such New Districts respectively, and declaring the said New Districts to be established for all purposes of the Administration of Justice in Criminal matters. 20 V. c. 44, s. 152.

Or making any one or more of them criminal districts.

9. Provided that if at any time before the issuing of such Proclamation as aforesaid, the Governor is satisfied that there is at the *chef-lieu* in any one or in any number of the said New Districts a proper court house and gaol for all the purposes of the administration of justice, he may issue a proclamation appointing a day on which said sections of chapter of these Consolidated Statutes not then in force in such New District or districts shall come into force therein, and naming the day on which such New District or districts shall be fully established for all purposes whatever, and appointing the times at which the terms of the Crown Side of the court of Queen's Bench are to be held in such New District or Districts respectively, and declaring the said New District or Districts to be established for all purposes of the administration of justice in criminal matters:

Effect of such Proclamation.

2. Any such proclamation shall have the same effect, as regards the District or Districts mentioned therein, as a proclamation to the like effect issued under the next preceding section of this Act with regard to all the new districts would have had with regard to them under the said section, although there may be still some new District or Districts in which the said sections of chapter or any other provisions of any other Act are not then in force;

3. And in case any proclamation or proclamations is or are issued under this section, the remaining New Districts not included in any such proclamation, shall continue, for all purposes of the administration of justice in criminal matters, to form part respectively of the Old Districts of which they now form part for such purposes, until they are themselves established for such purposes by proclamations issued under this section ;

As to remaining new districts in such case.

4. But nothing in this section shall make it necessary that any such proclamation should issue at any time with respect to any New District or Districts, if the Governor should deem it advisable to delay the issue thereof in any case, either to a later day, or until a Proclamation can issue under the next preceding section with respect to all the New Districts. 22 V. c. 5, s. 75.

Proviso.

10. The Districts of Quebec, Montreal, Three Rivers, St. Francis, Gaspé, Kamouraska and Ottawa, shall not be deemed new Districts, notwithstanding the changes in their limits by the establishment of the new Districts, either for civil or criminal purposes, nor shall such change affect the appointment of any judge, justice of the peace, or officer, or his powers or duties, except in so far as they may depend on the local limits of the District or may be affected by other provisions of this or any other Act: 20 V. c. 44, s. 5.

Certain districts not to be deemed new districts, &c.

2. The said Districts bounded for civil purposes are referred to in these Consolidated Statutes as the civil District of (Montreal, *as the case may be*) ;--and the expression "the Criminal District of (Montreal," or *as the case may be*), in the said Statutes means the District as then bounded for purposes relative to the Administration of Justice in Criminal matters, whether it be then co-extensive with the Old District of the same name, or has been reduced by the establishment of any of the New Districts for purposes relative to the Administration of Justice in Criminal matters.

How referred to for civil purposes.

11. The re-division of Lower Canada into Districts shall operate no change in the local jurisdiction of the Court of Queen's Bench in and for any of the Districts mentioned in the next preceding section in the exercise of its original criminal jurisdiction, or in the local jurisdiction of any Court of Quarter Sessions, or other court of criminal jurisdiction, or of any justice of the peace or other functionary or officer having any jurisdiction or duty in criminal matters, or the local jurisdiction or authority of any justice of the peace in civil matters or otherwise, until the boundaries of such District have been altered for purposes relative to the administration of justice in criminal matters, and then so far only as its boundaries are altered for such purposes. 20 V. c. 44, ss. 4, 152,—22 V. c. 5, s. 75.

Re-division into districts not to affect Court of Q. B., &c.

Provision as to Justices of the Peace, when the limits of a district are altered.

**12.** Every Justice of the Peace for any of the Old Districts, whether appointed as such before or after the passing of the Lower Canada Judicature Act of 1857, but before the day to be appointed in any Proclamation under the *eighth* section of this Act, as that on which all the New Districts shall be Districts for all purposes relative to the administration of justice in criminal matters, resident at that time so appointed in any of the New Districts, shall by virtue thereof and without any new Commission or oath of office, or other formality, be a Justice of the Peace for all purposes, civil or criminal, for the New District in which he is then resident, provided any part of such New District was at the time of his appointment included in the Old District for which he was appointed, and notwithstanding such New District contains some part of some other of the Old Districts, but he shall cease to be a Justice of the Peace for any part of such Old District which is not included in such New District. 22 V. c. 5, s. 69.

Further provision as to the same.

**13.** Until the day appointed by any proclamation under the *eighth* section of this Act as that on which all the New Districts shall become Districts for all purposes of the administration of justice in criminal matters, every Justice of the Peace appointed before the said day for any of the Old Districts, resident in any of the New Districts, may, in the exercise of his civil jurisdiction in such New District, or in any document, or in any act done or proceeding had by or before him of a civil nature, whether under the Elections Petitions Act of 1851, or any other law, designate himself or be designated as a Justice of the Peace for the New District in which he is resident, and over the whole of which his civil jurisdiction shall extend, (although it may include a portion of one or more of the Old Districts other than that for which he was appointed) or as a Justice of the Peace for the Old District for which he was appointed; But every Justice of the Peace appointed for any of the Old Districts shall, in the exercise of his criminal jurisdiction designate himself, and be, until the day first mentioned in this section, designated as a Justice of the Peace for such Old District, within the limits whereof only he shall act as a Justice of the Peace in Criminal matters: 22 V. c. 5, s. 70.

2. But nothing in this or the next preceding section shall affect the right of the Crown to cancel any Commission of the Peace or to issue any new commission for any place whatever.

Provision as to Coroners, &c.

**14.** Until all the New Districts become Districts for all purposes relative to the administration of justice in criminal matters, every Coroner in and for any one of the New Districts, may take inquisitions and make investigations appertaining to his office, within the District for which he is appointed, and may exercise all powers incident to such inquisition or investigation

investigation, and may commit any person who ought in the consequence thereof to be committed to gaol, to the common gaol for the Old District including the locality in which such inquisition or investigation is had ;—And such Coroner shall certify the inquisition and investigation and the evidence and recognizances and other matters thereunto appertaining to the proper officer of the Court in which the trial is to be, before or at the opening of the Court ; Provided that the Coroner in and for any one of the Old Districts, may also take such inquisitions and make such investigations in any place within such Old District, until the time first aforesaid. 22 V. (1858) c. 5, s. 71.

**15.** No alteration in the limits of any District, or in the local jurisdiction of any court, judge or justice of the peace, shall affect any suit or proceeding pending when such alteration takes place, but such suit or proceeding may be continued to judgment and proceedings after judgment may be had, in the court at the place at which such case commenced or to which it *was or ought to be* transmitted, or before the judge or justice before whom it commenced, in like manner as if no such alteration had taken place. 20 V. c. 44, s. 146.

Alterations in limits of district not to affect proceedings then pending.

**16.** The next preceding section shall apply to alterations made in the limits of any District, by the provisions of the Act 12 V. c. 38, for establishing the Districts of Ottawa and Kamouraska, and generally to all alterations of the limits of Districts or judicial divisions, whether before or after the passing of the said Act or of this Act. 12 V. c. 38, s. 11.

Same as to alterations made by former Acts.

## CAP. LXXVII.

## An Act respecting the Court of Queen's Bench.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

## CONSTITUTION OF THE COURT.

Court of Queen's Bench established.

**1.** There is and shall be established in and for Lower Canada a court of record to be called "The Court of Queen's (or King's) Bench," and to consist of five judges, that is to say, of a chief justice and four puisné judges, to be appointed from time to time by Her Majesty, Her Heirs and Successors, by letters patent under the great seal of this Province :

Qualification of the Judges.

**2.** No person shall be appointed to be chief justice or puisné judge, unless at the time of his appointment he has been a judge of the Superior Court of Lower Canada, or is an advocate of at least ten years' standing at the Bar of Lower Canada : The said Court shall be called "The Court of King's Bench," whenever the Sovereign then reigning is a King. 12 V. c. 37, s. 2,—20 V. c. 44, s. 6.

Their independence.

**2.** The independence of the judges of the said Court as regards the Crown is secured by chapter *eighty-one* ; and no such judge shall sit in the Executive or Legislative council, or in the Legislative Assembly, or hold any other place of profit under the Crown. 12 V. c. 37, s. 3.

Their residence.

**3.** The judges of the said court shall respectively reside at or near Quebec or Montreal, and at least two of them shall reside at each of the said places. 20 V. c. 44, s. 7.

Their jurisdiction in appeal.

## APPELLATE JURISDICTION OF THE COURT OF APPEAL SIDE.

**4.** The said court, and the judges thereof, shall have, hold and exercise an appellate civil jurisdiction and also the jurisdiction of a court of error, within and throughout Lower Canada, with full power and authority to take cognizance of, hear, try and determine in due course of law, all causes, matters and things appealed or removed by writ of appeal or of error, from all courts and jurisdictions wherefrom an appeal or writ of error by law lies or is allowed, unless such appeal or writ of error is expressly directed to be to some other Court. 12 V. c. 37, s. 5,—34 G. 3, c. 6, s. 23.

Their powers for its exercise.

**5.** The jurisdiction of the said court in appeal and error shall carry with it all powers necessary to the exercise of such jurisdiction, and it shall belong to the said court, to determine the question when security shall be requisite, and the sufficiency thereof, and the admission, dismissal or remission of appeals, and the supply to the defects of the record, and the effect of the appeal as a *supersedeas* of all or any proceedings in the lower courts, for the stay of execution on the judgment of

of the same, or any process of the nature of execution. 27 G. 3, c. 4, s. 6.

**6.** The chief justice of the said court shall preside therein, or if he be absent, then the puisné judge thereof entitled by his commission to precedence in the said court. 12 V. c. 37, s. 7. Chief justice to preside.

**7.** Four of the judges of the said court shall form a quorum thereof in appeal and error, and may hold the court and exercise all the powers and authority thereof; and any judgment or order in appeal or error concurred in by any three judges of the court at any sitting thereof, shall have the same force and effect as if concurred in by all the judges so present; and no judgment appealed from shall be reversed, altered or confirmed, unless by the concurrence of three judges of the said court, 20 V. c. 44, s. 8. Quorum to hold Court.

**8.** No judge of the Superior Court shall be disqualified from sitting in any case, by the mere fact of his having been a judge of the court whose judgment is in question, while such case was there pending, unless he sat in the case at the rendering of final judgment, or, if the appeal is brought before final judgment from some interlocutory judgment, then unless he sat in the case at the rendering of such interlocutory judgment. 12 V. c. 37, s. 11. In what cases only judges of the Superior Court are disqualified from sitting in Court of appeal.

**9.** Whenever, owing to the absence, or leave of absence, disqualification, or incompetency of any of the judges of the Court of Queen's Bench before whom any cause has been or shall be heard, or for any other reason, it becomes necessary to discharge the *délibéré* in such cause, such *délibéré* may be discharged by the remaining judges, or by any of them, if only one judge not disqualified or rendered incompetent be present when the discharge of *délibéré* is demanded or should be ordered. 14, 15 V. c. 88, s. 4. How *délibéré* to be discharged in case of absence, &c., of any judge.

**10.** The judges of the Superior Court shall act as judges of the Court of Queen's Bench under this Act whenever need shall be, and whenever it happens that any of the judges of the Superior Court is or are required so to act, the clerk of appeals shall, by order of one of the judges of the Court of Queen's Bench, notify the chief justice (or in his absence from the Province, the senior judge) of the Superior Court, who shall thereupon communicate with the other judges of his court, and arrange with them what judge or judges shall so act as a judge or as judges of the Court of Queen's Bench, in the cause or causes to which the notice relates: Superior Court judges to sit in Queen's Bench when required.

**2.** The words "judge of the Superior Court" shall include the chief justice. 14, 15 V. c. 88, s. 5. Words "Judge of S. C."

**11.** Whenever any one judge or more of the Court of Queen's Bench is lawfully recused or disqualified, or rendered incompetent, either by reason of interest or otherwise, to sit in the said court Proceedings in case judge of Q. B., is dis-

qualified from sitting.

court in any cause cognizable thereby, or is suspended from office or absent from the Province, the fact shall be recorded in the register of the court by the clerk of appeals, whenever he is thereunto required in writing by any of the parties, and such number of the judges of the Superior Court who would not be disqualified from sitting in such cause if they were judges of the said Court of Queen's Bench, as will be necessary to complete the said last named court, may then act as judges thereof, and exercise the same powers and authority with regard to such cause, and to all judicial acts and proceedings required therein, either before or after the determination thereof, as judges of the said last named court not disqualified or rendered incompetent may do. 14, 15 V. c. 88, s. 2.

How leave of absence to any judge for more than two months shall be granted.

**12.** Whenever leave of absence for more than two months, is granted by the Governor to any judge of the said court, the fact shall be notified to the clerk of appeals by a letter to be addressed to him by the provincial secretary, which letter shall be deemed authentic, and shall by the said clerk be filed among the records of the court and entered in the register thereof. 14, 15 V. c. 88, s. 1.

Return of judge who has been absent not to affect the powers of the judge of the S. C., who has been acting in his stead.

**13.** The return of any judge of the Court of Queen's Bench who has been absent, or the expiration of his leave of absence, or the removal of any cause of disqualification or incompetence, shall not affect the powers of the judge of the Superior Court acting in his stead, nor shall they be affected by the appointment of any judge who would be competent in the cause; and if any judge of the Superior Court acting under this act as a judge of the Court of Queen's Bench should die or become disqualified or incompetent or be absent, the provisions of this Act shall in such case have the same effect to remedy the want of a sufficient number of judges in the cause as if he had been to all intents and purposes a judge of such last named court. 14, 15 V. c. 88, s. 6.

In case three judges do not concur as to the judgment to be rendered.

**14.** Whenever any cause in appeal or error has been heard by four judges only of the said court, and taken *en délibéré* by them, and three of the said judges do not concur in opinion as to the judgment which ought to be given in such cause, the court may discharge the *délibéré*, and order that the cause be re-heard; and if at the time when such cause comes up for re-hearing, the other judge is lawfully re-used or disqualified or rendered incompetent either by reason of interest or otherwise to sit in such cause, or is absent, any judge of the Superior Court may act as a judge of the Court of Queen's Bench as regards such cause, and shall have the same power and authority with respect to the same, and to all judicial acts required therein, either before or after the determination thereof, as a judge of the said last named court not disqualified or rendered incompetent. 20 V. c. 44, s. 18.

## RULES OF PRACTICE AND TARIFF OF FEES.

**15.** The said court shall make and establish a tariff of fees for the counsel, advocates and attorneys practising therein, and also such rules of practice as are requisite for regulating the due conduct of the causes, matters and business before the said court or the judges thereof, or any of them, and in term or out of term, and all process and proceedings therein or thereunto relating; which tariff of fees and rules of practice the said court may repeal, alter and amend from time to time :

Court to make a tariff of fees and rules of practice.

2. No such rule of practice shall be contrary to or inconsistent with this Act, or any other Act or law in force in Lower Canada, otherwise the same shall be null and void ;

Such rules not to be contrary to law.

Until such tariff of fees and rules of practice are made and duly established by the said court, the tariff of fees and rules of practice in force immediately before the coming into force of the Acts 7 V. c. 18, 12 V. c. 37, shall be in force, and shall apply to the said court and the proceedings therein, subject to such amendments and alterations as shall be from time to time made therein by the said court. 12 V. c. 37, s. 17,—27 G. 3, c. 4, s. 6,—See 41 G. 3, c. 7, s. 16,—See 18 V. c. 98, s. 8, and 20 V. c. 44, s. 143.

Present tariff of fees to remain in force until new ones established.

*Of the Clerk and his Deputy.*

**16.** There shall be appointed from time to time a clerk of the said court, who shall be the clerk thereof for all matters depending upon its jurisdiction as a court of appeal and error, and shall be known as the "Clerk of Appeals;" and the said clerk shall reside either in the city of Quebec or in the city of Montreal, and shall by an instrument under his hand and seal appoint a deputy, who shall reside in that one of the said cities in which the said clerk does not himself reside; and such deputy is hereby empowered to perform any duty of the clerk of appeals, and shall continue to perform all the duties of that office, in case of the death, dismissal, suspension from office or resignation of the said clerk, until the appointment of his successor in the said office; and the instrument by which such deputy clerk has been appointed shall be entered at full length in the register of the court; but the said clerk may at all times remove such deputy and appoint another. 12 V. c. 37, s. 12. See 13, 14 V. c. 37, s. 7, and 20 V. c. 44, s. 136.

Appointment of the Clerk of Appeals and of his deputy.

**17.** No clerk or deputy clerk of appeals shall, while he remains such, practise as an advocate, proctor, solicitor, attorney or counsel in Lower Canada. 12 V. c. 37, s. 13.

No such Clerk to practise at law.

**18.** The salary of the clerk of appeals shall be such sum not exceeding two thousand dollars per annum, as the governor in council shall from time to time direct. 20 V. c. 44, s. 20.

Salary of Clerk.

*Terms*

*Terms of the Court, and where held ;—From what Districts Appeals shall be heard at each place.*

When and where the terms are to be held.

**19.** Four terms of the said Court in Appeal and Error shall be held in each year at each of the cities of Quebec and Montreal ; the said terms shall commence respectively on the first day of March, the first day of June, the first day of September and the first day of December, at the city of Montreal ; and on the twelfth day of March, the twelfth day of June, the twelfth day of September and the twelfth day of December, at the city of Quebec, and shall continue at each place during nine calendar days :

On last day of term, Court may adjourn for the purpose of giving judgments.

2. Provided that the court may, on the last judicial day of any such term, adjourn, for the purpose of giving judgment only, to any day thereafter, on and after which day it may again adjourn for the like purpose ; and such adjournment may be to any day during a criminal term of the court or subsequent thereto ;

Certain acts may be done by one judge or the clerk.

3. And provided also, that any one judge, or in the absence of a judge, the clerk of the court, or his deputy, may, on any day in term, open and adjourn the court, receive returns and motions of course, call parties who ought then to appear in court, and record appearances or defaults, and do other acts of a like nature requiring no exercise of judicial discretion. 20 V. c. 44, s. 15.

Governor may order by Proclamation an extraordinary term.

**20.** The Governor may, at any time, and from time to time, by proclamation, direct an extraordinary term of the said Court in Appeal and Error, to be held either at Quebec or Montreal, and to commence and end on such days as may be appointed in such proclamation, which shall be issued at least thirty days before that appointed for the commencement of such term ; and to any such extraordinary term all the provisions of this Act, and of the law, with regard to ordinary terms of the Court in Appeal and Error, shall apply in so far as is consistent with such proclamation. 20 V. c. 44, s. 16.

Sittings may be closed when no more business before the Court.

**21.** The sittings at any term of the court on the appeal side, ordinary or extraordinary, may be closed, whenever there is no business before the court, or the term may be continued by the judges by adjournment until there is no business before it. 20 V. c. 44, s. 16.

Where cases in appeal from the different districts shall be heard and determined.

**22.** Cases in appeal or error from the districts of Ottawa, Montreal, Terrebonne, Joliette, Richelieu, St. Francis, Bedford, St. Hyacinthe, Iberville and Beauharnois, shall be heard and determined at the city of Montreal only, and the writs in such cases shall be returnable there ; and cases in appeal or error from the districts of Three Rivers, Quebec, Saguenay, Gaspé, Chicoutimi, Rimouski, Kamouraska, Montmagny, Beauce and Arthabaska,

Arthabaska, shall be heard and determined at the city of Quebec only, and the writs in such cases shall be returnable there. 20 V. c. 44, s. 17.

*Appeal from the Superior Court—Jurisdiction.*

**23.** An appeal shall lie to the Court of Queen's Bench as a Court of Appeal and Error from any judgment rendered by the Superior Court for Lower Canada in any district in all cases where the matter in dispute exceeds the sum of *twenty pounds*, sterling, or relates to any fee of office, duty, rent, revenue or any sum of money payable to Her Majesty, titles to lands or tenements, annual rents or such like matters or things where the rights in future might be bound, although the immediate value or sum in appeal is less than *twenty pounds sterling* :

In what cases appeal is allowed from the Superior Court.

2. Provided that security shall be first duly given by the appellant, that he will effectually prosecute the said appeal and answer the condemnation, and also pay the costs and damages adjudged, in case the judgment or sentence of the Superior Court is affirmed,—or the appellant shall agree and declare in writing at the office of the prothonotary or clerk of the court appealed from, that he does not object to the judgment given against him being carried into effect according to law, on which condition, he shall give security only for the costs of appeal, in case the appeal is dismissed; and on condition also, that the respondent shall not be obliged to render and return to the appellant more than the net proceeds of the execution, with the legal interest on the sum recovered, or the restitution of the real property, and of the net value of the produce and revenues of the real property, whereof the respondent has been put in possession by virtue of the execution, to take place from the day he recovered the sum or possessed the real property, until perfect restitution is made, without any damages against the respondent by reason of the said execution in case the judgment is reversed. 34 G. 3, c. 6, s. 27,—12 V. c. 38, s. 37,—20 V. c. 44, s. 17.

Security to be given by appellant that he will prosecute the appeal.

**24.** Wherever the judgment appealed from is founded on the verdict of a jury, no other appeal shall lie than an appeal in error, that the law only and not the fact may be drawn into question. 34 G. 3, c. 6, s. 28.

Appeal in error only from the verdict of a jury.

**25.** Whenever the jurisdiction of the court, or the right to appeal from any judgment of any court, is dependent upon the amount in dispute, such amount shall be understood to be that demanded and not that recovered, if they are different. 12 V. c. 38, s. 82.

What shall be deemed the amount in dispute in certain cases.

## Of the Writ of Appeal and proceedings thereon.

What the writ of appeal contains.

**26.** The party meaning to appeal from any definitive judgment of the Superior Court, shall sue out a writ from the Court of Queen's Bench, in the exercise of its jurisdiction as a Court of Appeal and Error, under the seal of the said court and signed by the clerk of appeals or his deputy, stating that the appellant complains of being aggrieved by the judgment appealed from, and commanding the judges of the Superior Court, or any one of them, to send up the original papers and proceedings, forming the records or found in the registers of the court, concerning the same :

Writ to be allowed if requisite security have been given.

2. Such writ, when presented to one of the judges or to the prothonotary of the court in the district in which the judgment has been rendered, shall be allowed by him, if the appellant has given the requisite security, which security is understood to be personal security, or bail by justification ;

Appeals may be had from interlocutory judgments in certain cases.

3. An appeal may be had and obtained, in manner above said, from interlocutory judgments which would carry execution, by ordering something to be done or executed that cannot be remedied by the final judgment, or whereby the matter in contestation between the parties may be in part decided, or whereby final hearing and judgment would be unnecessarily delayed ;

How only appeal in such case shall be granted.

4. But such appeal from an interlocutory judgment shall not be granted and allowed, unless the party desiring to obtain the appeal, or his attorney, obtains a rule, upon motion made in the Court of Queen's Bench, and served upon the other party or his attorney, to shew cause why a writ of appeal from such interlocutory judgment should not be granted ;

Service of rule to stay execution till determination of motion for appeal.

5. A rule so served shall have the effect of staying execution upon such interlocutory judgment, till the determination of the motion for such appeal, and if the writ of appeal is awarded thereupon, the said writ shall be executed by a judge or by the prothonotary in the manner hereinabove prescribed for writs of appeal from final judgments, and return shall be made thereof as therein commanded. 25 G. 3, c. 2, s. 24—20 V. c. 44, s. 43.

If appeal is not allowed and a copy of writ served within fifteen days, execution to issue.

**27.** If the writ of appeal is not allowed, and a copy thereof served on the respondent, or his attorney, within fifteen days after any judgment given in the Superior Court, execution shall issue ; Provided always, that in cases of appeal from judgments in the said court in the *District of Montreal*, execution shall be stayed for the space of twenty days, where the party meaning to appeal lodges good and sufficient security in the said court within fifteen days from the date of such judgment, to prosecute his said appeal with effect, and the security shall be taken

taken as in case of a writ of appeal issued ; And no appeal shall be allowed or received after the expiration of one year from the date of the judgment of the Superior Court ; save and except judgments, whereby the rights of infants, absentees, *femmes couvertes*, or persons *non compos mentis*, might be bound. 25 G. 3, c. 2, s. 29.

No appeal allowed after one year from date of judgment, except in certain cases.

**28.** All writs and process to be issued out of the said court in the exercise of its jurisdiction as a Court of Appeal and Error, shall be distinguished as being so issued, and shall run in the name of Her Majesty, Her Heirs or Successors, and shall be sealed with the seal of the said court, and signed by the clerk thereof or his deputy, whose duty it shall be to make out and prepare the same :

How writs shall be issued, sealed and signed.

They shall not be tested in the name of any judge, but the words "in witness whereof we have caused the seal of our said court to be hereunto affixed," shall be instead of such *teste* ;

Not to be tested.

No such writ or process shall be deemed void or voidable by reason of its having a wrong seal or no seal thereon, and every such writ and process may be either in the English or in the French language. 12 V. c. 37, s. 14.

Not to be void when not sealed.

**29.** It shall not be necessary that the writ of appeal from any judgment of the Superior Court be allowed by any judge of the Court last mentioned ; and the prothonotary of the Superior Court at the place where the judgment appealed from was rendered, may receive the appeal bond or security in appeal, and administer the requisite oaths and put the necessary questions to persons offered as sureties, and such powers shall be exercised by any such prothonotary concurrently with the judges of the said court, any one of whom may, if he think proper, exercise the same as heretofore. 20 V. c. 44, s. 43.

Prothonotary of Superior Court may receive security in appeal.

**30.** It shall not be necessary that any judge of the Superior Court should sign bonds of security in appeal or other bonds, in any case, but the said security bonds or any other bond or recognizance, may be received, acknowledged, and taken by the prothonotary of the district in which such bonds are required to be given, and be received by and acknowledged before him in the same manner and to the same legal effect as by any of the said judges :

Judge of Superior Court need not sign bonds of security in appeal.

But nothing herein shall be construed to prevent any such judge from receiving any such bond as aforesaid, if he thinks fit so to do. 22 V. c. 5, s. 42. *part.*

**31.** The return to any writ of appeal issuing from the Court of Queen's Bench in relation to any judgment or order of the Superior Court, may be made by, and the original papers and proceedings

Who may return the writ of appeal.

proceedings found in the court concerning the same, may be sent up and certified to the said Court of Queen's Bench, by any judge of the Superior Court, or by the prothonotary thereof, at the place where such judgment or order was made. 22 V. c. 5, s. 42.

Delay for filing reasons of appeal.

**32.** If the appellant does not, within eight days after the return of the writ of appeal and transmission of the proceedings, file his reasons of appeal, the respondent may obtain a rule or order, that unless the appellant's reasons of appeal are filed in four days, the appeal will be dismissed; And if the said reasons of appeal are not filed within four days after service of the said rule on the appellant or his agent, the appeal shall be accordingly dismissed with costs. 25 G. 3, c. 2, s. 25.

Delay for filing answers thereto.

**33.** Within eight days after the reasons of appeal are filed, the respondent shall file his answers thereto; or if he neglects so to do, the appellant may obtain a rule or order, that unless the respondent file his answers within four days, he will be precluded from filing them after that period; and if his answers are not filed within four days after service of such rule on the appellant or his agent, he shall accordingly be precluded from filing them, and the court shall proceed to hear the cause on the part of the appellant, and proceed to judgment therein without the intervention of the respondent. 25 G. 3, c. 2, s. 26.

But the time limited in such cases may be prolonged, on cause shewn.

**34.** The court, nevertheless, may, upon application made, and good cause shewn by either of the parties (notice being given to the other), prolong the time allowed for filing either the reasons of appeal or the answers thereto; and in case the court is not sitting at the time when such reasons or answers ought regularly to be filed, the party neglecting shall apply to the court at the next sitting thereof, and shew his reasons for such neglect; and if the court finds them insufficient, it shall, as the case may be, either dismiss the appeal, or proceed to hear it without the intervention of the respondent as above directed. 25 G. 3, c. 2, s. 27.

Court to fix the day for hearing the cause.

**35.** When the reasons of appeal, and the answers thereto, are filed, the court shall, on the application of either of the parties, fix on such convenient day for the hearing of the cause, as to it may seem proper. 25 G. 3, c. 2, s. 28.

Final judgments to be *motivés*.

**36.** All final judgments rendered by the said court shall contain a summary statement of the points of fact and law, and the reasons upon which such judgments are founded, and the names of the judges who have concurred therein or entered their dissent therefrom. 12 V. c. 37, s. 18,—27 G. 3, c. 4, s. 4.

*Of Appeals by heirs, assigns, (ayants cause), husbands or others.*

**37.** All writs of error and appeal may be brought either by the party against whom the judgment complained of was rendered, or, in case of his death, by his executors or administrators, if the judgment was to recover any debt, damages or personal property, or by his heirs, devisees or assigns, (*ayants cause*) if the judgment was for the recovery of real estate or the possession thereof, or if the title to real estate was determined thereby. 12 V. c. 41, s. 17.

By whom appeals may be brought in case of the death of the party against whom the judgment was rendered.

**38.** If a judgment be recovered against an unmarried woman or widow, and she afterwards marries, a writ of error or of appeal may be brought thereon by her and her husband jointly; and if a judgment has been obtained against several persons and one or more of them die, a writ of error or of appeal may be brought thereon by the survivor or survivors; and if, after the issuing of any writ of error or of appeal, any of the parties to the judgment complained of has died, the proceedings on such writ of error or appeal may be continued by and between the survivors alone. 12 V. c. 41, s. 18.

If judgment be against a woman who afterwards marries.

*Of appeals from judgments of the Circuit Court, and the proceedings thereon.*

**39.** From any judgment rendered by the Circuit Court in any suit or action in which the sum of money or value of the thing demanded is one hundred dollars or upwards, or which relates to any titles to lands or tenements, or to any sum of money payable to Her Majesty, fee of office, duty or rent, revenue, annual rent or such like matters and things, where the rights in future might be bound, an appeal shall lie to the Court of Queen's Bench (on its appeal side) sitting at the place where under this Act it is to hear and determine appeals from the Superior Court in the district including the circuit in which such suit or action was originally instituted; and the said Court of Queen's Bench shall hear and adjudge on such appeal as to law appertains, subject to the provisions herein-after made. 20 V. c. 44, s. 60.

In what cases appeal may be from Circuit Court.

**40.** The party appealing from any judgment rendered by the Circuit Court, shall, within fifteen days after the rendering thereof, (but without being bound to give previous notice thereof to the adverse party,) give good and sufficient security by sureties who shall justify their sufficiency to the satisfaction of the person before whom it is given, as hereinafter provided, that he will effectually prosecute the said appeal and answer the condemnation, and also pay such costs as are awarded by the Court of Queen's Bench, if the judgment appealed from should be affirmed. 20 V. c. 44, s. 61.

Security in appeal to be given and to what amount.

Before whom security may be given and where.

**41.** The said security shall be given either before a judge of the Court of Queen's Bench, at the place where the appeal is to be heard, or before the clerk of appeals at such place, and the bond shall then be deposited and remain of record in the office of the said clerk, at the said place; or it shall be given before a judge of the Superior Court when at the place where the judgment appealed from has been rendered, or before the clerk of the Circuit Court at such place, and the bond shall then be deposited and remain of record in the office of the latter :

What shall be sufficient.

**2.** Any one surety, being a proprietor of real property of the value of two hundred dollars, over and above all incumbrances payable out of or affecting the same, shall suffice to render such security valid; and the said judges, clerk of appeals, or clerk of the Circuit Court, are hereby respectively authorized to administer all oaths required by law in such cases from the persons so becoming sureties, and to put to them all necessary inquiries and questions. 20 V. c. 44, s. 62,—and 22 V. c. 5, s. 43.

But if the appellant agrees to allow the judgment to be executed

**42.** If, within the same delay of fifteen days after the rendering of the judgment, the party appealing agrees and declares in writing at the office of the clerk of appeals, or at the office of the clerk of the Circuit Court at the place where the judgment appealed from was rendered, that he does not object to the judgment being carried into effect according to law,—or pays into the hands either of the said clerk of appeals or of the clerk of the Circuit Court, the amount in principal, interest and costs, of the said judgment, (which amount, when so paid, the respondent shall be entitled to have from such clerk,) and at the same time declares in writing his intention to appeal, then and in that case the party so appealing, in lieu of the security above required, shall give security only for the costs and damages to be awarded by the Court of Queen's Bench in case the appeal is dismissed. 20 V. c. 44, s. 63.

What amount the respondent is bound to return to the appellant if judgment appealed from be reversed.

**43.** When only such security as last mentioned for costs and damages has been given, the respondent shall not, if the judgment appealed from be reversed, be bound to return to the appellant more than the amount of money so paid into the hands of the clerk of appeals or of the Circuit Court, with legal interest thereon, from the day of the payment of the same to such clerk,—or more than the sum levied under the execution sued out upon such judgment,—or more than the restitution of the real property whereof the respondent has been put into possession by virtue of such judgment, and the net value of the revenues and produce thereof, to be computed from the day when he was so put in possession thereof, until perfect restitution is made,—with the costs of such appellant as well in the Court of Queen's Bench as in the Circuit Court, but without damages against the respondent in any of the said cases, by reason

reason of the judgment appealed from or of the execution thereof. 20 V. c. 44; s. 64.

**44.** And in order to avoid delay and expense in the prosecution of appeals from judgments rendered by the Circuit Court,—such appeals shall be prosecuted and proceedings thereon had, in a summary manner, by petition of the appellant to the Court of Queen's Bench, setting forth succinctly the grounds of appeal, and that the security required by law has been duly given, and praying for the reversal of the judgment appealed from, and the rendering of such judgment as the court below ought to have rendered; a copy of which petition, with notice of the time or day on or after which it may be proceeded upon by the Court of Queen's Bench, and a copy of the appeal bond, certified by the clerk in whose office it is filed, shall be served on the adverse party personally or at domicile, or on his attorney, *ad litem*, in the Circuit Court, within twenty-five days from the rendering of the judgment appealed from. 20 V. c. 44, s. 65.

Appeals to be prosecuted in a summary way by petition and notice.

**45.** Within the same delay of twenty-five days after the rendering of the judgment appealed from, the party appealing shall file the original of the said petition and notice with a certificate of service thereof annexed, in the office of the clerk of the Circuit Court in whose custody the record in the suit in which the appeal is instituted is, with a certificate of the clerk of appeals that security in appeal has been given, if the appeal bond is not deposited in the office of the said clerk of the Circuit Court; and thereupon the said clerk of the Circuit Court shall deliver to the appellant a certificate of the filing of the said petition and of the documents accompanying it, for the purpose of proving when requisite, that he has instituted such appeal, and shall forthwith certify under his hand and the seal of the Circuit Court, and cause to be transmitted to the Court of Queen's Bench at the proper place, to be filed among the records thereof, the said petition, with the judgment, record, evidence and proceedings to which the appeal relates. 20 V. c. 44, s. 66.

Petition and notice to be filed in the Circuit Court.

Clerk to give a certificate and transmit the record to the Court of Q. B.

**46.** Each party, appellant or respondent, shall, before the first day on which the case can be heard in appeal under the next following section, file an appearance in person or by attorney, in the office of the clerk of appeals, and the clerk shall enter each case in which the record has been transmitted to him, from the Circuit Court, mentioning whether the parties respectively have so appeared or not:

Parties to the appeal to file their appearances in Q. B.

2. If the respondent does not appear as herein required; he shall be held to make default, and if the appellant fail so to appear, he shall be held to have abandoned his appeal, and the record shall be remitted to the Circuit Court;

Penalty for default.

Appellant may file the certificate of the Clerk of the Circuit Court— for what purpose.

3. The appellant may file, with his appearance, in the office of the clerk of appeals, the certificate of the filing of his said petition in appeal and the documents accompanying it, in the office of the clerk of the Circuit Court, in order to prove, when requisite, that he brought his appeal, and to enable him to adopt all necessary proceedings against the clerk of the Circuit Court, in case of his neglecting or refusing to transmit to the Court of Queen's Bench, as he is bound to do, the petition in appeal, with the judgment, evidence and proceedings to which the appeal relates. 20 V. c. 44, s. 67.

At what time the appeal may be heard and what judgment shall be given.

47. At the first sitting of the Court of Queen's Bench, on the appeal side, at the place where the appeal is to be heard, after the expiration of the forty days next after the rendering of the judgment appealed from, or at any subsequent sitting of the said court, the appeal shall, without any further formality, be summarily heard and such judgment rendered thereon by the said court, as ought to have been given by the Circuit Court; and the record in the case, with such judgment (and the appeal bond if filed with the clerk of appeals) shall be remitted to the Circuit Court at the place where the judgment appealed from was given, in order that the judgment of the Court of Queen's Bench may be executed by the Circuit Court, and further proceedings had therein as to law appertain. 20 V. c. 44, s. 68.

Appellant neglecting certain proceedings to be deemed to have abandoned his appeal.

48. Any appellant who neglects to cause a copy of such petition and notice in appeal to be served and filed as aforesaid, or who having caused the same to be so served and filed, neglects to prosecute such appeal effectually in the manner hereinbefore prescribed, and within such delay as the Court of Queen's Bench deems reasonable, shall be considered to have abandoned such appeal, and upon the application of the respondent the Court of Queen's Bench shall declare all right and claim founded on such appeal to be forfeited, and shall grant costs to the respondent and order the record (if transmitted) to be remitted to the Court below. 20 V. c. 44, s. 69.

Court of Q. B. may order a *factum*,—make rules of practice—

49. The said Court of Queen's Bench may, if it deems it expedient for the purposes of justice, order a *factum* or case to be prepared and filed in any such appeal, and may grant such delay and make such rules of practice touching such appeals, or any class or classes of them, or such rules and orders in each particular case, as the said court deems just and right:

And tariffs of fees.

2. The said court may also make tariffs of fees in such cases for the attorneys and others employed therein, not being officers paid by salaries or whose fees are fixed by any tariff to be made by the Governor in Council. 20 V. c. 44, s. 70.

*Of Appeals from Judgments of the Circuit Court in the Magdalen Islands.*

50. An appeal shall lie from the judgment of the Circuit Court in the Magdalen Islands to the Court of Queen's Bench sitting in appeal and error at Quebec, in every case in which an appeal would lie to the said court if such judgment had been rendered in the Superior Court or in the Circuit Court at any other place :

In what cases such appeal shall lie.

2. But, whatever be the sum of money or value of the thing demanded in such case, the proceedings in appeal shall be the same as in appeals from the Circuit Court,---except that (subject to the provisions of the next following section in the cases therein mentioned,) the first day on which the case may be heard in the said court of Queen's Bench, shall be the juridical day in term next after the expiration of ninety days from the rendering of the judgment appealed from if it be rendered in the spring term at the Magdalen Islands, and the first juridical day in term after the first day of June next after the rendering of the judgment, if it be rendered in the autumn term at the said islands ;---but the security in such appeal must be given within fifteen days after the rendering of the judgment, as in other places. 20 V. c. 44, s. 129.

Proceedings in all cases to be the same as in appeals from Circuit Court, except as to the day on which the case is to be heard.

51. In any case in which an appeal lies from a judgment by default, recorded by the clerk of the circuit of the Magdalen Islands, under the provisions made as to default or *ex parte* cases returnable in vacation,---the proceedings in appeal shall be as provided by the next preceding section,---except that the first day on which the case in appeal from any judgment so recorded by default may be heard in the Court of Queen's Bench, shall be the juridical day in term next after the expiration of ninety days from the end of the delay allowed to file an opposition (as hereinbefore provided), to such judgment, if such delay expires on or after the first day of the spring term in the said circuit, and before the first day of the autumn term therein,---and the first juridical day in term after the first day of June next after the expiration of the said delay for filing such opposition, if such delay expires on or after the first day of the autumn term in the said circuit, and before the first day of the spring term therein. 22 V. c. 5, s. 40.

Proceedings in cases in which appeals lie from judgments by default.

OF APPEALS TO HER MAJESTY IN HER PRIVY COUNCIL.

52. The judgment of the Court of Queen's Bench shall be final in all cases where the matter in dispute does not exceed the sum or value of five hundred pounds sterling ; but in cases exceeding that sum or value, as well as in all cases where the matter in question relates to any fee of office, duty, rent, revenue or any sum or sums of money payable to Her Majesty, title to lands or tenements, annual rents or such like matters

In what cases an appeal lies from the judgment of the Court of Q. B. to Her Majesty in Her Privy Council.

or things, where the rights in future might be bound, an appeal shall lie to Her Majesty in Her Privy Council, in that part of the United Kingdom of Great Britain and Ireland called England, though the immediate sum or value appealed for be less than five hundred pounds sterling, provided security be first duly given by the appellant, that he will effectually prosecute his appeal, and answer the condemnation, and also pay the costs and damages to be awarded by Her Majesty, in Her Privy Council, in case the judgment of the said court is affirmed,—or provided that the appellant agrees and declares in writing, at the clerk's office of the court appealed from, that he does not object to the judgment given against him being carried into effect according to law, on which condition he shall give sureties for the costs of appeal only, in case the appeal is dismissed, and on condition also, that the appellee shall not be obliged to render and return to the appellant more than the net proceeds of the execution, with legal interest on the sum recovered, or the restitution of the real property, and of the net value of the produce and revenues of the real property, whereof the respondent has been put in possession, by virtue of the execution, to take place from the day he recovered the sum or possessed the real property until perfect restitution is made, but without any damage against the respondent, by reason of such execution, in case the judgment is reversed. 34 G. 3, c. 6, s. 30, and 12 V. c. 37, s. 19.

In such cases execution to be suspended for six months.

**53.** In all cases where an appeal is allowed to Her Majesty in Her Privy Council, execution shall be suspended for six months from the day on which such appeal is allowed, and from the expiration of that period to the final determination of the said appeal,—if before the expiration of the said six months, a certificate is filed in the court having jurisdiction in appeal in Lower Canada, signed by the clerk of Her Majesty's Privy Council or his deputy, or any other person duly authorized by him, that such appeal has been lodged, and that proceedings have been had thereon, before Her Majesty in Her Privy Council; but if no such certificate is produced and filed in the court having jurisdiction in appeal in Lower Canada within the said six months, the said appeal shall no longer operate as a stay of judgment and execution, but the party who obtained judgment in the said court having jurisdiction in appeal, may sue out execution as if no such appeal had been made or allowed. 20 V. c. 44, s. 19.

Certificate of such appeal must be lodged to suspend execution beyond that period.

Duty of Clerk of Appeals as regards judgments rendered by Her Majesty in Her Privy Council.

**54.** On any appeal to Her Majesty in Her Privy Council from any judgment heretofore rendered by the former Court of Appeals for Lower Canada, or from any judgment rendered by the present Court of Queen's Bench, on the appeal side thereof, the clerk of appeals shall register an official exemplification of the judgment of Her Majesty in Her Privy Council, immediately on the production of the same by any party interested therein, and without requiring a previous order of the

• court

court or of any judge thereof for such registration ; and the said clerk of appeals shall also, with a copy of such exemplification, and without requiring any such previous order, remit the record of the cause to the court below, unless the judgment of Her Majesty in Her Privy Council require some further proceeding to be had in the said Court of Queen's Bench ; provided, that nothing contained in this section shall extend to or affect any judgment rendered by Her Majesty in Her Privy Council, before the 30th day of August, 1851. 14, 15 V. c. 88, s. 8.

Proviso.

*Of the limitation of the time for bringing Appeals.*

**55.** In all cases where an appeal is by law allowed, from the Superior Court to the Court of Queen's Bench, as also where an appeal is by law allowed from the said Court of Queen's Bench to Her Majesty in Her Privy Council, no appeal shall be granted or allowed after the expiration of one year, from the date of the final judgment of the said courts respectively ; saving always, and excepting every such judgment, whereby the rights of persons under age, *femes covert*, or persons *non compos mentis*, or otherwise *interdits* are bound, who may appeal from any such judgment, within one year after the disability, under which they have respectively so laboured, has ceased ; and in case of the death of any person labouring under any of the said disabilities, his heir or heirs, if present in Lower Canada, may appeal from such judgment, within one year after such death, or if absent therefrom, within five years, and also saving and excepting every judgment which is given against any person absent from Lower Canada, who may appeal from any such judgment, within one year after such death, or if absent therefrom, within five years ; and also saving and excepting every judgment which is given against any person absent from Lower Canada, who may appeal from any such judgment, within five years from the date thereof, if he does not sooner return to Lower Canada, in which case no appeal shall be admitted after the expiration of one year from the date of such return ; and in case of the death of any person within one year after any judgment given against him, his heir or heirs, if present in Lower Canada, may appeal from such judgment, at any time before the expiration of a year from the death of such person, and if absent, before the expiration of five years from the date of such judgment. 34 G. 3, c. 6, s. 32. See 12 V. c. 38, s. 37,—20 V. c. 44, s. 60.

No appeal may be brought after one year from rendering of judgment, except in certain cases.

Case of judgment given against absentees.

Case of death within a year of the person against whom the judgment was rendered

*Of error in criminal cases,--and questions reserved by the criminal courts and submitted to the court on its appeal side.*

**56.** The Court Queen's Bench sitting in appeal and error shall be a Court of Error in criminal as well as in civil cases, and shall have jurisdiction in error in all criminal cases before the said court on the crown side thereof, or before any Court

Court of Q. B. to be a Court of Error in criminal cases.

of Oyer and Terminer, or Court of Quarter Sessions; and the writ of error shall operate a stay of execution of the judgment of the court below. 20 V. c. 44, s. 21.

Difficult questions of law.

And in order to provide means of deciding any difficult question of law which may arise at criminal trials—

In what cases questions may be reserved.

**57.** When any person has been convicted of any treason, felony or misdemeanor, at any criminal term of the said Court of Queen's Bench, or before any Court of Oyer and Terminer, gaol delivery, or quarter sessions, the court before which the case has been tried, may, in its discretion, reserve any question of law which has arisen on the trial, for the consideration of the said Court of Queen's Bench on the appeal side thereof, and may thereupon respite execution of the judgment on such conviction, or postpone the judgment until such question has been considered and decided by the said Court of Queen's Bench; and in either case the court before which the case trial was had, in its discretion, shall commit the person convicted to prison, or shall take a recognizance of bail with one or two sufficient sureties, and in such sum as the court thinks fit, conditioned to appear at such time or times as the court shall direct, and receive judgment or render himself in execution, as the case may be. 20 V. c. 44, s. 22.

Bail may be taken or prisoner committed.

Case to be stated by the Court reserving the question.

**58.** The said court shall thereupon state, in a case to be signed by the judge or judges, recorder, inspector and superintendent of police, or chairman holding or presiding such court, the question or questions of law which have been so reserved, with the special circumstances upon which the same have arisen; and shall forthwith transmit the same to the clerk of appeals at the place where appeals from the district in which the conviction was had, are to be heard:

Court of Q. B. to give the proper judgment or make the proper order in the case.

2. The said Court of Queen's Bench shall have full power and authority, at any sitting thereof on the appeal side, after the receipt of such case, to hear and finally determine every question therein, and thereupon to reverse, amend or affirm any judgment which has been given on the indictment or inquisition, on the trial whereof such question arose, or to avoid such judgment, and to order an entry to be made on the record, that in the judgment of the said Court of Queen's Bench the party convicted ought not to have been convicted, or to arrest the judgment, or to order judgment to be given thereon at some other criminal term of the said court, or session of oyer and terminer, or quarter sessions, if no judgment has before that time been given, as the said Court of Queen's Bench is advised, or to make such other order as justice require. 20 V. c. 44, s. 23.

Judgment of Q. B. to be

**59.** The judgment or order, if any, of the Court of Queen's Bench in such case as aforesaid, shall be certified under the hand

hand of the chief justice or one of the judges concurring therein, to the clerk of the court from which the same was sent, who shall enter it on the original record in proper form, and a certificate of such entry under the hand of such clerk, in the form, or as near as may be to the effect of the schedule A. to this Act, with the necessary alterations to adapt it to the circumstances of the case, shall be delivered or transmitted by such clerk to the sheriff or gaoler in whose custody the person convicted is, and such certificate shall be a sufficient warrant to such sheriff or gaoler and all other persons, for the execution of the judgment as the same is so certified to him to have been affirmed or amended, (and execution shall thereupon be done on such judgment,) or for the discharge of the person convicted from further imprisonment if the judgment be reversed, avoided or arrested; and in that case such sheriff or gaoler shall forthwith discharge him, and at the next sitting of the court from which the case was sent, the recognizance of bail, if any, shall be vacated; and if the court from which the case was sent is directed by the Court of Queen's Bench to give judgment, it shall give judgment at the next session thereof. 20 V. c. 44, s. 24.

certified to the Court from which the case is sent.

**60.** The judgment of the Court of Queen's Bench in any such case as aforesaid, shall be delivered in open court, after hearing council or the parties, in case the prosecutor or the party convicted thinks it fit that the case be argued, and in like manner as other judgments of the said court on the appeal side, but no notice, appearance or other form of procedure, except such only, if any, as the court in such case sees fit to direct, shall be requisite. 20 V. c. 44, s. 25.

Judgment of Court of Q. B. to be delivered in open Court, &c.

**61.** The Court of Queen's Bench, when a case has been so reserved for its opinion, may, if it sees fit, cause the case or certificate to be sent back for amendment, and thereupon the same shall be amended accordingly, and judgment shall be delivered after it has been amended. 20 V. c. 44, s. 26.

Q. B. may send back the case for amendment.

**62.** Whenever any writ of error is brought upon any judgment on any indictment, information, presentment or information in any criminal case, and the Court of Queen's Bench reverses the judgment, the said court may either pronounce the proper judgment, which shall be executed as the judgment of the court below, or may remit the record to the court below, in order that such court may pronounce the proper judgment. 20 V. c. 44, s. 27.

Q. B. reversing a judgment to pronounce the proper one, &c.

**63.** If in any criminal case either reserved as aforesaid or brought before it by writ of error, the Court of Queen's Bench is of opinion that the conviction was bad from some cause not depending upon the merits of the case, it may by its judgment declare the same, and direct that the party convicted be tried again, as if no trial had been had in such case. 20 V. c. 44, s. 28.

May order new trial in certain cases.

Forging certificate, &c., under next preceding sections to be felony.

**64.** Whoever forges or alters, or offers, utters, disposes of or puts off, knowing the same to be forged or altered, any certificate or certified copy of any certificate, required or authorized by the next preceding sections, with intent to cause any person to be discharged from custody, or otherwise prevent the due course of justice, is guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned in the Provincial Penitentiary for any period not more than seven nor less than three years. 20 V. c. 44, s. 29.

*Of the transmission of records, and of suits pending when former Acts were repealed.*

Certain sections of 12 V. c. 37, to remain in force so long as any thing remains to be done under them.

**65.** Sections *sixteen, twenty and twenty-one*, of the Act twelfth Victoria, chapter thirty-seven, providing for the transmission of the records and muniments of the former Courts of Appeals, and for the continuance of cases and proceedings, to and in the Court of Queen's Bench on its appeal side, remain in force so far as any thing remains to be done under them, and the records and muniments therein mentioned, and all the records, registers, muniments and proceedings of the former Provincial Court of Appeals and of the Court of Appeals for Lower Canada, transmitted or to be transmitted under the said sections, make part of the records, registers, muniments and proceedings of the said Court of Queen's Bench. 12 V. c. 37, s. 20.

*Sections relating to the Court on its Appeal side only.*

What sections of this Act apply to the appeal side of the Q. B.

**66.** Sections *four to sixty-four* of this Act apply to the said Court of Queen's Bench, in the exercise of its jurisdiction and functions as a court of appeal and error only, or the "Appeal Side" of the said court. 12 V. c. 37, s. 23.

CRIMINAL JURISDICTION OF THE COURT, OR CROWN SIDE.

*Of the jurisdiction of the court, generally.*

Court of Q. B. to have criminal jurisdiction throughout Lower Canada.

**67.** The said Court of Queen's Bench and the judges thereof, shall have criminal jurisdiction throughout Lower Canada, and in the several districts thereof, with full power and authority to take cognizance of, hear, try and determine, in due course of law, all pleas of the Crown, treasons, murders, felonies and misdemeanors, crimes and criminal offences whatsoever, had, done or committed, or whereof cognizance may lawfully be taken within Lower Canada, save and except such as are cognizable only by the jurisdiction of the Admiralty. 12 V. c. 37, s. 24.

Judges to be Justices of the Peace and Coroners.

**68.** The judges of the court hereby established shall severally and respectively be, and they are hereby appointed to be, justices and conservators of the peace and coroners in and throughout Lower Canada. 12 V. c. 37, s. 27.

**69.** No cause, matter or thing shall be removed into the said court from any other court or jurisdiction, except cases pending before any court of general or quarter sessions of the peace, in which a trial by jury is by law allowed, which cases may be removed into the court hereby established, by *certiorari* :

What cases only may be removed into the Court.

2. But nothing in this Act shall be construed to interfere with the exercise of the powers, authorities and jurisdiction in criminal matters vested in the Superior Court, when sitting in the district of Gaspé. 12 V. c. 37, s. 25.

Superior Court in Gaspé to retain its criminal jurisdiction.

**70.** The Court of Queen's Bench shall, at any terms thereof, held for the exercise of its original criminal jurisdiction in any district in which no Court of Quarter Sessions has then been appointed to be held, or in which the holding of Courts of Quarter Sessions has been discontinued, have cognizance of, try and determine all matters and appeals of which by law the Court of Quarter Sessions would have cognizance if such court were held in the district ; and such appeals shall accordingly lie to the said Court of Queen's Bench, and the judges and officers thereof shall, with respect thereto, have the powers of the Court of Quarter Sessions whenever no such court as last mentioned is appointed to be held in the district. 20 V. c. 44, s. 34.

Court to have powers of Court of Quarter Sessions, when such Court is not held in the district.

**71.** The terms or sittings of the said court, in the exercise of its criminal jurisdiction, shall respectively be held by any one or more judges of the said court ; and any one or more of them shall, at such terms or sittings, form a quorum, and may exercise all the powers and jurisdiction of the court. 12 V. c. 37, s. 32.

Quorum for holding sittings

**72.** Any one of the judges of the Superior Court may hold any term or sitting of the Court of Queen's Bench, for the exercise of the original criminal jurisdiction of that court, and shall have all the powers of a judge thereof and of the court in the exercise of the said jurisdiction ; but it shall not be incumbent upon any judge of the Superior Court to hold any such term or exercise any such powers at either of the cities of Quebec or Montreal, if there is a judge of the Court of Queen's Bench present at such city and able to act. 20 V. c. 44, s. 30.

Any Judge of the Superior Court may hold a criminal term.

Proviso.

*Of writs and process.*

**73.** All writs and process of the said court, issued in the exercise of its jurisdiction in criminal matters, shall be distinguished as being so issued, and shall be signed by the clerk of the Crown in and for the district in which they issue, and shall run and be sealed and attested in the manner hereinbefore provided with regard to the writs and process of the court issued in the exercise of its jurisdiction as a Court of Appeal and Error. 12 V. c. 37, s. 28.

How writs shall be issued, sealed and attested.

*Of the clerks of the Crown, and their deputies.*

Appointment and duties of the Clerk of the Crown.

**74.** There shall be appointed, from time to time, a clerk of the crown, in and for each of the districts where terms or sittings of the said court are held for the exercise of its jurisdiction in criminal matters, who shall be the clerk of the said court for such district, with regard to all matters dependent upon its jurisdiction in such matters; and each such clerk of the crown may, by an instrument under his hand and seal, appoint a deputy, who is hereby empowered to perform any duty of such clerk of the crown, and shall continue to perform all the duties of that office, in case of the death, dismissal, suspension from office or resignation of such clerk of the crown, until the appointment of his successor in the said office; and the instrument by which such deputy clerk is appointed, shall be entered at full length in the register of the court; but such clerk of the crown may at any time remove such deputy, and appoint another. 12 V. c. 37, s. 29.

Who may be appointed Clerk of the Crown.

**75.** Any prothonotary of the Superior Court, or any clerk of the Circuit Court, may be appointed clerk of the crown, in and for any district; but no clerk of the crown shall, while he remains such, practise as an advocate, proctor, solicitor, attorney or counsel, in Lower Canada. 12 V. c. 37, s. 30.

Proper officers in each Criminal District.

**76.** In and for each of the Criminal Districts of Lower Canada; a clerk of the crown, clerk of the peace, coroner, gaoler and other proper officers shall be appointed, and shall have like powers, duties and liabilities incidental to those officers respectively. 12 V. c. 38, s. 12.

*Of the places of holding and of the terms of the court.*

Two terms to be held annually in each of the criminal districts.

**77.** Two terms or sittings of the Court of Queen's Bench in the exercise of its jurisdiction in criminal matters, and for taking cognizance of all crimes or criminal offences, shall be held in each year in and for each of the *Criminal* Districts into which Lower Canada is divided, other than the district of Gaspé. 12 V. c. 37, s. 31,—34 G. 3, c. 6, s. 3.

How long the said terms shall continue.

**78.** The said terms or sittings shall respectively continue and be holden until the said court declares the same closed, which shall not be done until the court is of opinion that there remains no trial, matter or proceeding to be had or done by or before it, which cannot more conveniently remain over until the next term; and the court may, if it be deemed advisable, or if the attendance of the judge or judges holding the same is required at any other place or court, adjourn from day to day, or to any day before the first day of the then next term. 12 V. c. 37, s. 35,—20 V. c. 44, s. 32.

Governor may direct an extra-

**79.** The Governor may, at any time and from time to time, by Proclamation, direct an extraordinary term of the said court to

to be held in and for any district, and to commence on the day to be named for that purpose in such proclamation, which shall be issued at least thirty days before such day; and to such extraordinary term all the provisions of this Act and of the law, with regard to the ordinary Criminal terms of the said court, shall apply. 12 V. c. 37, s. 36,—20 V. c. 44, s. 32.

**80.** The Governor may by proclamation from time to time fix the periods at which the terms of the Court of Queen's Bench in the exercise of its original criminal jurisdiction, shall commence in all or any of the districts other than those of Quebec and Montreal, and may alter the same in like manner; but there shall not be less than two such terms in each district in every year; and to such terms and to any extraordinary term which the Governor may think proper to order in any district, the provisions of this Act, and more especially of the two next preceding sections thereof, shall apply. 20 V. c. 44, s. 32.

And fix by Proclamation the periods for holding the terms.

**81.** The terms of the said court on the Crown Side, in the Old Districts, shall continue as fixed immediately before this Act comes into force, until altered by proclamation as aforesaid; and any such term may be closed whenever there is no business before the court or continued by adjournment, until there is no business before it. 20 V. c. 44, s. 33.

Terms as now fixed to continue until altered by Proclamation.

*Of the transmission of records and of matters pending at the time of.*

**82.** Sections *thirty-seven* and *thirty-eight* of the Act twelfth Victoria, chapter thirty-seven, providing for the transmission of records and documents of the former Courts of Queen's Bench for the Districts of Quebec, Montreal, Three Rivers and St. Francis in criminal cases, to the present Court of Queen's Bench in the same Districts, and for the continuance of their pending criminal cases and proceedings, shall continue in force so far as any thing remains to be done under them, and the records and documents so transmitted as shall form part of the records and documents of the present Court of Queen's Bench in the said Districts respectively. 12 V. c. 37, ss. 37, 38.

Certain sections of 12 V. c. 37, to remain in force while any thing has to be done under them.

*Of matters pending in the districts of Kamouraska, Ottawa, Gaspé, at certain periods.*

**83.** Section *thirty-one* of the said Act twelfth Victoria, chapter thirty-seven, providing for the continuance of criminal cases and proceedings in the Districts of Montreal and Quebec, notwithstanding the erection of the Districts of Ottawa and Kamouraska; and sections *one* and *two* of the Act sixteenth Victoria, chapter thirty, providing for the continuance of criminal proceedings in the Settlements of St. Anne des Monts and Cap Chat, notwithstanding their separation from the District of Gaspé,

And certain other sections of 12 V. c. 37, and 16 V. c. 30, to remain in force while any thing remains to be done under them.

Gaspé, shall continue in force so far as any thing remains to be done under them. 12 V. c. 37, s. 31,—16 V. c. 30, ss. 1, 2,—16 V. c. 93.

*Sections of this Act relating to the Crown side of the Court only.*

Section of this Act applying only to Crown side of Q. B.

§4. Sections *sixty-five to eighty-two* of this Act apply to the Court of Queen's Bench in the exercise of its functions as a court of criminal jurisdiction only, or the Crown Side of the said court. 12 V. c. 37, s. 40.

#### SCHEDULE A.

*(Being the Schedule referred to in section fifty-nine.)*

Whereas at the (*describe the Court*) held at \_\_\_\_\_, in the district of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, and the following days, A. B., late of \_\_\_\_\_, having been found guilty of (*felony, or as the case may be,*) and judgment given thereon that (*state the substance of the judgment,*) the court before whom he was tried reserved a certain question of law for the consideration of the Court of Queen's Bench for Lower Canada, on the appeal side thereof, and execution was thereupon respited in the mean time; this is to certify that by the said Court of Queen's Bench, sitting at the city of (*Montreal,*) according to law, it was considered by the said court that the judgment aforesaid should be (*annulled, and an entry made on the record that the said A. B. ought not in the judgment of the said court to have been convicted of the felony aforesaid, or as the case may be,*) and you are hereby required (*forthwith to discharge the said A. B. from your custody, or as the case may be.*)

E. F.,  
Clerk of, &c., (*name of the Court.*)

To the sheriff of \_\_\_\_\_  
and the gaoler of \_\_\_\_\_  
and all others whom it may concern.

C A P. L X X V I I I.

An Act respecting the Superior Court.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

OF THE JUDGES, AND GENERALLY OF THE JURISDICTION AND POWERS OF THE COURT AND JUDGES.

1. There is and shall be in and for Lower Canada, a court of record of civil jurisdiction for Lower Canada, to be called the "Superior Court," which court shall consist of eighteen judges, that is to say, of a chief justice and seventeen puisné judges, to be appointed from time to time by Her Majesty, Her Heirs and Successors, by letters patent, under the great seal of this Province, and such judges, including the chief justice, shall ordinarily exercise their judicial functions in the district or districts or counties which shall from time to time be prescribed and assigned to them by the governor. 12 V. c. 38, s. 3, and 20 V. c. 44, s. 9.

Constitution of the Superior Court.

2. The Superior Court has original civil jurisdiction throughout Lower Canada, with full power and authority to take cognizance of, hear, try and determine in the first instance and in due course of law, all civil pleas, causes and matters whatsoever, as well those in which the Crown may be a party, as all others, excepting those purely of admiralty jurisdiction, which shall be and remain subject to that jurisdiction, and excepting also those over which original jurisdiction is given to the circuit court. 12 V. c. 38, s. 6.

Jurisdiction of the Superior Court defined.

3. The Superior Court shall take cognizance of all suits or actions (those purely of Admiralty jurisdiction excepted,) which are not cognizable in the Circuit Court, or which are evoked or otherwise removed from the Circuit Court, or from any other court or jurisdiction, into the said Superior Court, and of such suits or actions only, unless in any case it be otherwise provided by this law, and excepting always suits, actions or proceedings pending in superior term, in any one of the several Courts of Queen's Bench, immediately before the time when the Act 12 V. c. 38 came fully into effect, and which were by that Act transferred to the Superior Court at the same place. 12 V. c. 38, s. 18.

What suits it shall take cognizance of.

4. Excepting the Court of Queen's Bench, all courts and magistrates, and all other persons, and bodies politic and corporate within Lower Canada, shall be subject to the superintending and reforming power, order and control of the Superior Court and of the judges thereof, in such sort, manner and form as by law provided; And so far as regards any unrepealed provision of any Act in force in Lower Canada at the time the said Act 12 V. c. 38 came fully into effect, the said Superior Court is substituted

All Courts, except that of Q. B. and all magistrates, persons, &c., in L. C. subject to its power and control.

substituted for the Courts of Queen's Bench abolished by the said Act, and such unrepealed provision shall apply to the Superior Court as it theretofore applied to the said Courts of Queen's Bench; and such superintending and reforming power and control are hereby vested in and assigned to the said Superior Court, and the judges thereof. 12 V. c. 38, s. 76.

Court to determine all suits in which *capias ad respondendum* is sued out.

5. The superior court has original cognizance of and shall hear, try and determine, in due course of law, any suit or action in which a writ of *capias ad respondendum* is sued out. 12 V. c. 38, s. 32.

Powers of S. C. as to emancipation of minors, rescission of contracts, &c.

6. The Superior Court has authority to grant emancipation of minors on the counsel of their relations or friends, and to hear and determine all legal matters and causes for the rescission of all contracts and deeds, and to rescind and annul the same, in the same manner as if special letters of emancipation and rescission had been in the first instance obtained, conformable to the usage under the government, prior to the conquest of this country :

Superior Court to have powers and jurisdiction of certain Courts prior to 1759.

2. The said Superior Court has full power and jurisdiction, and is competent to hear and determine all complaints, suits and demands of what nature soever, which might have been heard and determined in the courts of *prévôté, justice royale, intendant*, or Superior Council, under the government of the province, prior to the year one thousand seven hundred and fifty-nine, touching rights, remedies and actions of a civil nature, and which are not specially provided for by the laws and ordinances of Lower Canada, since the said year one thousand seven hundred and fifty-nine; and the said Superior Court is competent to award and grant all such remedy, as may be necessary for effectuating and carrying into execution the judgments thereof, made in the premises aforesaid, and which to law and justice appertain.

But nothing herein to grant S. C. powers of a legislative nature.

3. Nothing in this Act shall extend to grant to the said Superior Court any powers of a legislative nature, possessed by any court prior to the conquest. 34 G. 3, c. 6, s. 8, and 12 V. c. 38, s. 8.

#### OF THE JUDGES.

Appointment and qualification of judges.

7. The chief justice and judges of the Superior Court, when the ninth section of the Act 20 V. c. 44 took effect, remain such by virtue of the commissions they then held; the new judges of the court, and all future judges thereof, are and shall be appointed from among the then circuit judges and the advocates of at least ten years' standing at the bar of Lower Canada 20 V. c. 44, s. 10,—12 V. c. 38, s. 4.

Independence of the judges.

8. The independence of the judges of the said court as respects the Crown, is provided for by chapter eighty-one of these Consolidated Statutes; and no such judge shall sit in the executive

executive council, or in the legislative council, or in the legislative assembly, or hold any other place of profit under the crown, so long as he shall be such judge. 12 V. c. 38, s. 5.

9. Four of the judges of the said courts shall reside in the city of Montreal—three at the city of Quebec—one at the town of Three-Rivers—one at the town of Sherbrooke—one at the village of Aylmer—or in the immediate neighborhood of the said places respectively,—two in the district of Gaspé, and one in the district of Saguenay, at such places as are appointed by the Governor; and the others at such places as the Governor appoints in the district or districts in which they shall, by him be directed from time to time ordinarily to exercise their judicial functions. 20 V. c. 44, s. 11.

Where they shall reside.

10. The salary of the chief justice and the salaries of the puisné judges of the said court appointed before the passing of the Act 20 V. c. 44, shall not be affected by it; but of puisné judges thereafter to be appointed, the salaries shall be as follows:

Their salaries.

Of those who are directed to reside in the districts of Montreal and Quebec, four thousand dollars per annum;

Of those who are directed to reside in the other districts, except those of Gaspé and Saguenay, three thousand two hundred dollars per annum;

Of those who are directed to reside in the districts of Gaspé and Saguenay, two thousand eight hundred dollars per annum;

The allowance to judges for travelling expenses shall be fixed by the Governor in council, as heretofore. 20 V. c. 44, s. 12.

11. Whenever any judge of the Superior Court, by illness, suspension from office, or other cause, is unavoidably prevented from performing his duties as such judge, the Governor may, if he sees fit, appoint, by an instrument under the great seal of the province, some person qualified to be appointed a judge of the said court, to be an assistant judge thereof, either for a time certain, to be limited in such instrument, or during the time the judge first mentioned continues unable to perform his duties, in which last case the appointment of such assistant judge shall determine whenever such first mentioned judge resumes the performance of his duties or another judge is appointed in his place:

In what cases assistant judges may be appointed.

2. And during the time the appointment of any such assistant judge remains in force, he shall have and exercise all the powers and authority, and perform all the duties by law vested in or assigned to a judge of the said Superior Court, as if

Powers and duties of assistant judges.

if he had been appointed a judge thereof, and shall reside at the place named for that purpose in the instrument appointing him. 16 V. c. 13.

All the powers of the Court vested in any one judge thereof.

**12.** All the powers, which by any Act are vested in or may be executed by any judges or *quorum* of the Superior Court in term or out of term, are hereby vested in and shall be exercised by any one judge of the said court, and in term or out of term according as they might without this section have been exercised in term or out of term, by such *quorum*, so that any one judge shall be a *quorum* of the court, and may hear, try and determine all causes and matters whatever cognizable by the court, and exercise all the powers of the court with regard to the same. 20 V. c. 44, s. 37.

The preceding section to apply to cases pending when 20 V. c. 44, came into force.

**13.** The next preceding section shall apply to cases pending when the Act 20 V. c. 44 came into effect, so that any one judge may continue and determine any proceedings commenced by any greater number of judges :

One judge may complete any matter begun by another.

2. Any judge may continue and complete any matter commenced or continued by another, but shall not reverse any decision of another judge, unless he might reverse such decision if it were his own. 20 V. c. 44, s. 38.

One judge may take the place of another in certain cases.

**14.** In all proceedings commenced and carried on in vacation before any one of the judges of the Superior Court, it is and shall be competent, in case of the illness or absence of such judge, for any other judge of the said court to sit in his place, and to exercise the power and authority which would have been exercised by the judge so ill or absent, had he continued to sit. 16 V. c. 194, s. 33.

Judges may sit in the same time and place in separate apartments.

**15.** Any two or more judges of the Superior Court residing in the same district, may, and shall, whenever the despatch of business requires it, sit at the same time and at the same place, but in separate apartments, in term or out of term, and each of them may severally hear and determine all causes and matters, preside at *enquêtes*, and generally may and shall exercise the same powers in all respects as if he alone were sitting at such place. 20 V. c. 44, s. 39.

#### OF THE DISTRICTS, TERMS AND SITTINGS OF THE COURT.

Where the sittings of the Court shall be held.

**16.** Terms and sittings of the Superior Court and of the judges thereof shall be held at the *chef-lieu* in each of the *civil* districts respectively into which Lower Canada is divided ; and all actions, suits or proceedings may be commenced at the place where the terms of the said court are held in any such district. 12 V. c. 38, s. 14.

Times of holding the terms

**17.** The Governor may by proclamation from time to time fix the periods at and during which the terms of the Superior Court

Court shall be holden in all or any of the districts, and may alter the same in the like manner, but not less than three terms of the said court shall be held in each district every year ; except in the district of Gaspé, in which not less than two such terms shall be held :

to be fixed by Proclamation.

2. Provided that the terms of the Superior Court in the present districts shall remain as fixed by law at the coming into force of this Act until they shall be so altered ;

Present terms to remain as fixed by law till so altered.

3. And provided also, that, except in the districts of Gaspé and Saguenay, no term of the said court shall be so fixed as that any part thereof shall be between the ninth day of July and the first day of September, both days exclusive ;

Vacation.

4. And nothing in any Act or proclamation shall prevent the court from closing the term if there be no further business before it, or from continuing it by adjournment until there is no further business before it. 20 V. c. 44, s. 36,—16 V. c. 194, s. 4,—12 V. c. 38, s. 77,—19, 20 V. c. 55, s. 4.

Power to Court to close term when no further business.

18. The Superior Court may, in any district, and on any day or days appointed for the purpose by the court during the then last term at the same place, hold a sitting or sittings out of term, for the purpose of giving judgment in cases theretofore heard and taken *en délibéré*, whatever be the nature of the judgment or of the case in which it is given. 16 V. c. 194, s. 1.

Court may hold sittings out of terms for the purpose of giving judgments.

OF THE ABSENCE, SICKNESS OR RECUSATION OF THE JUDGES, AND OF SUITS TO WHICH THEY ARE PARTIES.

19. If the sole judge in any district is unavoidably absent therefrom, or absent with leave of the Governor, or is, from sickness or otherwise, unable to perform his duties, the chief justice of the Superior Court being informed thereof, shall communicate the information so received by him, to the puisné judges resident in the district of Quebec or of Montreal, and one of the said judges (including the chief justice) resident in the said districts, according to any arrangement they have made among themselves, shall supply the place of such sole judge, and perform his duties ; and in any case of urgent necessity, an assistant judge of the said court may be appointed under the section *eleven* providing for such appointment. 20 V. c. 44, s. 40.

Provision in case of the absence, &c., of any judge.

20. If the sole judge resident in any district, or assigned to hold the Superior Court in any district, is a party to any suit brought therein, or is liable to be recused therein, the same may be brought in any adjoining district, upon allegation of the fact, the proof of which, if disputed, shall lie upon the party alleging it ; and if any such judge be recused during the course of any suit or proceeding, it shall be forthwith removed

If any judge be recused, &c., suit may be brought in the adjoining district.

removed to that one of the adjoining districts which the judge shall appoint to the court in which the record shall be forthwith transmitted by the prothonotary :

If recusation be disputed.

2. And if in either case the recusation is undisputed or maintained, the suit or proceeding shall be determined in such adjoining district, and if the recusation be disputed, it shall be tried summarily by the judge of such adjoining district, and if set aside, the record shall be sent to the district in which the suit or proceeding was or ought to have been brought, and it shall be determined there. 20 V. c. 44, s. 41.

#### OF THE PROTHONOTARIES, SHERIFFS AND OTHER OFFICERS.

Duties and liabilities of Prothonotaries, Sheriffs, &c.

21. Each sheriff or prothonotary shall be the officer of the Superior Court generally, and not merely of the judges sitting or acting in his district, and shall accordingly obey the lawful orders of the said court and of the judges thereof, in whatever district such orders are made, provided any thing be required to be done under it by such sheriff or prothonotary in his district :

Prothonotary may appoint a deputy.

Any prothonotary of the Superior Court may from time to time appoint by an instrument under his hand and seal, a deputy who shall have power to perform all the duties of the office in case of the absence or sickness of such prothonotary, and such instrument shall be entered at full length in the register of the court. 12 V. c. 38, s. 12.

If Sheriff be also Coroner, and is disqualified from acting officially, the Prothonotary to act in the matter.

22. If the sheriff in any district is also the coroner for the same, as he may be by virtue of this Act; then if such sheriff be interested or otherwise disqualified from acting officially in any matter, either as sheriff or as coroner, the prothonotary of the Superior Court for the district, or his deputy, shall act in such matter in the place and stead of such sheriff, and as if the process or order (if any) had been addressed to him or he had been directed by the proper authority so to act. 20 V. c. 44, s. 135.

#### OF THE EXERCISE OF CERTAIN JUDICIAL FUNCTIONS OUT OF COURT, BY THE JUDGES AND PROTHONOTARIES OR PRESIDENTS OF THE QUARTER SESSIONS.

Provision as to matters requiring despatch.

23. Any judge of the Superior Court, at any place where the said Court or the Circuit Court might then be held, shall in court or out of court, in term or out of term, or in vacation, and any prothonotary of the Superior Court at the place where his office is therein held, shall out of court, but in term or out of term, have and may exercise within and for the district in which such place as aforesaid lies, the same power and authority as is then vested in the Superior Court and the judges thereof, in what respects the probate of wills, the election and appointment of tutors and curators as well under the general law

law as under chapter of these Consolidated Statutes relating to Insolvent Debtors (12 V. c. 42), or any other Act, the taking of the counsel and opinion of relations and friends in cases where the same are by law required to be taken; the closing of inventories, attestation of accounts, *insinuations*; affixing and taking off seals of safe custody, the emancipation of minors, the homologation or refusal to homologate proceedings had at any *avis de parents* called or held by or before any notary, and other acts of the same nature requiring despatch; and the proceedings in all such cases shall form part of the records of the Superior Court at the place where they are had, or of the Circuit Court at such place, if the Superior Court be not held there :

Of what Court proceedings under this section are to be records.

2. But the appointments and orders by any prothonotary under this section or made under the same by any judge out of court, shall be liable to be set aside by any judge of the said court, sitting in the same district in court and in term, in like manner and under the provisions of law in and under which other appointments and orders made by one or more judges out of court in matters requiring despatch may be set aside by the Superior Court. 12 V. c. 38,—20 V. c. 44, s. 91.

Appointments made out of Court may be set aside in Court.

24. Whenever the judge residing in any district other than the districts of Quebec and Montreal, is absent from the place where the Superior Court is held, or unable from illness to perform his duties, the president of the general or quarter sessions of the peace, or if there be no such officer in the district, the prothonotary of the Superior Court, shall perform all the duties which the resident judge can by law perform out of term. 19, 20 V. c. 55, s. 3.

In certain cases Prothonotary to perform the duties of resident judge out of term.

25. In the absence of any judge of the Superior Court at the *chef-lieu* of any district in vacation, the prothonotary of the said court in and for such district may, in cases of evident necessity, and when by delay in the performance or exercise thereof, a right might otherwise be lost or a wrong sustained, perform and exercise at such *chef-lieu* any ministerial or judicial act or function which any judge of the said court might perform or exercise in vacation :

Prothonotary may act for judge in cases not admitting delay.

2. But any order or judgment made or rendered by any prothonotary under this section, shall be subject to revision by the court, at its next sitting in such district, or by any judge of the court present at the *chef-lieu* before such sitting, provided the party requiring such revision do, on or before the third juridical day after the making or rendering of such order or judgment, file with the prothonotary an exception thereto stating the grounds on which it is founded; and the execution of such order or judgment shall in all cases be suspended until the time for filing such exception has expired, and if an exception be filed, the suspension shall continue until the decision of the judge after such revision as aforesaid. 22 V. c. 5, s. 41.

But his orders to be subject to revision—in what manner.

OF THE TRANSMISSION OF RECORDS AND MATTERS PENDING ON  
THE REPEAL OF FORMER ACTS.

Certain sections of 12 V. c. 38, to remain in force as far as any thing remains to be done under them.

**26.** The *thirty-eighth* and *thirty-ninth* sections of the Act 12 V. c. 38, providing for the transmission of the records and muniments of the former Courts of Queen's Bench to the Superior Court at the same place, (except such as were directed to be transmitted to the Circuit Court,) for continuance of pending suits and proceedings, shall remain in force so far as any thing remains to be done under them, and the said records and muniments shall be records and muniments of the Superior Court to which they were at the places so transmitted. 12 V. c. 38, ss. 38, 39.

C A P . L X X I X .

An Act respecting the Circuit Court.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

GENERAL POWERS AND JURISDICTION OF THE COURT AND JUDGES.

1. A Court of Record, to be called the Circuit Court, and having jurisdiction throughout Lower Canada, shall continue to be holden every year in each of the Circuits in Lower Canada, hereinafter mentioned, by one of the judges of the Superior Court. 12 V. c. 38, s. 42.

Circuit Court to be holden in each Circuit in Lower Canada.

2. The Circuit Court shall have cognizance of, and shall hear, try and determine all civil suits or actions, as well those where the Crown may be a party as others (those purely of Admiralty jurisdiction excepted) wherein the sum of money or the value of the thing demanded does not exceed two hundred dollars, and wherein no writ of *capias ad respondendum* is sued out :

Jurisdiction of the Circuit Court.

2. And if the said sum or value is under one hundred dollars, the suit or action shall be heard, tried and determined in a summary manner ;

Suits under \$100 to be decided summarily.

3. And if the said sum or value does not exceed twenty-five dollars, then the said suit or action shall be determined according to equity and good conscience. 12 V. c. 38, s. 47.

If under \$25 to be determined according to equity.

3. All powers vested in the Superior Court or in the judges or officers of such court, respectively, in any suit or action pending in the said court, with regard to the summoning of defendants *en garantie*—the admission of parties to intervene—the summoning of witnesses and the adduction of evidence—the production of papers and other things in the possession of any witness or party—the examination of any witness or party, and the oaths to be deferred, referred or required of them—the issuing of any *commission rogatoire* or commission in the nature of a *commission rogatoire*—the examination of any witness sick or about to leave Lower Canada—the enforcing of the attendance of witnesses duly summoned, and the punishment of such as shall disobey any writ of *subpœna*—the imprisonment (*contrainte par corps*) of any defendant or party resisting or fraudulently endeavouring to evade the execution of any writ against his goods or chattels—or with regard to other matters relative to or connected with the conduct of such suit or action, and the proceedings therein, shall be and all such powers are hereby vested in the Circuit Court, and the judges by whom the same is to be held, and in the officers of the said court, respectively, and may be exercised by them (in so far as such powers and the provisions of law thereunto relating are not repugnant to or inconsistent with the provisions of this

Certain powers of the Superior Court vested in the Circuit Court.

Act,) as fully and effectually, and under the same provisions and conditions of law, as if the several Acts conferring the said powers were herein recited and re-enacted, and in such manner as shall be most conformable to and consistent with the other enactments of this Act: 12 V. c. 38, s. 64.

Circuit Court to have concurrent jurisdiction with S. C. as to the issuing of writs of *certiorari*.

2. The Circuit Court has concurrent jurisdiction with the Superior Court for the issuing of writs of *certiorari* relative to proceedings had before justices of the peace, or before commissioners for the summary trial of small causes within the limits of the circuit in which such Circuit Court is held; and the said justices of the peace and commissioners shall be subject to the supervision and to the orders and control of the Circuit Court and of the judges thereof, both in term and in vacation, in the same manner as the said Superior Court and of the judges thereof. 18 V. c. 104, s. 9.

*Of the powers of the courts, judges, clerks, with respect to the issuing of certain writs before or after judgment, and by whom these writs are to be executed.*

Circuit Court empowered to issue certain writs.

4. The Circuit Court may in causes and matters cognizable therein, issue writs of *saisie-arrêt* before or after judgment, *saisie-gagerie*, and *saisie-revendication*, to be made returnable in the said court, in the same and in like cases and circumstances in which such writs may lawfully be issued from and be made returnable in the Superior Court, and under and subject to the rules of law in such cases provided, unless in any case it is otherwise expressly provided by any Act:

Clerks of C. C. may receive the necessary oath or affidavit.

2. In all cases where such writs are issued out of the said Circuit Court, the clerks of the said court respectively, may take and receive the necessary oath, affidavit or proof, in such cases by law required, and thereupon may issue, without the *fiat* of a judge, any of the above mentioned writs, in like manner as if the same had been granted or awarded by a judge of the proper court;

This section not to affect powers of judges of S. C.

3. But nothing herein contained shall prevent any judge of the Superior Court, from granting or awarding any such writ as aforesaid, in cases where he could otherwise do so according to law. 12 V. c. 38, s. 63, *part*.

OF THE CIRCUITS, AND OF THE PLACES AT WHICH THE COURT IS TO BE HELD.

*Of the Circuits.*

A Circuit Court to be held in each district to have jurisdiction over the whole district.

5. The Circuit Court shall be held in each district at the place where the Superior Court is held therein, and being so held shall be known as the Circuit Court for the district of (*naming the district*), and its jurisdiction shall extend over the whole of such district, but concurrently with the Circuit Court (if

(if any) to be held as hereinafter provided in and for any county in such district, in so far as regards such county. 20 V. c. 44, s. 13.

6. The Circuit Court may be held in and for any county other than that in which the Superior Court is held for the district in which such county lies (except the counties hereinafter mentioned), so soon as the municipality of such county has provided proper accommodation for the court and the officers thereof, and made permanent provision for the maintenance of such accommodation, and when the Governor, being satisfied thereof, has, by Proclamation, directed the Circuit Court to be held in and for such county:

Circuit Court may also be held in any county in which the S. C. is not held.

2. Provided, always, that the Circuit Court shall not be held under this section in any of the counties of Hochelaga, Jacques Cartier, Laval, St. Maurice, Quebec, or Wolfe. 20 V. c. 44, s. 45.

Exception.

7. The Governor may, by the same Proclamation or by several Proclamations, direct the Circuit Court to be held at more than one place in and for any of the counties of Richmond, Stanstead, Wolfe, Missisquoi, Rimouski, Ottawa, Pontiac, Gaspé, Bonaventure, Beauce, Chicoutimi, Saguenay or Charlevoix, on being satisfied that proper accommodation has been provided for the court and its officers at each of such places, and permanent provision made for their maintenance:

Circuit may be held at more than one place in certain counties.

2. Provided that in any of the said counties in which the *Chef-lieu* of the district is situate, the place or places at which the Circuit Court is held for the county under any such Proclamation or Proclamations, shall be in addition to such *Chef-lieu*, at which the Circuit Court shall always be held for the district. 22 V. c. 5, s. 73.

Proviso.

8. The place or places at which the Circuit Court may be appointed by Proclamation to be held in any county other than one of those in which the Superior Court is held, shall be such as having been selected for the purpose by the municipal council of such county and approved by the Governor in council, shall be fixed by Proclamation of the Governor. 20 V. c. 44, s. 47.

Municipal Council to fix the place at which C. C. is to be held in any county.

9. The Circuit Court held in and for any county shall be designated as "The Circuit Court in and for the county of \_\_\_\_\_," (*naming the county*): and if there be more than one place where the said court is held in the county, the words "at \_\_\_\_\_" (*naming the place of sitting*) shall be added to such designation. 20 V. c. 44, s. 50.

Designation of C. C. held in any county.

10. Provided always, that the Circuit Court shall continue to be held at each and every place where it is held when *this Act*

C. C. to continue to be held

as at present,  
until it is other-  
wise directed by  
Proclamation.

*Act* comes into force, until it is otherwise directed by the Governor by Proclamation, although such place be not the *chef-lieu* of the district in which it lies, unless such place be in one of the said counties of Hochelaga, Jacques Cartier, Laval, St. Maurice, Quebec or Wolfe, or in a county in which the *chef-lieu* of the district is situate and which is not one of those wherein, under the *seventh* section, the Circuit Court may be held at more than one place :

C. C. held under  
this section to  
be deemed to  
be for the  
county in  
which it is held.

2. The Circuit Court held at any place under this section, shall be deemed to be held in and for the county in which the place in which it is held lies, as if such place had been appointed by Proclamation under either of the *sixth*, *seventh* or *eighth* sections ;

C. C. hereafter  
to be held at  
*chef-lieu*.

3. But the Circuit Court shall not, after this section shall come into force, be held at any place other than the *chef-lieu* of a district, except in the cases provided for by this and the three last mentioned sections. 20 V. c. 44, s. 48.

Local jurisdiction  
of C. C.

11. So far as regards the local jurisdiction of the Circuit Court in and for any district or county, such district or county shall be deemed to be a circuit within the meaning of this Act ; and when the Circuit Court is held at two or more places in one county, then the said court sitting at each such place shall have concurrent jurisdiction over the whole county. 20 V. c. 44, s. 49.

Governor may  
change the  
place of hold-  
ing the C. C. in  
any county.

12. The Governor may, at any time, by proclamation, change the place or any of the places at which the Circuit Court is held in any county (such place not being the *chef-lieu* of the district), or direct that the said court shall cease to be held in any county, or at any place in any county, after a day named for the purpose in such proclamation, whenever he deems such change necessary for the convenience of the people of the county, or deems it right to discontinue the sitting of the said court at any place, for want of proper accommodation for holding it there. 20 V. c. 44, s. 51.

In such case  
the records,  
&c., to be  
transmitted.

13. Whenever, under any provision of this Act, the Circuit Court ceases to be held at any place, the records, registers, muniments, and judicial and other proceedings in the said court at such place, shall be transmitted to and make part of the records, registers, muniments, and judicial and other proceedings in the Circuit Court at that place where the Superior Court is held for the district including the place where the Circuit Court so ceases to be held :

Judgments,  
&c., not affect-  
ed by such  
change.

2. No judgment, order, rule or act of the Circuit Court at such place, legally pronounced, given, had or done, shall be avoided by the court ceasing to be held at such place or by such transmission, but shall remain in full force and virtue ; nor shall any

any action, information, suit, cause or proceeding be thereby abated, discontinued or annulled, but the same shall be transferred, in their then present condition, respectively, to and shall subsist and depend in the Circuit Court at the place to which the records therein are so to be transmitted, and as if they had there been respectively brought or recorded, and other and further proceedings shall be therein had to judgment and execution, or subsequent thereto, as they might have been at the place where the Circuit Court ceases to be held; and any person who has been therein ordered to appear or do any other thing at any time at such place, shall appear or do such thing at the same time at the place to which such records are to be transmitted, and under the like penalties in case of default, unless the judge in any case substitutes another time, as he is hereby empowered to do. 20 V. c. 44, s. 71.

Actions, &c., to be transferred.

OF THE JUDGES AND OF THE TERMS AND SITTINGS OF THE COURT.

14. The Circuit Court shall be held by the judges of the Superior Court, each of whom shall have all the powers and duties vested in or assigned to any judge *in and with respect to the Circuit Court.* 20 V. c. 44, s. 13.

C. C. to be held by judges of S. C.

15. Any two or more of the said judges resident in the same district, may, and shall whenever the despatch of business before court requires it, sit and hold the court, at the same place, but in separate apartments, as provided with respect to the Superior Court, and one judge may continue any proceeding commenced or continued by another, as in the Superior Court, and subject to the same provisions. 20 V. c. 44, s. 54.

Two judges may sit at the same time and place in separate apartments.

16. Whenever a judge of the Superior Court of Lower Canada is unable, from sickness or other cause, personally to render judgment in any case taken by him *en délibéré* in the Circuit Court, he shall transmit such judgment to the clerk of the Circuit Court of the circuit in which the case is pending, and the said clerk shall, on receipt thereof, record the said judgment, and shall on the next day of term read the same in open court; and every such judgment shall have the same force as if pronounced in open court by the judge himself on the day on which it has been read. 19, 20 V. c. 55, s. 1.

In case the judge be unable to render any judgment.

17. The Governor may, by proclamation, from time to time, fix the number of terms of the Circuit Court to be held in and for all or any districts or counties, (and at each place in any county wherein there is more than one place for holding it,) the times at which such terms shall be held, and the number of days to be included in each of them; and may in like manner, from time to time, alter the same, so as not less than three terms shall be appointed to be held in and for each district and county in every year, except in the counties of Gaspé and Bonaventure, in which not less than two terms shall be held in such year:

Number of and times of holding the terms to be fixed by Proclamation.

Terms to continue as now held till altered by Proclamation.

2. But the terms of the Circuit Court at the places where it is held when this Act takes effect, and at which it may continue to be held under this Act, shall be held at the times then fixed by law until they are respectively altered by proclamation. 20 V. c. 44, s. 52,—12 V. c. 38, s. 77,—16 V. c. 194, s. 4,—19, 20 V. c. 55, s. 4.

Judge may at any time close or continue the term.

18. Nothing in the next preceding section, or in any proclamation under it, shall prevent the judge from closing the sittings in any term whenever there is no business before the court, or from continuing any term by adjournment until there is no more business before it, as *by law* provided; and no term shall be so fixed as that any part of it is between the ninth day of July and the first day of September, both days exclusive,—except in the districts of Gaspé and Saguenay. 20 V. c. 44, s. 53.

OF THE RECUSATION OF THE JUDGES, AND OF SUITS TO WHICH THEY ARE PARTIES.

If judge be a party, suit to be brought at *chef-lieu* of adjoining district.

19. If the sole judge resident in any district, be a party to any suit brought in the Circuit Court in such district, or be liable to be recused in such suit, the same may be brought in the Circuit Court at the *chef-lieu* of any adjoining district, upon allegation of the fact, the proof of which, if disputed, shall lie upon the party alleging it :

If judge be recused, proceedings to be taken.

2. If the judge be recused in the course of any suit or proceeding, he shall immediately cause an entry of such recusation to be made on the record, and shall thereupon order that the record in such suit or action be removed without delay to the Circuit Court at the *chef-lieu* of that one of the adjoining districts which he may appoint, and the clerk shall make an entry in the register of the court, and thereupon he shall forthwith certify, under his hand and the seal of the court, and transmit the record to the Circuit Court in such *chef-lieu* ;

If recusation be maintained ;

3. If in either case the recusation be undisputed or maintained, proceedings shall thereupon be had to trial, judgment and execution, at the said *chef-lieu*, the record shall be filed among the archives of the court at the said *chef-lieu*, and there shall continue to remain even after judgment ; and if the recusation be disputed, it shall be summarily tried by the judge holding the Circuit Court there, and if set aside the record shall be sent to the Circuit Court at the place where the suit or proceeding was or ought to have been brought, and it shall be determined there. 20 V. c. 44, s. 56,—12 V. c. 38, s. 65.

Or disputed.

OF CLERKS, AND THEIR SECURITIES AND DEPUTIES, AND OF THE COMMISSIONERS FOR AFFIDAVITS.

**20.** Clerks of the Circuit Court shall be appointed by the Governor for the several districts, respectively; and from time to time and as vacancies occur, by death, resignation, removal from office or otherwise, others may be appointed to fill the same : Appointment of clerks ;

2. Every clerk of the Circuit Court may, by an instrument under his hand and seal, appoint a deputy, who shall act as such only in the case of the absence or sickness of such clerk, and such instrument shall be entered at full length in the register of the court; but the clerk may at all times remove such deputy and appoint another in his place. 12 V. c. 38, s. 75. And their deputies.

**21.** The governor may appoint as clerk of the Circuit Court in and for any of the counties of Pontiac, Argenteuil, Soulanges, Huntingdon and Ottawa, the person holding the office of circuit clerk of the district in which such county is included, and such circuit clerk so appointed for a *district and county* may appoint a deputy for each of them. 19, 20 V. c. 55, s. 8. In certain counties the clerks may act both for district and county.

**22.** There shall be the same officers connected with the administration of justice in the county circuits as in the districts, and proper persons may in like manner be appointed to fill such offices; and where there are more than one place where the Circuit Court is held in any county, a clerk may be appointed at each; and all the provisions of law touching such offices respectively, as well with regard to the security to be given by the persons holding the same, or the appointment of deputies, as with regard to other matters, shall extend to the like officers in the *New Districts* and in the county circuits, subject always to the provisions of this Act. 20 V. c. 44, s. 94. Officers in the county circuits.

**23.** The security to be given by any such officers as aforesaid, appointed in any of the *New Districts*, shall not be higher than that given by persons holding like offices in the districts of Kamouraska and Ottawa. 20 V. c. 44, s. 95. Securities to be given by them.

**24.** Any notary may lawfully act as clerk of the Circuit Court at any place in Lower Canada. 8 V. c. 33, s. 1. Notaries may be clerks.

**25.** Any notary who, before the passing of the Act, 8 V. c. 33, acted as clerk of any Circuit Court or Commissioners' Court in Lower Canada, shall be indemnified and held harmless for having so done, and all acts done by him in either capacity shall be good and valid. 8 V. c. 33, s. 2. Acts by notaries as such heretofore declared valid.

**26.** No commissioners for receiving affidavits shall be appointed by the Circuit Court, but the commissioners for receiving Commissioners for taking affidavits.

davits in S. C. receiving affidavits in the Superior Court, shall, in the districts  
 to act for C. C. for which they have been respectively appointed, be commis-  
 sioners for receiving affidavits to be used in the Circuit Court,  
 without any other appointment. 12 V. c. 38, s. 102.

OF THE ELECTION OF DOMICILE BY ATTORNEYS.

Attorneys to  
 elect a domicile  
 within a mile of  
 the place at  
 which the  
 Court is held.

**27.** Each attorney practising in the Circuit Court in any circuit, shall file in the office of the clerk of the court for such circuit, his election of a domicile within one mile of the place where the court is held in such circuit, or in default of his so doing, any notice, pleading or other paper in any case before the court in such circuit, shall be well served upon him if left for him at the office of the clerk of the court for such circuit. 12 V. c. 38, s. 101.

## C A P . L X X X .

## An Act respecting the Superior and Circuit Courts in the District of Gaspé.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

## SUPERIOR COURT.

*Of the jurisdiction and powers of the Court and Judges, in civil and criminal matters, and of the Clerks of the Crown.*

1. The Superior Court and the judges thereof shall, in the district of Gaspé, have and exercise not only the jurisdiction, powers and authority of the Superior Court and of the judges thereof in other districts, but also, and subject to the like provisions of law in the exercise thereof, the jurisdiction, powers and authority of the Court of Queen's Bench, and of the judges thereof, in criminal matters or on the "Crown side" of the said court :
 

Jurisdiction of judges of S. C.
2. The joint prothonotaries of the Superior Court in the said district shall be the joint clerks of the Crown for the same, and shall as such be the clerks as well of the Superior Court in the exercise of its jurisdiction, powers and authority last aforesaid, as of the said Court of Queen's Bench on the Crown side thereof, whenever any extraordinary term of the said last mentioned court is holden in the said district ;
 

Prothonotaries to be also clerks of the Crown.
3. The provisions of the Acts twelfth Victoria, chapters thirty-seven and forty, relative to the continuance in the Superior Court in the district of Gaspé, of proceedings of a criminal nature pending in any of the then Courts of Queen's Bench, when the said Acts came into effect, and to the return of process in such cases into the Superior Court, in the said district, shall continue in force so far as any thing remains to be done under them. 12 V. c. 40, s. 3.
 

Provisions relating to matters pending when 12 V. cc. 37 and 40, came into force.

2. Except in those cases in which it is otherwise expressly provided by these Consolidated Statutes, or where it is inconsistent with the express enactments thereof, the Superior Court and the judges and officers thereof, shall have like jurisdiction, powers and authority and duties in the said district of Gaspé, with the said court and the judges and officers thereof respectively, in the other districts of Lower Canada, and shall, as shall also the attorneys practising therein, be bound by the same rules and provisions of law ;—and in all suits or actions to be brought in or removed into the said court in the said district of Gaspé, an appeal shall lie from the judgments of the said court, to the Court of Queen's Bench for Lower Canada, in like cases and under and subject to the same provisions of law in and under which an appeal would lie from the judgments of the Superior Court in the other districts of Lower Canada, in suits or actions brought

Jurisdiction of the S. C. in Gaspé.

brought in or removed into such last mentioned court. 7 V. c. 17, s. 15,—12 V. c. 40, ss. 1, 4.

S. C. may have criminal jurisdiction.

**3.** The Superior Court for the district of Gaspé may, at any term thereof, take cognizance of all crimes and criminal offences cognizable by the Court of Queen's Bench in the exercise of its jurisdiction in criminal matters in the other districts of Lower Canada, and of all suits or actions of a civil nature, or where the crown is a party, cognizable by the Superior Court in the other districts in Lower Canada, giving precedence to any cases of a criminal nature on the days (if any) appointed for hearing, trying or disposing of such cases. 7 V. c. 17, s. 16,—12 V. c. 38, s. 16—12 V. c. 40, s. 3.

Terms.

**4.** The terms of the Superior Court in the district of Gaspé shall continue to be held at the times and places fixed at the time of the coming into force of these Consolidated Statutes, until otherwise ordered by proclamation. 20 V. c. 44, s. 122.

Terms of S. C. may be held by one judge.

**5.** The terms and sittings of the Superior Court shall be held in the district of Gaspé by one judge of the said court who may hear, try and determine all causes and matters cognizable by the said court, and exercise all the powers of the court with regard to the same, and all the powers which are vested in or may be executed by any judge or a quorum of the Superior Court in term or out of term, are vested in any one judge of the said court, in the district of Gaspé, and shall be by him exercised in term or out of term. 20 V. c. 44, ss. 37, 120.

His powers.

*Of the Prothonotaries and Clerks of the Crown, of their residence and office hours;—of the Registers and Plumitifs of the Sheriff and his security.*

Appointment of joint clerks of the Crown and prothonotaries.

**6.** For the convenience of the inhabitants of the district of Gaspé, the Governor may appoint, during pleasure, two fit and proper persons of competent ability and experience in the practice of the courts of civil and criminal jurisdiction in Lower Canada, to be joint clerks of the crown and prothonotaries of the said Superior Court in the said district of Gaspé, one of whom shall reside at Percé aforesaid, and shall keep his office open at the court house thereat from ten in the forenoon, until three in the afternoon, daily, throughout the year, (Sundays and holidays always excepted,) and the other shall reside at New Carlisle and shall in like manner keep his office open at the court house thereat, daily, throughout the year (with the exceptions aforesaid) during the hours above mentioned :

Their office hours.

**2.** Provided that the said court may, when and so often as the judges thereof see fit, alter the said office hours and fix in their stead such others as in their discretion they deem expedient, having always a due regard to the public convenience. 7 V. c. 17, s. 20.

7. The said joint prothonotaries shall keep registers and *plumitifs* of all proceedings before the said Superior Court in civil cases in like manner and form as those kept by the prothonotaries of the said court in the district of Quebec;—and it shall not be necessary that the said registers and *plumitifs* should be kept in duplicate in the district of Gaspé, but the Superior Court shall have its separate registers and *plumitifs* in and for each county. 7 V. c. 17, s. 22,—20 V. c. 44, s. 123.

Prothonotaries to keep registers, &c.

8. The governor may appoint a fit and proper person of competent ability and integrity to be sheriff of the said district of Gaspé, who shall, before entering upon the duties of his office, give security in the manner by law provided with regard to other sheriffs in Lower Canada, to the amount of six thousand dollars. 7 V. c. 17 s. 26.

Appointment of sheriff.

*Of the place of imprisonment of Offenders and of the summoning of Jurors for Criminal cases.*

9. Whenever any offence is committed in the district of Gaspé, the offender, if committed to gaol before trial, may be committed to the common gaol of the county in which the offence was committed, or may in law be deemed to have been committed, and if tried before the Superior Court, he shall be so tried at the sitting of such court held in the county to the gaol of which he has been committed, and if imprisoned in the common gaol after trial he shall be so imprisoned in the common gaol of the county in which he has been tried. 7 V. c. 17, s. 17,—22 V. c. 5, s. 68.

Where offenders shall be committed for trial, and where they shall be tried.

10. If during the sitting of the said court at either of the places aforesaid, there are any criminal matters requiring despatch, the Superior Court may fix such day or days in the course of the sitting thereof as may best suit the public convenience for the hearing, trial and disposal of criminal matters, and may issue the necessary precept addressed to the sheriff for summoning grand and petty jurors; but without any special order of the court, no precept shall issue for summoning jurors to attend any criminal sitting of the said court; and in case of the issuing of any such precept, the sheriff of the district of Gaspé shall cause such precept to be executed with all possible despatch, and with as little expense as possible, to the Province for mileage or other incidental charges arising therefrom. 7 V. c. 17, s. 18,—12 V. c. 40, s. 4,—16 V. c. 197, s. 4.

Court to fix days for disposal of criminal matters.

*Witnesses cannot be summoned from one County to another except in certain cases.*

11. In civil cases no person residing in the county of Gaspé is liable to be summoned thence as a witness before the said Superior Court when sitting in the county of Bonaventure nor *vice-versâ* is any person residing in the county of Bonaventure liable

In what cases witnesses may be summoned from one county to the other.

liable to be summoned before the said court when sitting in the county of Gaspé :

2. But nothing in this section shall exonerate any person being a non-resident in the county in which the said court is sitting or to sit, from appearing and giving evidence as a witness before the said court, if duly served with a subpoena or order of the court to that effect, within such county, during the sitting of the court or within three days next before such sitting ;

3. And any person may be summoned to appear as a witness under the provisions of chapter seventy-nine of the Consolidated Statutes of Canada, and subject to the conditions therein contained. 7 V. c. 17, s. 19,— 8 V. c. 9.

*Of the places at which sales of immoveables par décret shall be held.*

Sales by *décret*  
to be made  
where property  
to be sold is  
situate:

**12.** All sales of real or immoveable property of whatsoever description, to be made in the district of Gaspé by the sheriff thereof, under any judgment, writ of execution, or order of court, shall be made in the township, settlement or place where the property for sale is situate, and on the spot if practicable, or otherwise at the most public place nearest thereto, in the township, settlement or place within which the property for sale is situate, and of which most public place, the sheriff shall give particular notice in his official publication of the sale, in addition to the other notices which by law he is bound to give in such publication. 7 V. c. 17, s. 27.

*Of the places at which records shall be kept, in actions real, personal and mixed.*

Where records,  
&c., shall be  
kept.

**13.** The records and papers in all suits or actions, real, personal or mixed, before the Superior Court in the district of Gaspé, in which the cause of action arose in the county of Gaspé, shall be kept in the office of the joint Prothonotary of the court at Percé,---and the records and papers in all such suits or actions in which the cause of action arose in the county of Bonaventure, shall be kept in the office of the joint Prothonotary of the said court at New Carlisle :

Where cause of  
action has not  
arisen within  
the district.

2. And in cases where the cause of action has not arisen within the district of Gaspé, the records and papers shall be kept in the office of the Prothonotary in the county (of Gaspé or Bonaventure, as the case may be,) wherein the defendant resides, and if he be a non-resident in the said district, then in the office from which the first writ or process in such suit or action issued ;

Proviso.

3. Provided that in all cases, any records, or papers, or documents, filed in the said court, may be kept in, or removed to

to either of the said offices in or into which the judges of the said court direct them to be kept or removed. 7 V. c. 17, s. 21.

*Of the transmission of records or papers, relating to real property, and of actions and proceedings pending in the Provincial Court or at Quebec, on the coming into force of the Act 7 V. c. 17.*

**14.** All records or papers relating to or affecting any real or immovable property situate in the said county of Gaspé, which, when the Act 7 V. c. 17 came into force, were filed and of record at New Carlisle, in the office of the clerk or Prothonotary thereof of the Provincial court abolished by the said Act, and which were forthwith, after the coming into force of the said Act, transferred to the office of the joint Prothonotary of the said Superior Court at Percé, shall be there kept and remain as part of the records and remembrances of the said office ; except always the registers in the said office at New Carlisle, known as "the registers of Gaspé land claims," which shall be kept and remain in the office of the joint Prothonotary of the said Superior Court, to be kept at New Carlisle

Transmission of papers relating to real property.

2. The transcript or copy of all the entries and writings in the said registers, made by the said joint Prothonotaries and certified as such, shall be deemed authentic, and having been transferred to the office of the said joint Prothonotaries at Percé, shall be there kept and remain as part of the records and remembrances of the said office at Percé, to the end that all whom it may concern may have free access thereto at all times without being subject to any fee or charge therefor, and a copy or copies certified by the said joint Prothonotaries, (and for which they shall be entitled to receive at the rate of ten cents per hundred words, and no more,) of any claim, adjudication, or entry in writing, in either of the said registers shall be deemed authentic, and as such shall be taken and admitted in all courts of law in Lower Canada. 7 V. c. 17, s. 23.

Copies of entries in registers to be deemed authentic.

**15.** The registers, records, documents and proceedings of and in the Provincial Court, abolished by the act 7 V. c. 17, in matters cognizable by the said Superior Court, and which were, after the commencement of the said Act, transmitted into the said last named court, shall make part of the records, registers, documents and proceedings thereof, kept at the office of the joint Prothonotaries thereof, in the county in which they were immediately before the commencement of the said Act ; subject always to be removed on the order of the judges of the said court. 7 V. c. 17, s. 24.

Transmission of records of the late Provincial Court

**16.** Sections twenty-five and twenty-eighth of the said Act 7 V. c. 17, providing for the continuance of cases pending in the Provincial Court or in the Court of Queen's Bench at Quebec, at the time when the said Act came into effect, shall continue

Certain sections of 7 V. c. 17, remain in force.

continue in force, so far as any thing remains to be done under them. 7 V. c. 17, ss. 25, 28.

CIRCUIT COURT.

*Generally, of the jurisdiction, powers and duties of the court, the judges and other officers—of evocation and appeal.*

Jurisdiction of  
Circuit Court.

**17.** Except in those cases in which it is otherwise provided by these Consolidated Statutes, or where it is inconsistent with the enactments thereof, the Circuit Court in the district of Gaspé, the judges holding the same and the officers thereof, shall have like jurisdiction, power, authority and duties in the said district, with the Circuit Court and the judges holding it and the officers thereof respectively, in the other districts of Lower Canada, and shall, as shall also the attorneys practising therein, be bound by the same rules and provisions of law :

Suits therein  
may evoked to  
S. C.

2. Suits and actions brought in the Circuit Court in the district of Gaspé, may be evoked to the Superior Court in the said district, and an appeal shall lie in the said suits and actions to the Court of Queen's Bench for Lower Canada, in like cases and in the same manner and subject to the same provisions of law, in and under which suits and actions may be evoked or appeals lie from the Circuit Court in any other district in Lower Canada to the Superior Court or to the Court of Queen's Bench, as the case may be. 8 V. c. 32, s. 2,—12 V. c. 38, s. 42,—12 V. c. 40, ss. 1, 4,—20 V. c. 44, s. 125.

*Of the Circuits, Terms and Sitzings of the Court,—of the recusation of the Judges and of suits to which they are parties.*

Terms of Cir-  
cuit Court.

**18.** The terms of the Circuit Court, in the district of Gaspé, shall continue to be held at the places and times at which it was held when these Consolidated Statutes took effect, until otherwise ordered by proclamation of the Governor. 20 V. c. 44, s. 122.

By whom it  
shall be holden.

**19.** The Circuit Court shall be ordinarily holden in the district of Gaspé by one of the judges of the Superior Court residing there ; and the said court shall be ordinarily holden in the county of Gaspé by the judge of the Superior Court residing in the said county, and in the county of Bonaventure by the judge of the Superior Court residing in that county, but if from illness, necessary absence or other cause, either of the said judges is unable to hold any court or perform any duty required to be holden, or performed in the county in which he resides, the other judge, on being informed thereof, shall hold or perform the same, if it be in his power so to do, without neglecting equally important and urgent duties in the county in which he resides. 7 V. c. 17, s. 4.

2. And nothing in this act shall be construed to prevent either of the said judges from exercising or performing within either of the said counties any power or duty which he could lawfully perform or exercise in the other, and the said judges shall mutually assist each other to the best of their ability in the performance of their judicial duties in the said district of Gaspé. 7 V. c. 17, s. 4.

Judges may act in either county.

20. If the judge ordinarily holding the circuit court at any place, be a party or recused in any case pending thereat, then it shall be removed into the Circuit Court at the *chef-lieu* in the county, or if such cause be lawfully evoked to the Superior Court, then it shall be removed into the Superior Court in the same county, there to be heard, tried and determined by any other judge holding the court in the county into which it has been removed, unless the parties agree that it be removed into the Superior Court or Circuit Court (as the case may be) in the other county, in which case it shall be so removed, but subject in either case to the same provisions in other respects as cases removed on like grounds from the Circuit Court to the Superior Court in other districts. 12 V. c. 38, s. 42.—12. V c. 40, ss. 1, 4—20 V. c. 44, ss. 11, 118.

In case the judge holding the Court is recused.

21. The Circuit Court shall sit every day during the terms, Sundays and Holydays always excepted, but the judge may close the sittings in any term whenever there is no more business before the court, or may continue a term by adjournment until there is no more business before it. 7 V. c. 17, s. 11—12 V. c. 38, s. 79—20 V. c. 44, s. 53.

When the Court shall sit.

*Of the Circuit in which certain Traders and Fishermen may be sued.*

22. Any person carrying on business as a trader or as a fisherman, in more than one of the *circuits* in the said district, may be sued in the *circuit* in which he has his domicile, or in any one in which he is carrying on business as aforesaid. 7 V. c. 17, s. 11.

In what circuit certain persons may be sued.

*Of the Fees to be allowed---and Appeals.*

23. No other or greater fees shall be allowed or awarded by reason of any proceeding or judgment in the said Circuit Court in the said district of Gaspé, or before either of the judges therein, than such as are allowed in the like cases in the Circuit Court in other districts in Lower Canada. 8 V. c. 32, s. 3.

Fees allowed.

24. In appealable cases, an appeal shall lie to the appeal side of the Court of Queen's Bench at Quebec, subject to the same provisions as in appeals to the said court from the Circuit Court in other districts, except in the case of appeals from the Circuit Court in the Magdalen Islands which shall be governed by the provisions made respecting them by this Act. 20 V. c. 44, s. 121.

Appeals.

## Transmission of Records, &amp;c.

Transmission  
of records.

**25.** Sections twelve and thirteen of the Act 7 V. c. 17, providing for the transmission of records and matters then pending from Commissioners' Court for the Magdalen Islands and from the Provincial Court to the Circuit Court at the same place, and making them records of the Circuit Court at such place, shall continue in force so far as any thing remains to be done under them. 7 V. c. 17, ss. 12, 13.

## PROVISIONS IN RELATION TO THE SUPERIOR AND CIRCUIT COURTS.

*Of the County in which actions shall be commenced, and of the appointment of certain Officers for each County.*

Each county to  
be deemed a  
separate dis-  
trict.

**26.** Each of the counties of Bonaventure and Gaspé shall be considered as a separate district, in so far as regards the county in which any civil suit or proceeding in the Superior Court, or in the Circuit Court at the *chef-lieu* in either county, shall be commenced or brought,—so that no such suit or proceeding shall be commenced or brought in either county, unless by reason of the residence of the defendant or of a defendant therein, or of the cause of action having arisen in such county, the suit or proceeding could be commenced therein if it were a separate district; but nothing in this section shall apply to any suit or proceeding pending when the Act 20 V. c. 44 came into force. 20 V. c. 44, s. 123.

Appointment  
of judicial offi-  
cers.

**27.** The governor, if he sees fit, may appoint a sheriff, a prothonotary of the Superior Court, a clerk of the Circuit Court at the *chef-lieu*, a clerk of the crown, and a clerk of the peace, in and for each of the counties of Gaspé and Bonaventure, and the salary theretofore allowed to the persons holding those offices jointly for the whole district of Gaspé, shall then be divided among those who are to hold them separately, in such proportion as the governor in council directs; and in case of the death of any of the said officers, the deputy appointed by him shall hold the office *pro tempore* and perform all the duties thereof until a successor to such officer is appointed:

Their powers.

**2.** Each such officer for either county shall in and as regards such county have the powers of a similar officer in and as regards a district, and the sheriff of the county of Gaspé shall appoint a deputy in and for the Magdalen Islands as the sheriff of the district of Gaspé might do;

Proviso.

**3.** But nothing in this section shall be construed to prevent the governor from continuing or appointing a sheriff for the whole district, or joint prothonotaries of the Superior Court, or joint clerks of the Circuit Court at the *chef-lieu*, joint clerks of the crown, or joint clerks of the peace, if he thinks it expedient so to do. 20 V. c. 44, s. 124.

*Of the Bailiffs, their admission, security and removal; of their duties and of the recourse against them.*

**28.** Bailiffs appointed by the Superior Court in the said district of Gaspé, have authority to act as such within the limits of the said district of Gaspé, for the service and execution of all writs, orders and process issuing as well from the said Superior Court and the said Circuit Court, in the said district, as from all other courts of justice in Lower Canada; and such bailiffs shall be removable by the said Superior Court:

Bailiffs—their authority, &c.

**2.** All bailiffs so appointed shall give security in the manner by law required with regard to bailiffs in other districts, and under like provisions, but the bond shall be taken before the prothonotary of the court in which the bailiff is appointed, in whose office it shall remain, and who shall have the same duties with regard to it and to the bailiff to whom it relates, as the prothonotary of the said Superior Court in other districts by law has in any case where a bailiff has given security before him. 7 V. c. 17, s. 8.

Security to be given by them.

**29.** So far as practicable, and if a competent person can be found willing to accept the office, a bailiff or bailiffs shall be appointed in each of the townships or principal settlements in the said district of Gaspé, and any party suing out any process either from any Circuit Court or from the Superior Court, or the sheriff, as the case may be, shall cause such process to be served or executed by the bailiff residing nearest to the place of service or execution. 7 V. c. 17, s. 10.

Appointment of bailiffs in each township.

**30.** The Circuit Court and the Superior Court, in the district of Gaspé, shall have the like power and authority to inquire into the conduct of any bailiff for the said district of Gaspé, or of any other officer of such court acting under colour or pretence of the process of such court, who is guilty of extortion or misconduct, or does not duly pay or account for any money levied or received by him and to punish any misconduct of such bailiff, or such other officer, and to grant redress to the party aggrieved thereby, as any Circuit Court or the said Superior Court in the other districts in Lower Canada has by law to inquire into the conduct of any bailiff or such other officer of the district in which it is established, and to punish him for misconduct, and to grant redress to the party aggrieved; and if any such bailiff or such other officer be committed to gaol in consequence of such misconduct, the committal shall be to the common gaol of that one of the said counties in which the court committing him is held at the time of such committal. 7 V. c. 17, s. 9,—12 V. c. 38, s. 11.

Enquiry into conduct, &c., of bailiffs.

Their punishment.

PROVISIONS RELATING TO THE MAGDALEN ISLANDS.

**31.** And inasmuch as the peculiar situation of the Magdalen Islands, in the gulf of St. Lawrence, demands special provision touching the administration of justice therein; therefore—

Recital.

Magdalen Island to form a separate circuit.

**32.** The said Islands shall continue to form a circuit by themselves, and the Circuit Court sitting there shall not have concurrent jurisdiction with the said court sitting in any other place in the district of Gaspé, nor shall the Circuit Court at any other place in the said district have concurrent jurisdiction with the court sitting in and for the said circuit of the Magdalen Islands :

Jurisdiction of C. C. therein.

2. The Circuit Court shall, with regard to the said circuit of the Magdalen Islands, have the same jurisdiction in all civil cases as the Superior Court in any other place ; and the clerk of the said court shall have the same powers as the prothonotary of the Superior Court at any other place ; and no civil case in the Circuit Court in the said Islands, shall be evocable from the same by reason of the nature, value or amount of the property or sum of money demanded therein. 20 V. c. 144, s. 126.

Proceedings in C. C. in the said Islands.

**33.** The proceedings in the Circuit Court in the said Islands, shall be summary, as in non-appealable cases, except that in appealable cases, notes of the evidence and oral admissions, and the substance of the pleadings, shall be taken by or under the direction of the judge, signed by him and filed in the record, in the manner provided in cases of like amount in other circuits or in the Superior Court :

Pleadings.

2. The pleadings in every case shall be *instanter*, as in non-appealable cases, and shall be oral, unless the judge, on the application of the parties, having written pleadings ready when they make the application, otherwise order. 20 V. c. 44, s. 127.

Return days.

**34.** For any case over which the Circuit Court in the said Islands has jurisdiction, every day in term or in vacation, not being a Sunday or holiday, shall be a return day. 22 V. c. 5, s. 38.

Proceedings in non-appealable cases.

**35.** In any non-appealable case in the Circuit Court in the said Islands, made returnable in vacation, the mode of proceeding shall be as provided with respect to non-appealable cases returnable in vacation ; and in any other or appealable case over which the Circuit Court in the said Islands has jurisdiction, the proceedings shall, if such case be returned in vacation, be the same as in an appealable case in the Circuit Court in any other circuit, returned in vacation ;---but if such case be returned in term, the mode of proceeding therein shall be as provided by the *thirty-third* section of this Act, in so far as the provisions of that section are not inconsistent with this section or section *thirty-seven* of this Act. 22 V. c. 5, s. 39.

Terms.

**36.** There shall be two terms of the said court yearly in the said Islands, one of which shall be called and known as the spring term, and the other the autumn term, and the day on which

which each term commences and ends shall be fixed by the Governor, by proclamation, and may be altered in like manner; but such terms may be continued by the judge until he declare that there is no business before the court, and closes the terms. 20 V. c. 44, s. 128.

**37.** An appeal shall lie from the judgment of the Circuit Court in the said Magdalen Islands to the Court of Queen's Bench sitting in appeal and error at Quebec, in every case in which an appeal would lie to the said court if such judgment had been rendered in the Superior Court or in the Circuit Court at any other place : Appeals

2. But whatever be the sum of money or value of the thing demanded in such case, the proceedings in appeal shall be the same as in appeals from the Circuit Court,—except that the first day on which the case may be heard in the said Court of Queen's Bench, shall be the juridical day in term next after the expiration of ninety days from the rendering of the judgment appealed from if it be rendered in the spring term at the Magdalen Islands, and the first juridical day in Term after the first day of June next after the rendering of the judgment if it be rendered in the autumn term at the said Islands ;—but the security in such appeal must be given within fifteen days after the rendering of the judgment, as in other places. 20 V. c. 44, s. 129. Proceedings in appeal.

**38.** In any case in which an appeal may lie from a judgment by default, recorded by the clerk of the circuit of the Magdalen Islands, under the provisions made by chapter as to certain classes of cases,—the proceedings in appeal shall be as provided by the *next preceding* section,—except that the first day on which the case in appeal from any judgment so recorded by default may be heard in the Court of Queen's Bench, shall be the juridical day in term next after the expiration of ninety days from the end of the delay allowed to file an opposition (as hereinbefore provided), to such judgment, if such delay expires on or after the first day of the spring term in the said circuit, and before the first day of the autumn term therein,—and the first juridical day in term after the first day of June next after the expiration of the said delay for filing such opposition, if such delay expires on or after the first day of the autumn term in the said circuit, and before the first day of the spring term therein. 22 V. c. 5, s. 40. Days for hearing appeals.

**39.** Any judge of the Superior Court, while sitting at the Magdalen Islands, shall have all the powers and authority with respect to the admission of bailiffs vested in the Superior Court for Lower Canada, and the clerk of the Circuit Court held at the said Islands shall, for such purpose, have all the powers vested in the prothonotary of the Superior Court. 20 V. c. 44, s. 130. Power of judge of S. C. as to admission of bailiffs.

Clerk of C. C. to be deputy clerk of the peace.

**40.** The clerk of the Magdalen-Islands Circuit Court shall be *ex officio* deputy clerk of the peace, and shall within the limits of the said Islands have all the powers and authority of the clerk of the peace for the district or county of Gaspé. 20 V. c. 44, s. 131.

Provision for court house.

**41.** The court house or place of which the circuit court shall be held shall be provided by and at the cost of the Local Municipality of the said Islands, in like manner as elsewhere, and under the same provisions. 20 V. c. 44, s. 132.

Appropriation for court house and gaol.

**42.** Out of the Lower Canada Municipalities Fund, the sum of one thousand six hundred dollars shall be applied to build a court house and gaol in the Magdalen Islands, on a site to be furnished by the municipality of the said islands, and approved by the commissioners of public works, in the manner and subject to the provisions relative to the building of court houses and gaols in the new districts; and such gaol shall be used as a common gaol and house of correction, for the detention of offenders legally sentenced to imprisonment by any justice of the peace, or competent authority in the said islands, and also for the detention of prisoners committed for trial for any indictable offence, until they can be conveyed to the common gaol for the district. 20 V. c. 44, s. 133.

Deputy sheriff.

**43.** The sheriff of the district of Gaspé shall appoint a deputy, who shall reside in the Magdalen Islands, and shall have the charge of the court house and of the said gaol and of all persons committed for custody therein, and shall have all the powers of the sheriff in civil and in criminal cases in and with respect to the said Magdalen Islands, and also in the remainder of the district of Gaspé with respect to the conveyance of prisoners from the said islands to any common gaol in the said district, and other matters necessarily connected with the administration of justice in the said islands, and such further powers as the sheriff may see fit to depute to him :

2. But the said sheriff shall have another deputy for all purposes in that one of the counties in his district in which he does not reside. 20 V. c. 44, s. 134.

Sections 1 and 2 of 16 V. c. 30 in force for certain purposes.

**44.** Sections one and two of the Act 16 V. c. 30, providing for the continuation of proceedings then commenced, notwithstanding the separation of St. Anne des Monts and Cap Chat from the district of Gaspé, on the 1st January, 1853, shall continue in force so far as any thing remains to be done under them. 16 V. c. 30, ss. 1, 2.

*Of the application of the Judicature Acts generally to the District of Gaspé.*

Certain provisions of these Statutes to

**45.** All the general provisions of these Consolidated Statutes concerning the Administration of Justice, not inconsistent with

with those made specially applicable to the district of Gaspé in this Act, or any other, shall apply in and to the said district. 20 V. c. 44, s. 125.

apply to the  
District of  
Gaspé.



## C A P. L X X X I.

An Act respecting the independence of the Judges, and certain matters relating to the Administration of Justice generally.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

## INDEPENDENCE OF THE JUDGES.

Judges to hold their offices during good behaviour.

1. To the end that the Judges herein after mentioned may be independent of the Crown,—the Judges of the Court of Queen's Bench and the Judges of the Superior Court in and for Lower Canada, shall hold their offices during their good behaviour, notwithstanding that any commission heretofore granted to any of them should specify that the office is to be held during the pleasure of Her Majesty ; and the commissions to be granted to the said Judges of the said Court of Queen's Bench and of the Superior Court, shall be made to them respectively to hold during their good behaviour, and shall remain in full force during their good behaviour, notwithstanding the demise of Her Majesty, or any of Her Heirs and Successors :

May be removed on address of both Houses :—  
Appeal to Her Majesty.

2. Except, nevertheless, that the Governor may remove any Judge or Judges of any of the said Courts upon the address of the Legislative Council and Legislative Assembly ; and in case any Judge so removed thinks himself aggrieved thereby, he may, within six months, appeal to Her Majesty in Her Privy Council, and his motion shall not be final until determined by Her Majesty in Her Privy Council. 7 V. c. 15, s. 1,—12 V. c. 38,—20 V. c. 44.

Another Judge may be appointed until H. M.'s pleasure is known.

2. When any Judge of either of the said Courts dies, or resigns his office, or is removed in the manner authorized by this Act, the Governor may, notwithstanding any thing hereinbefore contained, appoint, by commission under the great seal, some fit and proper person to hold the said office until the Royal pleasure is made known ; and such appointment shall be held to be superseded by the issuing of a commission under the Great Seal of this Province, in the terms first directed by this Act, to the same person, or to such other person as Her Majesty appoints in the place of the Judge who has died, or resigned or been removed in the manner authorized by this Act, or by the signification within the Province of the Royal decision in the privy council, restoring to his office any Judge who has been so removed. 7 V. c. 15, s. 2,—12 V. c. 38,—20 V. c. 44.

INTERPRETATION OF THE WORD " JUDGE."

3. The word " Judge" in any enactment respecting the Administration of Justice includes the Chief Justice of the court to which the enactment applies. 14, 15 V. c. 88, s. 5, &c.

Word " Judge" to include Chief Justice.

JURISDICTION AS REGARDS AMOUNT--COSTS.

4. Whenever the jurisdiction of any court or the right to appeal from any judgment of any court, is dependent upon the amount in dispute, such amount shall be understood to be that demanded, and not that recovered; if they be different; but if the amount recovered be such that it might have been recovered in any inferior court, the plaintiff shall recover such costs only as he would have recovered if the suit had been brought in such inferior court, unless the court in which the suit is brought orders otherwise. 12 V. c. 38, s. 82.

Amount demanded to govern—and not that recovered.

ALTERATION OF TIME OR PLACE OF HOLDING ANY COURT.

5. Whenever under the provisions of any Act, the time or place for holding any term of any court is altered, and any person has been ordered to appear or to do any other thing in such court which must be done in term, on a day which by reason of such alteration is no longer a day in term, or at a place where the court is no longer held, then such thing shall be done by such person on the first juridical day in the term, ordinary or extraordinary, next after that on which but for such alteration it ought to have been done (unless the court appoints another day, as it may do), and at the place where the court is then held, and to which the records and muniments of the court are removed, and at which all matters commenced at the former place of holding the court shall be continued and completed. 20 V. c. 44, s. 145,—and 12 V. c. 38, s. 77.

When and where any thing ordered previously to such alteration shall be done.

CLOSING TERMS.

6. Notwithstanding any provision fixing the duration of any term of any court by any Act, or in any proclamation under any Act, the judge or judges holding such court may declare the sittings thereof at such term closed, whenever he or they are of opinion that there remains no trial, matter or proceeding to be had or done by or before the court which cannot more conveniently remain over until the then next term:

Judge may close them whenever the business is finished.

2. And if at the end of any term, as fixed by Act or proclamation, there still remains any trial, matter or proceeding to be had or done by or before the court, which cannot, in the opinion of the judge or judges holding the same, remain over until the then next term with equal convenience to all parties, the judge or judges may continue the term by adjournment from day to day or to any day before the then next term; and every

And may continue them as long as there remains any business.

every sitting of the court pursuant to such adjournment shall be held to be in term. 20 V. c. 44, s. 147,—12 V. c. 38, s. 16,—16 V. c. 194, s. 2.

#### SUNDAYS AND HOLIDAYS.

Next juridical day substituted for.

7. If the day, on which any thing is by any Act directed to be done, be a Sunday or holyday, then such thing shall be done with like effect on the next following juridical day. 12 V. c. 38, s. 90.

#### TRANSMISSION OF RECORDS.

May be by Post on certain conditions.

8. In every case where any record or document is by law required to be transmitted by any court or by an officer of any court from one place to another, such transmission may be made through the post office, and the party requiring such transmission shall pay the amount of the postage to the transmitting officer before he shall be bound to make such transmission, and any delay caused by such party's failing to pay the same, shall be reckoned against him as occasioned by his default. 20 V. c. 44, s. 144.

#### OFFICERS MAY APPOINT DEPUTIES.

And must do so when necessary.

9. Every sheriff, coroner, prothonotary or clerk of courts or other ministerial officer of justice may, and shall, *when necessary* for the despatch of the business of his office, appoint one or more deputies. 20 V. c. 44, s. 136.

#### OF PROTHONOTARIES AND CLERKS OF THE SUPERIOR AND CIRCUIT COURTS.

Not to practise as attorneys, &c.

10. No prothonotary of the Superior Court or clerk of any Circuit Court shall, during his continuance in office, nor shall his deputy while performing the duties of the office, practise as an advocate, counsel or attorney-at-law in Lower Canada. 12 V. c. 38, s. 103.

Bonds to remain in force.

11. The bonds given before the Act 12 V. c. 38 came fully into effect, by the several prothonotaries of the Court of Queen's Bench in Lower Canada and the clerks of the Circuit Courts therein, and their sureties, for the due performance of the official duties of such prothonotaries and clerks respectively, have, (notwithstanding the said Act or any later Act, or any change of their names of office, and those of the courts of which they are officers,) remained and shall remain in full force and avail to all parties as if they had been given after the said Acts had come fully into effect, and for the due performance of the duties of the office which each prothonotary or clerk held by virtue of any of the said Acts, and for duly accounting for and paying all moneys which have come into their hands respectively by virtue

virtue of such offices respectively, as if such bonds respectively had been given and conditioned accordingly :

2. Each prothonotary of the Superior Court, and each clerk of the Circuit Court, to be hereafter appointed, shall, within three months after his appointment, give security for the due performance of the duties of his office and for duly accounting for and paying all moneys which shall come into his hands by virtue of his office, by a bond to be given by him jointly and severally with good and sufficient sureties, which bond shall stand and be as and for a security to the amount thereof, for the damages which may be sustained by any party, by reason of the negligence or misconduct of such prothonotary or clerk ;

Security to be given.

3. The amount for which such bond shall be given shall be as follows, that is to say : by the prothonotary of the Superior Court, in the district of Montreal or of Quebec, and his sureties, in the sum of eight thousand dollars ; by the prothonotary of the Superior Court, in the district of Three-Rivers or of St. Francis, Kamouraska or Ottawa, and his sureties, in the sum of four-thousand dollars ; by the joint prothonotary of the Superior Court, in the district of Gaspé, and their sureties, in the sum of two thousand dollars ; and by each clerk of the Circuit Court, and his sureties, in the sum of one thousand dollars.

Amount of such security.

12 V. c. 38, s. 104.

#### OF THE APPOINTMENT OF COMMISSIONERS FOR RECEIVING AFFIDAVITS.

12. The chief justice or any of the judges of the Superior Court for Lower Canada, may, by one or more commissions under the seal of the said Superior Court, in the district in which he discharges his functions, and for which such commissions issue, from time to time, as need requires, empower such persons as they think fit and necessary in such district, to take and receive all such affidavits that any person is willing and desirous to make before any of the persons so empowered, in or concerning any cause, matter or thing depending or to be depending, or anywise concerning any of the proceedings to be had in the Superior or Circuit Courts respectively, in such district, which said affidavits, taken as aforesaid, shall be filed in the several and respective offices of the said courts the same do concern, and then be read and made use of in the said courts to all intents and purposes, as other affidavits taken in the said courts now are :

How such commissioners shall be appointed.

2. Every affidavit, taken as aforesaid, shall be of the same force as affidavits taken in the said respective courts now are ; and every person forswearing himself, in such affidavit, shall incur and be liable to the same penalties, as if such affidavit had been made and taken in open court. 48 G. 3, c. 22, s. 5,—12 V. c. 38, ss. 8, 102,—and 20 V. c. 44; ss. 35, 37,—and see *Con. Stat. Can.* c. 79, ss. 2, 3, &c.

Effect of affidavits taken before them.

Commissioners declared to have powers to receive affidavits to be used in Circuit Court.

**13.** Every commissioner for receiving affidavits to be used in the Superior Court in any district in Lower Canada, and whether such commissioner resides in Upper or in Lower Canada, and whether appointed by one judge or by more than one judge of the said court, has had and shall have full power and authority to receive affidavits to be used in the Superior Court or in the Circuit Court in any and every district in Lower Canada. 22 V. c. 5, s. 44.

Who may administer oaths when no special functionary is named for the purpose.

**14.** Any oath required to be taken under any Act in which no mention is made of the name of the public functionary before whom such oath is to be taken, or any oath rendered necessary, or that may be required by the Governor in carrying into execution the provisions of any Act of the legislature, may be administered by and taken before any justice of the peace, or any commissioner appointed as aforesaid, within their several jurisdictions respectively; and any such oath already so taken before and administered by any one of such public functionaries, within their several jurisdictions, respectively, is declared valid to all intents and purposes. 22 V. c. 5, s. 45.

#### OF THE RECUSATION OF THE JUDGES.

What degree of relationship shall be a ground of recusation.

**15.** No degree of relationship or affinity, more distant than that of cousin-german, existing between any Judge of the Court of Queen's Bench or of the Superior Court, and any of the parties to any action, shall be a ground for recusation:

This Act applies to cases pending on 30th May, 1855.

2. And if any one of the said Judges, before the passing of the Act 18 V. c. 105, (30th May, 1855,) was incompetent to give judgment on account of such degree of relationship or affinity, or was, on account thereof, recused in any action pending before one of the said Courts, such recusation shall cease to have any effect, and such Judge shall be competent to sit in such cause, whether or not he has been replaced by a Judge *ad hoc*; and in case he has been so replaced, such Judge *ad hoc* shall cease to be empowered to act as such. 18 V. c. 105, *effete*?

#### RELATIONSHIP OF WITNESSES TO PARTIES.

Competency of witnesses in civil matters, as regards relationship to the parties, determined.

**16.** The relations and connections of the parties, of the degrees removed beyond cousins-german, exclusively, may be witnesses in civil matters, to depose in favor of or against them, notwithstanding the said eleventh article of the twenty-second title of *enquêtes* of the Ordinance of 1667, which is expressly repealed, inasmuch as it regards the degrees of relationship only. 41 G. 3, c. 8.

#### OF PROOF IN COMMERCIAL MATTERS.

Rules of evidence in commercial matters.

**17.** In proof of all facts concerning commercial matters, recourse shall be had in all the Courts of civil jurisdiction in Lower Canada to the rules of evidence laid down by the laws of England. 25 G. 3, c. 2, s. 10.

**18.** The Law relating to proof of all facts concerning commercial matters, in force in Lower Canada, shall apply to any sale or delivery made by a non-trader to a trader, of any provisions, produce, effects or things. 22 V. c. 5, s. 63. Application of such rules.

**19.** But any party to any suit or action of a commercial nature may be examined on *faits et articles*, in the like manner as parties may be examined in other cases. 12 V. c. 38, s. 89. Faits et articles.

**20.** The courts of civil judicature in Lower Canada shall allow and admit the decisory oath or *serment décisoire*, in commercial matters; whenever either of the parties exacts from the other; in manner as it has heretofore been granted, and as it is admitted and allowed in other civil matters, agreeable to the ancient laws, customs and usages of Lower Canada. 41 G. 3, c. 15. Serment décisoire admissible in commercial matters.

#### OF COSTS IN CROWN CASES OF A CIVIL NATURE.

**21.** In every suit or proceeding of a civil nature, by or on behalf of the Crown, before any Court, Judge or Tribunal in Lower Canada, the object whereof is to recover or to prevent the loss of any immoveable or moveable property, rent, duty, toll or sum of money, or to maintain, enforce or preserve any right, privilege or lien to or upon the same, such Court, Judge or Tribunal may award to the Crown; if successful in such suit or proceeding, the same costs which might be awarded to any private party in the like case, and the Crown shall have the same remedy for recovering such costs as such private party would have; But nothing herein contained shall be construed to impair the right of the Crown to recover costs in any case where such right is now given by law. 13, 14 V. c. 33, s. 1. The Crown to have the same right as a private party to recover costs in civil suits.

**22.** If in any case to which the foregoing section is applicable, the Crown is unsuccessful, the Governor in Council may, if he deems it right, direct the payment to the successful party, of such costs as the said party would in like case have recovered from any other unsuccessful party. *ibid*, s. 2. Costs may be paid by the Crown.

**23.** And for the avoidance of doubt as to the interpretation of this Act or of any other Act, passed or to be passed, respecting the judicature or judicial proceedings in Lower Canada, it is declared and enacted, That whatever would be held to be a Civil suit or proceeding, if all the parties thereto were private individuals, shall be held to be so although one of such parties be the Crown, unless it is otherwise provided, or such interpretation be inconsistent with the context or intent of the Act. *ibid*, s. 3. What shall be deemed a civil suit.

#### IN ACTIONS FOR PERSONAL WRONGS.

**24.** In all actions for personal wrongs to be compensated in damages, the plaintiff, in case the court or jury finds the damages Costs of suits limited in certain cases.

damages to be under the value of *forty shillings sterling*, shall not recover or obtain more costs of suit than the damages so found amount to. 7 G. 4, c. 6.

OF ACTIONS OR DEFENCES IN FORMA PAUPERIS.

Courts may, in certain cases, allow parties to sue and defend in formâ pauperis.

**25.** The Superior Court and the Circuit Court and each of the Judges thereof, may permit parties to sue and defend causes *in formâ pauperis*, as hath been heretofore practised, whenever they are satisfied by affidavit that such parties, having a good cause of action or a good defence, are unable to establish the same in the ordinary course of law, for want of the necessary means to defray the fees and charges of the several officers of the said Courts whose services are required in the conduct of causes before such Courts: 12 V. c. 43, s. 1.

2. And the said Courts may, either by interlocutory or by final judgment, dispauper parties to whom the said privilege of suing *in formâ pauperis* has been allowed, whenever law and justice require them to be so dispaupered. *ibid*, s. 2.

C A P . L X X X I I .

An Act respecting certain proceedings and actions.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

AT WHAT PLACE ACTIONS SHOULD BE BROUGHT, AND WHERE THE *demande en ratification, licitation or partage*, OUGHT TO BE MADE IN CERTAIN CASES.

1. All actions, suits or proceedings may be commenced at the place where the terms of the Superior Court for Lower Canada are held in any district, provided the cause of such actions, suits or proceedings respectively, arise within such district, or the defendant or one of the defendants, or the party or one of the parties, to whom the original Writ, Order or Process is addressed, is domiciled or served personally with such Writ, Order or Process within such district, and that all the defendants or parties aforesaid, be legally served with Process, and not otherwise, except where any of the said defendants or parties are summoned by advertisement as by law provided. 12 V. c. 38, s. 14.

In what place actions in the Superior Court shall be brought

*Real or Mixed actions.*

2. When the persons who ought to be joined in the same action as defendants, reside in different districts, the plaintiff may in such case at his choice, prosecute the said action:

Where such actions shall be brought, when defendants therein reside in different districts.

First, in matters real,—in the jurisdiction wherein the object of the suit is situated;

Secondly, in matters of a mixed nature,—in the jurisdiction wherein the object in litigation is situated or in the jurisdiction wherein the defendants or any of them reside; and

Thirdly, if in matters of succession or descent, that is to say—first, in cases or *demandes* between co-heirs, to division or *partage* inclusively—second, in cases of *demandes* instituted by creditors of the deceased, previous to *partage*—third, in cases or *demandes* relative to the execution of testamentary dispositions and *demandes* in *délivrance de legs*, until final judgment,—in the jurisdiction wherein the succession has been opened;

2. And a writ or writs of summons may be issued addressed to the sheriff or to a bailiff of the Superior Court, or to the Sheriffs or to bailiffs of the said Court (according as such writs may by law be served by sheriffs or bailiffs) of the several districts where the several defendants respectively reside, and copies thereof having been served upon such defendants, shall have

Process may be served in the districts in which the defendants reside.

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the same force and effect as if the service thereof had been made within the district or circuit in which the action is instituted. 4 G. 4, c. 17, ss. 1, 2,—20 V. c. 44, &c.

#### HYPOTHECARY ACTIONS.

Hypothecary actions may be brought in the district in which the defendant or one of them resides.

3. Any action *hypothécaire* may be instituted and prosecuted in the district or circuit in which the defendant (or one of the defendants) resides at the commencement of the suit; and the court having cognizance of such suit, may proceed with regard to the same in such manner in all respects as is provided in the next preceding section, in the several cases therein mentioned; and a writ of execution may be issued out of the said court, directed to the sheriff of the district in which the property hypothecated is situate, which writ (if it has issued out of the Superior Court) shall be obeyed by such sheriff, and the proper return thereto shall be made to the court in the district or circuit out of which it issued, and the moneys levied under the same (if any) shall be paid by such sheriff, according to the order of such last mentioned court. 4 W. 4, c. 4, s. 5,—12 V. c. 38,—20 V. c. 44, &c.

#### REAL AND MIXED ACTIONS.

Cause of action where to be deemed to have arisen.

4. In any real or mixed action, the cause of such action shall be held to have arisen in the District or Circuit, as the case may be, wherein the real property in question in such action is situate. 14, 15 V. c. 60, s. 1.

#### PROPERTY PARTLY IN ONE LOCALITY AND PARTLY IN ANOTHER.

In case property be situated partly in one district and partly in another.

5. Whenever any real property is situate partly in one District or Circuit and partly in another, the Plaintiff may bring any real or mixed action in regard to such real property in either of the said Districts or Circuits at his option, and the whole of such real property may be partitioned (*partagé*) or sold by licitation (*licité*) or seized and sold under judgment obtained in any such action, in the same manner as if the said real property were wholly situate in the District or Circuit in which the judgment was rendered:

Application of this section.

2. This section shall apply to any judgment rendered for any cause whatsoever against a defendant possessing any real property situate partly in one District or Circuit and partly in another;

Where certain other proceedings may be instituted.

3. And any proceeding for confirmation of title, (*demande en ratification en licitation* or *en partage*, may be commenced, and prosecuted in one or the other of the Districts or Circuits in which the real property in question is partly situate at the option of the applicant, as if such real property were wholly situate in the District or Circuit in which the applicant has chosen to commence his proceedings. 14, 15 V. c. 60, s. 2.

actions

ACTIONS EN GARANTIE.

6. In every case of *garantie*, as well of *garantie formelle* as of *garantie simple*, where the *garant* lives out of the district in which the original action was instituted, there may issue a Writ from the Court at the place where such suit or action was instituted, directed to the Sheriff or to a Bailiff of the district where such *garant* lives, (according as such Sheriff or Bailiff is by law empowered to serve the same,) to summon the said *garant* to appear before the Court in the district where the suit was instituted, to answer to the *demande en garantie* of the defendant in such original action, and to await the judgment of the Court;—and the service of such Writ, it having been first endorsed by the signature of one of the Judges of the Superior Court, upon the return of the Sheriff or a Bailiff of the district where the *garant* resides, to the Court in the district where the suit was instituted, shall have the same force and effect as if the service had been made upon the *garant* in the district where the suit was instituted; And in all causes or suits, the plaintiff may, in like manner, summon his *garant*, if any such he has, to intervene, and the Court give judgment, as well against the *garant* of the plaintiff as against that of the defendant, as the case may require. 41 G. 3, c. 7, s. 6.

Manner of proceeding in cases of *garantie*.

7. And whereas much inconvenience, expense and delay arose from the Rule of Law under which the purchaser of any real property could, in case of eviction or other *trouble*, call only upon his immediate *garant*, who, in his turn, might call upon his *garant*, and so on until the last party responsible be brought into Court—For remedy thereof, in any such case the purchaser evicted or troubled, may bring his action *en garantie* in the first instance against any party who might be eventually brought into Court in the manner aforesaid as *garant*; and in like manner any person called into Court as *garant* in any such case may call into Court as his *garant* any party who might be eventually brought into Court, as *garant* in such case, in the manner aforesaid; but nothing herein shall prevent any such party as aforesaid from suing or calling into Court his immediate *garant* if he thinks proper so to do. 16 V. c. 194, s. 31.

Recital.

Any one who might eventually be brought into Court as a *garant* respecting real property may be so called in the first instance.

ACTION FOR WILFUL DAMAGE TO IMMOVEABLES SUBJECT TO HYPOTHEC.

8. If any personal hypothecary debtor or *tiers détenteur* in possession of any immoveable property on which there exists any privileged claim or hypothec, personally or by the intervention of others, wilfully and with intent to defraud the party having such privileged claim or hypothec, injures, wastes or diminishes the value of such property by destroying, carrying away, or selling any house, outhouse or building or deteriorating the same, or by destroying, carrying away or injuring any timber or fence, or any fixture in any house or building on the said property, he may be sued in damages by such

Action of damages for damaging or removing real property under seizure.

privileged or hypothecary creditor whether the sum secured by such privilege or hypothec be or be not then payable or exigible :

Condemnation to *contrainte par corps* allowed to enforce damages.

2. And in such action the Plaintiff may recover from the Defendant, with condemnation to *contrainte par corps*, damages equal to the diminution of value occasioned by such act of the Defendant as aforesaid, or to the amount of the privileged claim or hypothec if such amount be less than such diminution of value, but the amount so recovered shall be secured by the said privilege or hypothec, and when paid shall go in discharge or in diminution of the same. 22 V. c. 5, s. 49.

What affidavit is required to obtain *capias ad respondendum* against defendant.

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

Defendant may be bailed.

2. But such defendant may be released from confinement at any time before judgment, upon giving security or bail, in like manner and upon like conditions as other defendants arrested upon *Capias ad respondendum* ;

Defendant may petition for and obtain his discharge, if affidavit be proved to be false, &c.

3. And if upon summary petition of such defendant, the grounds stated in the affidavit appear to any Judge of the Superior Court to be insufficient, or if it be proved to the satisfaction of any Judge of the Superior Court sitting at the place where such Writ of *Capias ad respondendum* issued, that the allegations of the affidavit on which such Writ was obtained were false in any essential particular, the Defendant may be discharged from custody by the order of such Judge. 22 V. c. 5, s. 50.

#### ACTIONS EN REPRISE D'INSTANCE.

Of service of process in the action *en reprise d'instance*.

10. In any action wherein the *instance* stands or is interrupted by the decease of any of the parties thereto, and the legal representative of any party deceased is domiciliated in any district in Lower Canada, other than that wherein the original

original suit was pending, there may issue from the Court in the district or Circuit in which such suit is pending, a Writ of summons addressed to the Sheriff or to a Bailiff of the Superior Court, according as such Writ may by law be served by a Sheriff or a Bailiff of the district in which such legal representative resides, which Writ, after a copy thereof has been served upon such representative, shall have the same force and effect as if the service had been made upon him or her, within the district or Circuit wherein the original suit was so pending. 4 W. 4, c. 4, s. 1.

OF THE LIMITATION OF THE ACTIONS OF PROTHONOTARIES AND CLERKS, ATTORNEYS AND OTHER OFFICERS OF JUSTICE, FOR THEIR FEES.

**11.** In all actions brought by the Prothonotary or Clerk of any court of justice for the recovery of fees or emoluments of office, the defendant may plead three years' prescription to the demand in any such action, dating from the date of the delivery or transmission of the papers, documents and orders which such Prothonotary or Clerk has been required to prepare and deliver, by virtue of his office, or from the date at which such Clerk might have demanded the payment of any sum for the filing of actions, pleas or other judicial documents, on the filing of which a fee is granted to such Clerk; and such prescription shall be a bar (*fin de non recevoir*) to any such action. 12 V. c. 44, s. 1.

Defendants in actions by prothonotaries, &c., for fees may plead three years' prescription.

**12.** In all actions brought by Attorneys *ad lites* against their clients for the recovery of fees or disbursements, the defendant may plead five years' prescription, dating from the day when final judgment was rendered in the case in which the plaintiff became entitled, as Attorney *ad lites* to the fees and made the disbursements for which the action is brought :

In actions by Attorneys for costs, &c., defendants may plead five years' prescription.

**2.** And in all actions brought by Sheriffs and other officers of justice for the drawing up, issuing or filing of any document, paper or order by them, or for rendering any other service in their official capacity, for which any fee or remuneration is allowed them, the defendant may plead three years' prescription, dating from the date of the rendering of such services, or of the delivery or filing of such documents, papers or orders; and such prescription shall be a bar (*fin de non recevoir*) to such action. *Ibid*, s. 2.

In actions by Sheriffs, three years' prescription may be pleaded.

ACTIONS IN THE CIRCUIT COURT.

**13.** All actions, suits, or proceedings may be commenced at the place where the terms of the Circuit Court are held in any Circuit, provided the cause of such suits, actions or proceedings respectively, arose within such Circuit, or the defendant or one of the defendants, or the party or one of the parties, to whom the original Writ, Order or Process is addressed, is domiciled or served personally with such Writ, Order or Process within

Where actions, &c., in the Circuit Court may be commenced.

within such Circuit, and all the defendants or parties are legally served with Process, and not otherwise; except where any of the defendants or parties are summoned by advertisement, and in other cases specially provided for by law :

Where and by whom process may be served.

2. But the Process may in such cases be served out of the limits of the Circuit, but in the District in which such Circuit is situate, by any Bailiff of the Superior Court appointed in and for such District ; 12 V. c. 38, s. 49.

3. Any writ of summons *ad respondendum* issuing out of the Circuit Court in any district to be executed in any other district, may be served and returned in such other district by a bailiff of the Superior Court for the district in which the writ issues, but such last mentioned bailiff shall be entitled to no more costs and emoluments for serving and returning the same than a bailiff for the district in which the service is made and residing nearest to the place of service would have been entitled to for so doing. 22 V. (1858,) c. 5, s. 5, *part*.

#### ACTION OF A MINOR FOR HIS WAGES.

Minors to have an action for wages to a certain amount.

14. Any person under the age of twenty-one years and above the age of fourteen years, may prosecute any suit in the proper Circuit Court for any sum of money not exceeding twenty-five dollars, which is due to him for wages, in the same manner as if he were of full age. 12 V. c. 38, s. 76.

## CAP. LXXXIII.

## An Act respecting the ordinary procedure in the Superior and Circuit Courts.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

*In the Superior Court—Writs and Process.*

1. All writs and process to be issued out of the Superior Court shall run in the name of Her Majesty, Her Heirs or Successors, and shall be sealed with the seal of the said court, and signed by the prothonotary for the district in which they issue, whose duty it shall be to make out and prepare the same; and they shall not be tested in the name of any judge, but the words "in witness whereof we have caused the seal of our said court to be hereunto affixed," shall be instead of such *teste*. 12 V. c. 38, s. 19.

Writs, &c., to run in H. M.'s name.

2. No such writ or process shall be deemed void or voidable by reason of its having a wrong seal or no seal thereon; and every such writ or process may be either in the English or in the French language: and if any affidavit be required before the issuing of any such writ or process, the prothonotary may receive such affidavit, and administer the necessary oath: but this shall not be construed to prevent any judge of the court from receiving such affidavit and administering such oath if he thinks fit. 12 V. c. 38, s. 19.

May be either in the English or French language.

3. Any writ of summons issuing out of the Superior Court, except writs of *capias ad respondendum*, *saisie-arrêt* before judgment, *saisie-gagerie*, or *saisie-revendication*, shall be directed to and executed and returned by any of the bailiffs of the said court appointed for the district in which the writ issues:

How writs of summons shall be executed.

2. Writs of *capias ad respondendum*, *saisie-arrêt* before judgment, *saisie-gagerie*, or *saisie-revendication*, to be executed wholly or partly in any district other than that in which they issue, shall (except in those cases in regard to which other provision is hereafter made) be directed to and executed and returned by the Sheriff of the district in which they are to be executed. 12 V. c. 38, s. 20.

Certain other writs to be executed by the Sheriff.

4. Any writ of summons only (but not any writ of *capias ad respondendum*, *saisie-arrêt* before judgment, *saisie gagerie* or *saisie revendication*) issuing out of the Superior Court in any district, but to be served wholly or partly in some other district, may be addressed to and returned by any bailiff of the said court for the district in which the writ is to be served, or by any bailiff of the said court for the district in which the writ issues, but such last mentioned bailiff shall be entitled to no more costs and emoluments for serving and returning the same, than a bailiff for the district in which the service is made and residing

Writs of summons to be executed in another district, may be returned by any bailiff of such district.

residing nearest to the place of service would have been entitled to for so doing: 22 V. c. 5, s. 55.

In such cases the copies served to be certified.

2. And when any such writ is directed to any bailiff of the court as aforesaid, the copies of the same to be served upon the parties according to law, shall be certified as true copies, either by the prothonotary of the said court, for the district in which they shall have issued, or by the attorney of the party suing out such writ. 12 V. c. 38, s. 20.

In case a writ requires to be served by the bailiff or sheriff of two or more districts.

5. If in any case, in the Superior Court, any writ requires to be executed by the sheriffs or bailiffs of two or more districts, or by a bailiff in one district or a sheriff or sheriffs in another or others, then such writ shall be addressed to such sheriff or sheriffs, and to any bailiff of the Superior Court, as the case may require, and as many originals shall be made as there may be districts in which it is to be executed; but this shall not affect any provision herein made with regard to *alias* writs. 12 V. c. 38, s. 93.

Clerks of C. C. may receive affidavit for *capias ad resp.* or *saisie-arret* before judgment.

6. In all cases in which a writ of *capias ad respondendum*, or a writ of *saisie arret* before judgment in an action cognizable by the Superior Court, may by law be issued, the clerks of the Circuit Court respectively shall have the same power and authority as are vested in the Prothonotaries of the Superior Court respectively, to receive the requisite affidavit, and to issue such last mentioned writ of *capias ad respondendum*, or of *saisie-arret* before judgment, and to make the same returnable in the Superior Court in the district in which the same issued:

How the writs last mentioned shall be executed.

2. The writs last mentioned shall, in any such case, be addressed directly, either to the sheriff of the district, or to any bailiff of the Superior Court, appointed for the same and by them respectively executed and returned; and when such writ is so addressed to any such bailiff, such bailiff shall without delay proceed to execute the same, without any previous warrant from the sheriff, and shall deliver the writ, with a report of his proceedings thereon to the sheriff, to whom he shall also deliver the body or the goods attached, as the case may be, to be dealt with according to law, and by whom the writ and the proceedings thereon shall then be returned to the Superior Court; but in such case, the sheriff shall not be responsible for any act done by the bailiff, until the officer last named has complied with the foregoing requirements;

How service of declaration may be made.

3. And in every such case, service of the declaration in the cause may be made in the same manner and within the same delay as if the writ had been issued by the Prothonotary of the Superior Court, and addressed to and executed by the sheriff;

4. Provided that in all cases where any such writ of attachment against the body or goods is issued by any clerk of the Circuit Court, and made returnable in the Superior Court, the defendant shall be entitled to the same relief on giving security or otherwise to the sheriff, and in default shall be committed to the common gaol of the district, in like manner as if such writ had been issued by the Prothonotary of the Superior Court. 12 V. c. 38, s. 63.

Defendant entitled to same relief whether the writ be issued by the clerk or prothonotary.

7. Every day not being a Sunday or Holiday, shall be deemed a juridical day, for all the purposes of this Act, and shall be a return day for all writs, process and proceedings required to be returned into the Superior Court. 12 V. c. 38, s. 22.

Every day but Sundays or Holidays to be a juridical day.

*Of Appearance and Default.*

8. Every writ of summons shall be served at least ten days (of which neither the day of service nor the day of the return shall be reckoned as one) before the day fixed for the return thereof, if there be not more than five leagues from the place of service of the writ to the place where the defendant is summoned to appear; and if there be more than five leagues, then there shall be an additional delay of one day for every additional five leagues. 12 V. c. 38, s. 23.

Delay between service and return of writs.

9. It shall not be necessary that any defendant summoned to appear before the Superior Court, should appear or be called in open court, but the writ of summons shall be returned into the prothonotary's office, on the day on which it is returnable, and the defendant may on that day, or on the next following juridical day, file his appearance personally or by attorney, in the office of the prothonotary of the court, at any time during office hours, and if he does not file his appearance as aforesaid, he shall not thereafter be allowed to appear (except by express permission as hereinafter mentioned,) and his default shall, on the juridical day next but one after the return day be recorded, and the court shall proceed to hear, try and determine the suit or action in due course of law. 12 V. c. 38, s. 23, &c.

How defendant shall file his appearance.

10. Notwithstanding any such default to appear, the defendant may, at any time before judgment, be allowed by the Superior Court, or by any one judge thereof, to appear, on a special application of which the plaintiff shall have one clear day's notice, and for good cause shewn to the satisfaction of such judge. 12 V. c. 38, s. 24.

Notwithstanding default, defendant may be allowed to appear on special application.

11. Every defendant or other party in or to any suit or action who appears in person shall be considered as having, for all the purposes of such suit or action and of all proceedings incident thereto or consequent thereon by such appearance, elected his legal domicile at the office of the prothonotary of the court in which such suit or action has been instituted;

If defendant, &c., appears in person, he shall be deemed to have elected his domicile at the office of the prothonotary.

and

and all notices and all services of papers or documents in such suit or action which should otherwise be given or made by one attorney *ad litem*, to or upon another, shall be considered as having been legally given or made at such prothonotary's office. 12 V. c. 38, s. 23,—25 G. 3, c. 2, s. 6,—41 G. 3, c. 7, s. 3.

*Of Pleadings, Foreclosure and Inscription EX PARTE.*

Within what time preliminary pleas and the answers thereto must be filed.

**12.** Whether the appearance is filed in term or in vacation, no *exception à la forme*, *exception déclinatoire*, *exception dilatoire*, or other preliminary plea, shall be received, unless the same is filed within four days from the day of the return of the writ or of the filing of the pleading to which such preliminary exception or plea is opposed; the plaintiff or other party opposing shall be allowed eight clear days to answer thereto, and there shall be a like delay of eight days for replying or filing each further pleading allowed by law to join issue on such *exception à la forme*, *exception déclinatoire*, *exception dilatoire*, or other preliminary plea :

Pleas to the merits—eight days allowed for the filing of.

2. And whether the said appearance be filed in term or in vacation, the defendant shall be allowed eight clear days from his appearance to file his pleas to the merits (or other pleas than *exceptions à la forme*, *exceptions declinatoires*, *exceptions dilatoires*, or other preliminary pleas), the plaintiff shall have a like delay to answer, and there shall be a like delay between each further pleading allowed by law. 12 V. c. 38, s. 25,—16 V. c. 194, s. 21.

Foreclosure in case pleadings are not filed within the delay prescribed.

**13.** If at the expiration of the delay allowed for any pleading (except an *exception à la forme*, *exception déclinatoire*, *exception dilatoire*, or other preliminary plea, but not the answers or replications to them), and for the filing of which a delay of eight clear days is allowed, the same is not filed, the opposite party may demand the same, and if it be not filed on or before the third juridical day after such demand, may foreclose the party by whom it ought to have been filed; and the filing of the return of service of such demand shall be sufficient to authorize the prothonotary, upon application in writing for *acte* of foreclosure, to grant and record the same without further notice or formality :

Notice to party foreclosed of inscription for *enquête* or hearing.

2. But the party foreclosed shall nevertheless be entitled to at least one clear day's notice of the inscription of the cause for *enquête* or hearing, before such *enquête* shall be commenced or the cause shall be heard. 12 V. c. 38, s. 25.

Delay for pleading may be enlarged by the Court.

**14.** The delay for pleading may in any case be enlarged by the Superior Court, or by any one judge thereof, on special application, of which notice shall be given to the opposite party at least one clear day before it is made; and any party may file any pleading within the time hereby allowed for filing the same. 12 V. c. 38, s. 26.

*Of Enquêtes.*

**15.** A majority of the judges of the Superior Court residing in Quebec or in Montreal respectively, may, in term of the said court, fix, by a rule of practice promulgated by one of the said judges sitting in term, any such number of days for *enquête* days, in the districts of Quebec and Montreal respectively, as they think proper, and may alter or repeal any such rule of practice :

*Enquête* days in districts of Montreal or Quebec.

But not less than six days shall be fixed by any such rule of practice, as such *enquête* days in any month in the year,—except the months of July and August, and the days on which the Circuit Court sits in the same place ;

Not less than six in any month.

**2.** In any other district, any judge of the said court may, during term time, make and promulgate a rule of practice to fix the number of days on which evidence may be adduced in the court, and any number of days he may think proper as *enquête* days out of term, with full power and authority to alter or repeal any such rule of practice ;

*Enquête* days in the other districts.

Not less than three days at a time shall be fixed by any such rule of practice as such *enquête* days out of term, excepting in the months of July and August, and the days on which the Circuit Court sits, when no such days shall be fixed ; and, except in the districts of Quebec and Montreal, the judges shall not be bound to appoint any particular number of days in each month as *enquête* days ; but in the Old Civil Districts, the rules of practice in force when the present section takes effect, shall remain in force until repealed or altered. 12 V. c. 38, s. 29,—16 V. c. 194, s. 65,—20 V. c. 44, s. 44.

Not less than three at a time to be fixed.

**16.** Every juridical day in term and out of term, except from the ninth day of July until the first day of September both inclusive, in each year, shall be an *enquête* day for all default or *ex parte* causes and proceedings in the Superior Court ; and notes of the evidence made and signed in the manner prescribed by section of this Act (20 V. c. 44, s. 85), shall serve to all intents and purposes as though they had been taken at an *enquête* in the usual manner. 16 V. c. 194, s. 7, as amended by 20 V. c. 44, s. 85.

Every day except in vacation to be an *enquête* day in default or *ex parte* causes.

**17.** The judges of the Superior Court may assign one room or more than one room in each court house, in which the court is held, for the taking of *enquêtes* therein, and fix the number of clerks or writers whom the prothonotary of the court shall employ for taking such *enquêtes*, accordingly as the case may require. 12 V. c. 38, s. 27.

Rooms and clerks for the taking of *enquête*.

**18.** With the consent in writing of all the parties to any case in the Superior Court, the *enquête* and evidence therein may be taken

In certain cases *enquête* may be taken

taken in the manner in use before 20 V. c. 44, came into force.

taken in the manner in use before the coming into force of the Lower Canada Judicature Act of 1857, notwithstanding any thing to the contrary in *section ninety-five*, subject to such additional costs and fees as may from time to time be fixed by any tariff; But in all cases in the said Court in which such consent in writing is not given, the *enquête* shall be taken in the manner prescribed by the said *section ninety-five*. 22 V. c. 5, s. 6.

*Proceedings for enquête and final hearing at the same time.*

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

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

Such inscription obligatory in certain cases at the option of either party.

**2.** Provided that if either party in his declaration, plea, answer or reply in any such case, notifies his option that such case be inscribed (at the proper time) for the adduction of evidence and final hearing on the merits at the same time, or if either party, before the inscription of such cause for the adduction of evidence, notifies to the other his option that such cause be inscribed for the adduction of evidence and final hearing on the merits at the same time, then, in either case such cause shall be necessarily so inscribed, and it shall not be in the power of either party to inscribe it otherwise. 22 V. c. 5, s. 1.

Rules of practice may be made for such cases.

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

Effect of such rules.

**2.** And whenever such special days in term are so appointed in any District, no case shall be there inscribed for the adduction of evidence and final hearing on the merits at the same time, on any other day in term : and cases so inscribed shall on such days have precedence over other cases or business before

before the Court inscribed or fixed for such days, except only cases taken *en délibéré* and in which judgment is to be rendered. 22 V. c. 5, s. 2.

**21.** A majority of the Judges of the Superior Court residing in the District of Quebec or in that of Montreal, or any Judge of the said Court when in any other District,—may, by any Rule of Practice to be by them or him from time to time made and promulgated by any one Judge sitting in term in the same District, appoint special days among those then appointed as *enquête* days, to be the days for which cases may be inscribed for the adduction of evidence and final hearing on the merits at the same time,—and any such Rule may be repealed or altered by any subsequent Rule made and promulgated in like manner :

Special days may be appointed for *enquête* and hearing at the same time from among the *enquête* days.

2. And whenever such special days among the *enquête* days are so appointed in any District, cases may be inscribed for the adduction of evidence and final hearing on the merits at the same time, on such days, as if they were special days in term appointed for such purpose under the next preceding section, and the Judge presiding may adjudicate upon such cases and exercise all judiciary powers with respect to them, as if sitting in term ;

On which cases may be inscribed as if they were special days in term.

3. Any case inscribed for any such special day as aforesaid, if not terminated or adjudicated upon on such day, may be adjourned to any of the subsequent days so appointed as aforesaid from among the *enquête* days, or to any day in term, or to any day in term appointed for the adduction of evidence and final hearing of cases at the same time. 22 V. c. 5, s. 3.

Cases not finished may be adjourned.

**22.** If any case inscribed for the adduction of evidence and final hearing on the merits at the same time, on any of the days appointed as aforesaid from among the *enquête* days, is taken *en délibéré*, judgment may be rendered therein on any other of such days, or on any day in term ;—And if any case inscribed for the adduction of evidence and final hearing on the merits on any of the special days in term appointed for that purpose by any Rule of Practice, is taken *en délibéré*, judgment may be rendered therein on any day in term, or on any of the special days appointed from among the *enquête* days, for the adduction of evidence and final hearing of cases at the same time. 22 V. c. 5, s. 4.

When judgment may be rendered in cases so inscribed.

**23.** Any case inscribed for the adduction of evidence and final hearing on the merits at the same time, on any of the special days appointed as aforesaid from among the *enquête* days, shall have precedence over any case inscribed or fixed for *enquête* only on such day, but not over any case taken *en délibéré* and in which judgment is then to be rendered. 22 V. c. 5, s. 5.

Cases so inscribed to have precedence on certain days.

*Of the enquête in any other place than that in which the court ordering it is held.*

Court may order the *enquête* to be taken at any place where the Court is held.

**24.** The Superior Court, or any judge thereof, may, in their discretion, order the *enquête* in any case, or the examination of any witness or witnesses, or of any party to the cause, or other person required to be examined in such case, to be taken at any place where terms of the Superior Court are held, or at any place where sittings of the Circuit Court are held, before any judge of the Superior Court; and this provision shall extend to *faits et articles, serment décisoire*, or other oath which may be legally required of any party:

How the examination shall be taken.

2. The examination may, in the discretion of the court or judge, be had in the usual manner as if the witness or party examined had appeared at the place where the case is pending, or upon written interrogatories and cross interrogatories; and the court may, in its discretion, order the record or any portion thereof to be transmitted to the place where the *enquête* or examination is to be taken, but no commission or formality other than the order of the court shall be requisite;

On transmission of record, prothonotary may issue orders to compel attendance of witnesses.

3. Such order (and the other documents if any) shall be transmitted to the prothonotary of the Superior Court or clerk of the Circuit Court, as the case may be, at the place where the *enquête* or examination is to be had, and such prothonotary or clerk may thereupon issue the proper process to compel the attendance of any witness or party to be examined in the case, at the place named in such order and on any *enquête* day at such place, or on any day (to be appointed by the judge) on which a judge will be present at such place. 12 V. c. 38, s. 30.

But nothing in the preceding section to prevent the issue of *commissions rogatoires*.

**25.** Nothing in the next preceding section shall be construed to prevent the said Superior Court, or any judge thereof, from issuing any *commission rogatoire*, or commission in the nature of a *commission rogatoire*, addressed to any commissioner or commissioners at any place out of Lower Canada, or at any place within Lower Canada, if from the circumstances of the case the court, or such judge, thinks the ends of justice will be better attained by such commission than by such order as in the next preceding section is mentioned. 12 V. c. 38, s. 31.

### *Of Trials by Jury.*

In what cases trials by jury may be obtained.

**26.** All persons having suits at law and actions in the Superior Court grounded on debts, promises contracts and agreements of a mercantile nature only, between merchant and merchant, and trader and trader, or trading corporations so reputed and understood according to law, or between merchants and traders or trading corporations, and persons not engaged in trade,—or on personal wrongs proper to be compensated in damages,—or wrongs sustained by reason of some *délits* or *quasi*

*quasi délits* to moveable property only in which the remedy sought is compensation in damages, interest and costs only,—may at the option of either party have and obtain the trial and verdict of a jury, as well for the determination of matters of trial as for the assessment of damages or personal or other wrongs in such cases :

2. Provided that the agreement of nine of the twelve jurors composing such jury, shall be sufficient to return a verdict, and that the same so made and returned, shall be held as legal and effectual to every intent and purpose as if the whole twelve jurors had agreed therein, and the prothonotary of the court shall set down on the register of the court the names of the jurors in every cause in which a verdict is returned as aforesaid. 25 G. 3, c. 2, s. 9,—9 G. 4, c. 10,—and 14, 15 V. c. 89, s. 4, p. 8.

Agreement of nine jurors sufficient to return a verdict.

27. No trial by jury shall be allowed in any civil suit or action wherein the sum of money or value of the thing demanded or in dispute does not exceed two hundred dollars. 20 V. c. 44, s. 81.

No jury trial in suits under \$200.

28. Every judge of the Superior Court is authorized in all cases of trial by jury in civil matters, to try the issues of fact and to receive the verdicts of juries in vacation, on such days as the court appoints for that purpose. 12 V. c. 38, s. 33.

Jury trials may take place in vacation.

29. The Superior Court may, in its discretion, order the trial by jury in any civil case to be had in any district ; and if such trial be ordered to be had in a district other than that in which the cause is pending, the record in the cause and the order for the trial shall be sent to the prothonotary of the court for the district in which the trial is ordered to be had ; and thereupon all proceedings to trial and verdict shall be had in such district, as if the cause were pending there, and the verdict shall then be returned, with the record, to the prothonotary of the district wherein the cause is pending, for judgment and all ulterior proceedings. 12 V. c. 38, s. 34.

In case the trial is had in a district other than that in which the cause is pending.

30. In all civil cases to be tried by a jury, whenever the capacity assigned to or assumed by either of the parties of the suit, is put in issue, the court shall hear and determine the issue so raised, before the issues raised upon the merits are submitted to the jury for their verdict. 10, 11 V. c. 13, s. 34.

In case the capacity of either of the parties to the suit is put in issue.

31. In every case in which a jury is demanded to try the issue or issues in any civil suit or action, such issue or issues shall be tried by a special jury, and no person but those whose names are found inscribed on the lists of special jurors shall serve or be summoned to serve on any such trial. 14, 15 V. c. 89, s. 4, p. 2.

Juries in civil suits to be special.

Definition of facts to be enquired into to be made by the judge.

**32.** Except as provided in the next following section, the trial of the issue in any such suit or action shall not be fixed until, upon the motion and suggestion of the party applying for the same, the court or one judge thereof has determined upon and defined the fact or facts to be enquired into by the jury, who shall in every case be required to return a special verdict in relation to such fact or facts. 14, 15 V. c. 89, s. 4, p. 3.

But the definition may be dispensed with by consent.

**33.** But the trial may be had without any definition of the fact or facts to be inquired of by the trial, and the jury may return a general verdict in such cause, provided the parties shall have consented thereto in writing. 22 V. c. 5, s. 60.

In case the charge of the judge is objected to.

**34.** If in any civil case tried by a jury, any portion of the judge's charge is objected to by either party, the judge shall, at the request of such party, put such portion of his charge in writing, either at the time of the trial or as soon after as conveniently may be, mentioning that it was so objected to, and then such portion of the charge so put in writing, being signed by the judge, shall become part of the record in the case. 20 V. c. 44, s. 42.

Notes to be taken of the evidence.

**35.** No bill of exceptions shall be filed at or in relation to any trial by jury, but the judge presiding at any such trial, shall make or cause to be made under his supervision, full notes of the verbal testimony adduced at such trial, and of all exceptions or objections made or taken at such trial; and such notes shall be read by the judge, or by the prothonotary of the court, at the oral request of any party to any such suit, preferred at any time during such trial, or immediately after the close thereof, in order that any error or omission found therein may be corrected or supplied. 14, 15 V. c. 89, s. 4, p. 9.

Fair copy of the notes to be made and filed of record in the cause.

**36.** A fair copy of such notes shall be made out by the prothonotary or clerk of the court, and after being certified by the judge, shall be filed of record in the cause, and shall in case of appeal from the final judgment pronounced in any such suit or action, be transmitted to the court of appeals, as forming part of such record, and shall be considered for the purposes of such appeal, as forming a true record of the evidence adduced on the trial, and of all other proceedings mentioned therein, and as supplying the place of a bill of exceptions, whenever such bill would have been required, but for the next preceding section. 14, 15 V. c. 89, s. 4, p. 10.

Translator may be allowed.

**37.** In any civil suit in which the services of a translator is necessary, the court or the presiding judge shall appoint a person competently skilled in the language to be translated, and shall allow to any such translator a reasonable compensation for his services, and the sum allowed to him shall form part of the costs of trial. 14, 15 V. c. 89, s. 4, p. 11.

*Judgments in vacation—out of Quebec and Montreal.*

**38.** On such days in vacation as have been appointed for the purpose either by any rule of practice to be made by the Superior Court, or by any order to be made by the said court sitting in term in the district to which such order relates, the judge of the Superior Court resident in any district in Lower Canada, except the districts of Quebec and Montreal, shall hear and give judgment in any case or matter which the said court sitting in term in the same district could hear and give judgment in, and such judgment shall have in all respects the same effect as a judgment of the said court in term, unless the party deeming himself aggrieved thereby, on or before the third juridical day after that on which such judgment was given, files in the office of the prothonotary of the said court for such district, his exception to such judgment and the reasons of such exception, and at the same time pay into the hands of the said prothonotary the sum of ten dollars (or such other sum as may be fixed by any rule of practice of the said court,) to secure the costs on the rehearing of the case upon such exception, in which case the judgment shall not be executed against such party, but the case or matter shall be reheard *by the court* in term in the same district, after which such judgment shall be given therein, and such order made as to the costs of the rehearing as the Court thinks right; and the resident judge shall not be precluded from sitting in court at such rehearing by reason of his having given the judgment excepted to. 16 V. c. 194, s. 15.

The judge in any district other than Quebec and Montreal may give judgments out of term, subject however to rehearing in term.

**39.** Rules of practice may be made for regulating the proceedings under the next preceding section, in like manner as for regulating other proceedings in the said court, but in the absence of such rules the judge or court shall govern themselves and regulate the proceedings in each case, in such manner as they deem best adapted to ensure justice to the parties concerned with the least possible expense and delay. 16 V. c. 194, s. 15, and 19, 20 V. c. 55, s. 2.

Rules of practice in such cases.

*Judgments from which an appeal lies to be motivés.*

**40.** Each final judgment, and each interlocutory judgment from which an appeal may lie, rendered by the Superior Court, as well in any suit or action by default or *ex parte* which is dismissed, as in any suit or action where issue has been joined, shall contain a summary statement of the points of fact and law, and the reasons upon which such judgment is founded, and the name of the judge who pronounced the same. 12 V. c. 38, s. 36.

Judgments from which an appeal may lie, —to contain a statement of the facts, &c.

*Of writs of execution out of one district into another.*

**41.** When any person against whom judgment has been rendered in the Superior Court has not sufficient goods, chattels, lands

Writs of execution may be

addressed from one district to another, executed by the sheriff in such other, and returned to the Court from which it issued.

lands and tenements, to satisfy such judgment in the district in which such judgment has been rendered, but has them in another district, a writ of execution may be ordered by the court in which such judgment has been so rendered, addressed to the sheriff of such other district in which such person has moveable and immoveable property as aforesaid, for the seizure and sale of such moveable and immoveable property, and the sheriff shall execute the same and make a return thereof to the court in the district from which it issued and shall be answerable to the court *there* for his doings relative thereto. 25 G. 3, c. 2, s. 39,—22 V. c. 5, s. 42.

#### *Appeals and Writs of Error.*

Appeals from Superior Court to the Court of Queen's Bench.

**42.** An appeal and writ of error shall lie to the Court of Queen's Bench from the judgments of the Superior Court (whether rendered in any cause commenced in the said court, in the first instance, or brought into it by evocation, removal from some other court, or transmission from some former court,) in every case in which, from its nature or the amount in dispute, an appeal or writ of error is allowed by law, upon the terms and conditions and under and subject to the restrictions, limitations, rules and regulations established by law. 12 V. c. 38, s. 37.

#### IN THE SUPERIOR COURT AND IN THE CIRCUIT COURT.

Application of certain sections.

**43.** The foregoing sections of this Act apply only to the Superior Court and cases therein,—the following sections from *forty four* to both inclusive apply both Courts.

#### *Of the Writ of Summons and of Process in general.*

Issue of writs.

**44.** Every person having a suit of civil nature to institute in the Superior Court or in the Circuit Court for Lower Canada, may sue out and as of right obtain from the office of the prothonotary or clerk in the district or *circuit* in which he desires to institute such suit, a writ of summons in Her Majesty's name against the party defendant, signed and sealed by such prothonotary or clerk, and returnable according to law. 41 G. 3, c. 7, s. 1,—12 V. c. 38, ss. 19, 23, 41, 79.

Service on defendant.

**45.** A copy of the writ of summons and of the declaration shall be served upon the defendant personally, or left at his house, with some grown person there belonging to the family, and in so doing the service shall be deemed sufficient. 25 G. 3, c. 2, s. 2.

When the sheriff is interested, the coroner to act for him.

**46.** Every writ and process which ought to be served and executed by the sheriff, where it happens that the sheriff is personally interested and concerned, shall be served and executed by the coroner of the district in which such writ, process issues. 25 G. 3, c. 2, s. 14.

*Of the saisie-arrêt before judgment in cases above forty dollars.*

47. No process of attachment, writ of *saisie-arrêt* prior to trial, except in the case of *dernier équipieur*, according to the usage of the country, shall be issued for attaching the estate, debts and effects of what nature soever, of any person whomsoever, whether in the hands of the owner, the debtor or of a third person,—except there be proof on oath made before one of the judges of the Superior Court, or before a prothonotary of the said court, or a clerk of the Circuit Court, in the district or circuit in which he is prothonotary or clerk, and in which such writ is issued, that the defendant or proprietor of the said debts and effects is indebted to the plaintiff in a sum exceeding forty dollars, and is about to secrete the same, or doth abscond or doth suddenly intend to depart from *Lower Canada*, with an intent to defraud his creditor or creditors, and that the defendant is then indebted to the plaintiff, and *the deponent* doth verily believe that without the benefit of such attachment *the plaintiff* would lose his debt or sustain damage :—and the sum of money specified in the affidavit upon which such writ or process issues, and also the name of the person who has made and given such affidavit, shall be endorsed on such writ :

In what cases only writs of attachment before judgment, may issue.

2. But nothing herein contained shall be construed to the prejudice of the rights of landlords in their legal recourse for the recovery of rents, according to any former mode of proceeding by any law, usage or custom whatsoever. 27 G. 3, c. 4, ss. 10, 11,—10, 11 G. 4, c. 26,—12 V. c. 38, ss. 19, 63.

Nothing herein to prejudice the rights of landlords.

48. If in an affidavit for obtaining a writ of *saisie-arrêt* before judgment under the next preceding section, or a writ of *capias ad respondendum*, under chapter *eighty-seven* of the Consolidated Statutes, in addition to the allegation that the defendant is personally indebted to the plaintiff in the sum required it is alleged upon grounds specially stated in the affidavit that the defendant is a trader, that he is notoriously insolvent, that he has refused to compromise or arrange with his creditors, or to make a *cession de biens* to them or for their benefit, and that he continues to carry on his trade,—such debtor shall then be held to be about to secrete his goods and chattels with intent to defraud his creditors generally, or the plaintiff in particular, and a writ of *saisie-arrêt* before judgment for attaching his estate, debts and effects, may issue under the next preceding section, and a writ of *capias ad respondendum* for arresting such defendant, may also issue under the said act. 22 V. c. 5, s. 48.

What affidavit will suffice for arrest of a trader defendant and for attachment of his goods.

49. The proceedings generally in cases where a writ of *capias ad respondendum* may issue, are regulated by chapter *eighty-seven* of these Consolidated Statutes.

Proceedings on writs of *capias ad respondendum*.

*Sheriff may demand an advance from the party seizing, to provide for the safe keeping of property seized.*

Sheriff before executing any seizure may demand an advance for his costs.

**50.** Any Sheriff, before executing any seizure of any kind under any process to him directed (whether *saisie-arrest* before judgment, seizure after Judgment, or *saisie revendication* or *entiercement*) may demand and receive in advance from the party at whose instance the seizure is to be made, or his Attorney *ad litem*, such sum as by any one of the Judges of the Superior Court or by the Prothonotary of the district in which the process for the seizure issues, is deemed sufficient for the safe keeping of the effects and moveable property seized :

And so again when the first sum is expended.

2. When and as often as the sum so advanced is expended, such Sheriff may, on presenting a summary petition to any one of the Judges of the Superior Court or to the Prothonotary of the District where the seizure has been made, obtain an order from such Judge or Prothonotary upon the party at whose instance the seizure was made, for the payment in advance of such further sum as by the said Judge or Prothonotary is deemed sufficient for the safe keeping of the effects and moveables seized ; and service of such petition and order shall in every instance be made upon the Attorney *ad litem* of the party seizing ;—And in default of such payment in advance within twenty-four hours after the said petition and order, the seizure shall be discharged and such Sheriff exonerated from all liability to any person or party whomsoever. 22 V. c. 5, s. 52, p. 7.

In default seizure to be discharged.

Proceedings to be taken by sheriff to whom any such costs are due.

**51.** Any Sheriff to whom at the time when the Act 22 V. c. 5, came into force, any sum of money was due on any seizure then pending, for costs and disbursements incurred for the safe keeping of any effects or moveable property, upon presenting a summary petition to any Judge of the Superior Court, or to the Prothonotary of the District where the seizure was made, stating the amount due to him as aforesaid, may obtain an order from such Judge or Prothonotary upon the party at whose instance the seizure was made, for the payment of the sum so due to him :

In default of payment seizure to be discharged.

2. Service of such petition and order shall be made upon the Attorney *ad litem* of the seizing party, and in default of payment of the said sum within the time fixed by the said Judge or Prothonotary in such order, the seizure shall be discharged and such Sheriff exonerated from all liability to any person or party whomsoever, but such Sheriff shall nevertheless retain all his legal rights and remedies for recovering the costs and disbursements then due to him by reason of such seizure from any party who was by law liable for the same ;

Advance for future costs.

3. And if in any such pending case the Sheriff is paid the amount of his fees and disbursements then incurred, he may thereafter

thereafter demand and obtain in advance in the manner hereinbefore provided, any further sum of money required for the safe keeping of the effects and moveable property seized. 22 V. c. 5, s. 52, p. 2. *Effete?*

**52.** No sheriff shall be bound to proceed to the execution of any writ of attachment, (*arrêt simple*) or writ of *revendication*, or of any writ of execution against any raft or timber, until he has been furnished by the party suing out such process with a bond of indemnity, with two good and sufficient securities, to the satisfaction of one of the judges of the Superior Court for Lower Canada, conditioned to secure and hold him harmless against all damages and costs to result from such seizure. 6 W. 4, c. 15, s. 22.

Before seizure of any raft, sheriff may demand a bond of indemnity.

*Of Main-levée from Attachment on payment of the debt or security being given therefor.*

**53.** Whenever the defendant or debtor under attachment prior to trial and judgment, either pays the debt and costs, or gives security to the sheriff, officer or bailiff who made the seizure, for the goods so attached and seized, as in case of bail or personal arrests, subject to justification in court, to the amount of the sum endorsed on the writ of attachment, of the costs to be taxed and of the interest to accrue, and that he will abide the judgment of the court, (which security such sheriff, officer or bailiff is bound to receive), the said goods shall be forthwith restored, and for that purpose the defendant or debtor shall be allowed forty-eight hours, after which period, if the debt and costs are not paid, nor such security given, the said goods shall remain attached and held by the sheriff, officer or bailiff, to answer the judgment of law. 27 G. 3, c. 4, s. 11,—10, 11 G. 4, c. 26,—12 V. c. 38, s. 63.

In what cases *main-levée* from attachment shall be granted.

*Of the issuing of Writs of Capias ad Respondendum and Saisie-Arrêt before Judgment by Commissioners for receiving Affidavits.*

**54.** In all cases wherein by law a *capias* or attachment may issue against the body or moveable effects of any debtor, before trial and judgment, any commissioner specially appointed to take and receive affidavits by the Superior Court for Lower Canada, or by any judge thereof in any of the districts of Lower Canada, (the oath or affidavit in such cases by law required, having been first previously made before him,) to his satisfaction and according to the form number *one* or *two* hereunto annexed, as the case may require, may issue his warrant, in the form number *three* or the form number *four* in the schedule to this Act, as the case may require, directed to the sheriff of the said district or his deputy, or to the bailiff or peace officer nearest to the place of residence of such commissioner, for the arrest of such debtor, or for the attachment and seizure of the moveable property and effects of such debtor, as

Commissioners for receiving affidavits empowered to issue *capias ad respondendum* or attachment before judgment.

the case may be, and to cause such debtor to be arrested and conveyed to the common gaol of the said district, wherein such commissioner is resident and appointed to take such affidavits, or the moveable property and effects of such debtor or debtors to be arrested and detained, as the case may be. 9 G. 4, c. 27, s. 1.

But the ordinary process must be issued and executed within 48 hours of the arrest or attachment.

**55.** No person so arrested and conveyed to gaol, shall be detained therein for a longer time than forty-eight hours from the time of his committal thereto, unless, before the expiration of the said term of forty-eight hours, the ordinary process of *capias* has been issued and executed in due course of law; and no moveable property so seized and attached, shall remain so seized or attached for a longer period than twelve days from the time of such seizure or attachment, unless, before the expiration of the said term of twelve days, the ordinary process of attachment has been issued and executed in due course of law. 9 G. 4, c. 27, s. 1.

Duty of Commissioner on granting the warrant.

**56.** Any commissioner who has granted such warrant shall transmit forthwith a duplicate thereof, together with the original of the affidavit upon which the same was founded, and a certificate of the proceedings had in consequence and by virtue thereof, that is to say, if it be a warrant for arrest in conformity with the form number *three* to the prothonotary of the Superior Court for Lower Canada, in the district in which he is so appointed commissioner, and if it be a warrant of attachment in conformity with the form number *four*, either to the said prothonotary of the Superior Court or to the clerk of the Circuit Court (according as the one or the other of the said courts has power to take cognizance of, or has jurisdiction in the matter,) in the district in which he is so appointed commissioner, and the said prothonotary or clerk shall file them in the cause to which they relate, and keep them among the records of the court of which he is prothonotary or clerk in its district or circuit. 9 G. 4, c. 27, s. 2,—12 V. c. 38, ss. 47, 63.

His fees for granting the same.

**57.** The commissioner may require and receive the sum of *sixty-seven cents*, from the person demanding the same, for any such warrant to be by him granted in pursuance of this Act, and the further sum of sixty-seven cents, for every return of the proceedings taken under any such warrant. 9 G. 4, c. 27, s. 3.

*Of the service of the declaration in certain cases and of the Writ of Capias ad Respondendum, Saisie-Gagerie, Saisie-Revendication and Saisie-Arrêt before Judgment has issued.*

How declaration shall be served in cases in which the plaintiff has

**58.** In all cases where by the laws of Lower Canada, any plaintiff is entitled to and has obtained a writ of *capias ad respondendum* or attachment against the body of any defendant, *saisie-gagerie, saisie en revendication*, or attachment for

for attaching the estate, debts and effects of what nature soever, whether in the hands of the owner, the debtor, or of a third person,—service of the declaration, specifying the cause of action upon which such writ has been issued, may be made on the defendant, either personally or by being left at the office of the sheriff of the court, into which such writ has been made returnable, at any time within three days next after the service of such writ if the same have issued in term, or within eight days next after such service if the writ have issued in vacation;—and service of such declaration in the manner aforesaid, shall be good and sufficient in law to compel the defendant to appear in court, and answer the demand of the plaintiff, in the same manner as if such declaration had been served together with the original writ. 7 G. 4, c. 8.

obtained attachment against the body or effects of the defendant.

**59.** In any case in which the estate, debts or effects of any debtor are attached by *saisie-arrêt* or *arrêt simple*, under process issued out of the *Superior Court or Circuit Court*, and in which the said debtor is either departed from or concealed within Lower Canada, so that service of the said process cannot be made as by law required,—the court in which such suit or action is instituted, or any judge of the said court in vacation, on receiving satisfactory proof by one credible witness of such departure or concealment, may dispense with such service, and order notice in lieu thereof to be inserted in such public newspaper as the said court or judge in vacation directs for the said debtor to appear in the said court within two months and await the judgment of the court;—and if the said debtor do not appear either in person or by attorney within the time specified in such notice, and shew reasonable cause why the court should not proceed to judgment in such suit or action, such notice shall have the same force and effect as if the said process had been actually served within the jurisdiction of the court where the suit is instituted. 9 G. 4, c. 28, s. 1.

Cases in which personal service of process may be dispensed with.

**60.** No person against whom any writ of attachment or writ of *saisie-arrêt* or *entiercement* has been granted for attaching the estate, debts, credits and effects of any debtor or other defendant in any action in any of the said courts, shall be held and declared to be personally liable, or condemned as the debtor of such defendant, unless service of such writ be made upon him personally, or unless the court from which such writ issued, is satisfied, upon proof by one or more credible witnesses, that such person intentionally conceals himself for the purpose of avoiding the personal service of such writ, in which case service thereof at his domicile shall be deemed and taken as good and sufficient service of such writ of attachment, *saisie-arrêt* or *entiercement*, as aforesaid. 9 G. 4, c. 28, s. 5.

No person to be condemned as the debtor of any defendant, unless service of the writ be personal or he conceals himself.

**61.** If any person is sued for any matter or thing done in pursuance of the *two next* preceding sections, he may plead the general issue and give the special matter in evidence. 9 G. 4, c. 28, s. 4.

General issue.

*Of the summoning of absentees, of the service of papers on, and the appointment of arbitrators or experts for absentees.*

Proceedings where defendant cannot be personally served.

**62.** In any suit or action against any person who has left his domicile in Lower Canada, or against any person who has had no domicile in Lower Canada, but has personal or real estate within the same, the plaintiff, if such person be not personally served with process, may summon and implead such person, by a writ issued in the usual way out of the Superior Court, or out of the Circuit Court, in the district or *circuit* wherein such person had his domicile, or where such property is situate,—and upon the return of the sheriff or bailiff to the writ, that the defendant cannot be found in the said district or *circuit*, the court, or any judge thereof in vacation, may order that the defendant shall by an advertisement to be twice inserted in the English language in any newspaper published in that language, and twice in the French language in any newspaper published in that language in Lower Canada, (such newspapers to be designated by the court or judge) be notified to appear and answer to such suit or action within two months after the last insertion of such advertisement; and upon the neglect of the defendant to appear and answer to such suit or action within the period aforesaid, the plaintiff may proceed to trial and judgment as in a case by default. 12 V. c. 38, s. 94.

Defendant in such case to be notified by advertisement to appear.

In such cases proceedings subsequent to advertisement may be notified at the office of the prothonotary.

**63.** In all actions brought in conformity with the *next preceding* section, against any absent party, all notices or proceedings subsequent to the advertisement required by way of summons to appear and required by law or by any rule of practice, in order to obtain or execute any judgment against such absent party, or for appealing from any such judgment, or determining and trying any opposition or contestation arising in such action, or for giving effect to any judgment rendered against such absent party in any action *en partage* or *en licitation*,—may be lawfully made and notified at the office of the Prothonotary or clerk of the court in which such action is pending:

In actions *en partage* or *en licitation* the experts for absentees may be appointed by the Court.

2. And whenever it is necessary in any such action *en partage* or *en licitation* against any absent party to appoint arbitrators or *experts* to examine the real property to which such action relates, and to determine whether the same can be partitioned with advantage, the *court* before which such action is brought during term, or any one of the judges thereof in vacation, may appoint, for such absent party, one or more arbitrators or *experts* to act conjointly with the arbitrator or *experts* appointed by the other party or parties to the said action. 14, 15 V. c. 60, s. 3.

When the defendant is in Upper Canada a writ for ser-

**64.** In any suit or action brought or to be brought against any person who shall have left his domicile in Lower Canada, or against any person who has had no domicile in Lower Canada,

Canada, but when such person has personal or real property therein, or the cause of such suit or action has arisen within Lower Canada,---then if such person is a resident of or is known to be then in Upper Canada, any judge of the Superior Court, or the prothonotary of the Superior Court or clerk of the Circuit Court at the place where the action is brought, on being satisfied of the facts by affidavit or otherwise, may sign an order to be indorsed on the writ of summons in such suit or action, in the following words, "this writ may be served in Upper Canada" :

vice there, may issue on affidavit.

2. Such Writ may then be served in Upper Canada by any bailiff entitled to serve process of the County Court of the county in which the service is made or by any literate person,---and the affidavit of such bailiff or of such literate person, made before some commissioner authorized to receive affidavits to be used in the Superior Court or Circuit Court for Lower Canada, or any Justice of the peace for the county in which the service is made, in the Form D of the schedule, to this Act, or to the like effect, shall be evidence of the service, and the person so served shall be bound to appear according to the exigency of the writ, and if he fails so to appear, the plaintiff may proceed as in case of default, and as if the service had been made within the limits of the ordinary jurisdiction of the court ;

How such writ may be served in Upper Canada.

3. Provided that there shall be between the day of service of the writ and that on which the defendant is commanded to appear, at least ten days if the action is in the Superior Court, and at least five days if the action is in the Circuit Court, for the first five leagues,---and one day more in either court, for every additional five leagues of the distance of the place where the service is made from that where the sittings of the court are held ;

Delay in such case between service and return of the writ.

4. And provided also, that nothing in this section shall oblige the plaintiff to adopt the proceeding hereinabove mentioned, or prevent such defendant from being notified to appear by advertisement in the manner provided by the next preceding section, if the plaintiff prefers to proceed under the said section ;

But plaintiff may, if he prefer, summon defendant by advertisement.

5. And, provided further, that the service and return of any writ in Upper Canada under this section, may be made by any bailiff of the Superior Court for any district in Lower Canada, but such bailiff shall be entitled to no more costs and emoluments for serving and returning the same, than a bailiff of the County Court for the county in Upper Canada where the service is to be made, would have been entitled to for so doing. 22 V. c. 5, s. 58.

Costs of service and return in such case.

*How process may be served in another district where there is no special provision.*

**65.** Whenever any writ, subpœna or other process, opposition, judgment, order, rule, notice or proceedings emanating from

When no special provision

exists as regards service of any process in another district, such service may be made by a bailiff.

from the Superior or the Circuit Court, or from any judge, or incident to any suit or proceeding in either of the said courts, requires to be served upon any party or person residing or being at the time in another district,—then if there is no special provision of law regulating the manner in which such service is to be made, it may be made by any bailiff of the superior court for such other district, who shall make the service and return required, in like manner and with like effect as it would have been made by a bailiff for the district in which such writ, subpoena or other process, opposition, judgment, rule, order, judgment, notice or other proceeding originated, if the party or person on whom the service is made had been resident or had been then present in such district :

Costs of service limited.

2. Any bailiff of the Superior Court for the district in which such writ, subpoena or other process, opposition, judgment, order, rule, notice or proceeding, issued or is made, rendered or had, may serve the same in any other district, but shall be entitled to no more costs or emoluments for so doing, than a bailiff of the district where the service is made, residing nearest to the place of such service would have been entitled to for so doing. 22 V. c. 5, s. 54.

*Of the default to appear by the plaintiff, &c., of the amendment of the declaration, and of security for costs.*

Plaintiff not appearing on return day, action to be dismissed.

66. If the plaintiff do not appear at the return day of the writ of summons, or appearing do not prosecute his action, the action shall be dismissed with costs to the defendant. 25 G. 3, c. 2, s. 8.

Amendment of declaration.

67. The declaration served upon any defendant with a writ of summons, and filed in the office of the Prothonotary or clerk, shall not be altered or amended after being filed, unless upon rule of the court and upon payment of costs. 25 G. 3, c. 2, s. 3.

In case plaintiff resides out of Lower Canada, defendant may demand security for costs.

68. In all actions, oppositions and suits prosecuted before the courts of civil jurisdiction in Lower Canada, (by any person residing without Lower Canada,) whether such person be a subject of Her Majesty or not, the defendant or other party concerned, may demand and obtain good and sufficient security at the discretion of the court in which such action, opposition or suit is brought, for payment of his costs in case the plaintiff or prosecutor should fail in their action, opposition or other suit,—and all proceedings shall be staid and suspended until such security shall have been offered and received. 41 G. 3, c. 7, s. 2.

*Of the confession of judgment.*

How confession of judgment may be made.

69. Any party desiring to confess judgment in any cause, either in the Superior Court, or in the Circuit Court, (except in non-appealable

non-appealable cases in the latter court,) shall file an appearance therein, and may then file a confession of judgment in writing, signed by him, (or by an attorney thereunto specially authorized by an authentic *acte* to be filed with it,) and countersigned by his attorney *ad litem*; and if the plaintiff accepts such confession, he may forthwith inscribe the case for judgment on the same, and the Prothonotary or clerk shall thereupon draw up a judgment accordingly, which being signed by the plaintiff or his attorney *ad litem*, shall be held to be the judgment of the court, and recorded and executed accordingly; and in non-appealable cases in the Circuit Court, judgment may be confessed orally in open court. 12 V. c. 38, s. 83.

70. Any confession of judgment filed or made orally as aforesaid, and not accepted by the plaintiff, shall, if such plaintiff does not, by the judgment in the cause, recover more than he would have obtained judgment for under such confession, have the same effect, with regard to all costs incurred after the filing or making of such confession as if it had been accepted by the plaintiff at the time of the filing or making thereof, and in any such case the defendant shall be entitled to recover from the plaintiff such costs, incurred by him after the filing or making of such confession, as may be awarded to him by the court in its discretion. 12 V. c. 38, s. 84.

In case plaintiff does not accept the confession.

OF THE *demande* IN INTERVENTION.

71. Any *demande* in intervention may be filed in the office of the Prothonotary or clerk of the court without being allowed by any court or judge, but it shall not stay proceedings in the case or otherwise affect the same, until it has been allowed by the court upon motion in term or by one of the judges upon petition in vacation, which said motion or petition may be made or presented at any time before judgment, after such *demande* in intervention has been allowed the proceedings in the case shall be stayed during three days, and if during that time it is served on the proper parties, and the return of such service be filed at the office aforesaid, proceedings shall be had as in an action of the same nature; but if such return be not so filed, such *demande* in intervention shall be *ipso facto* null, and any party may demand and obtain from the Prothonotary or clerk, *acte* of the non-filing of such return, and may file such *acte*, which shall have the same effect as a judgment pronouncing such nullity, and the parties may thereupon proceed as if such *demande* in intervention had never been filed. 16 V. c. 194, s. 22,—12 V. c. 38, s. 92.

Proceedings upon the *de demande* in intervention.

Of Pleadings and Foreclosure.

72. Every issue in law or fact to be formed in any cause in the Superior or Circuit Court between the parties plaintiff or defendant, shall be made and completed by the declaration,

How the issue in law or in fact shall be completed.

answer

answer and replication, or by the plea, answer and replication in cases of abatement and bar, of the said parties plaintiff and defendant, and no other or further pleadings or writings by way of plea upon the issue or matter in dispute, whether of law or fact, shall be received or admitted by the said courts to form part of the record in any cause there instituted and to be heard and adjudged upon. 25 G. 3, c. 2, s. 13.

In case the defendant files any preliminary plea, the plaintiff before answering may demand his plea to the merits.

**73.** Whenever the defendant in any case files any *exception à la forme*, *exception déclinatoire* or *exception dilatoire*, or other preliminary plea, the plaintiff may, before answering the same, demand of such defendant his plea or pleas to the action or merits; and if such last mentioned plea or pleas be not filed on or before the eighth juridical day after such demand, the plaintiff may foreclose such defendant from thereafter filing any plea or pleas to the action or merits, in the manner prescribed by the *thirteenth* section of this Act (12 V. c. 38, s. 25), and there shall then be no issue raised between the plaintiff and defendant, except on such preliminary plea or pleas; saving to the defendant nevertheless the benefit of the proviso to the *said* section as to notice of the inscription of the cause for *enquête* or hearing; and the provisions of the said section, shall apply to the cases mentioned in this section in so far only as they are consistent herewith. 20 V. c. 44, s. 72.

But if defendant, after so doing, succeeds on his preliminary plea, he shall have the costs on his plea to the merits.

**74.** Provided always, that when the defendant, on the demand of the plaintiff under the next preceding section, files any plea or pleas to the action or merits, he shall be allowed the costs thereon if he afterwards succeed on the preliminary plea or pleas; and that, if proof is ordered on any such preliminary plea, the *enquête* shall be taken at the same time on the issue raised by the plea or pleas to the action or merits, unless the court orders otherwise, and if the defendant succeeds on such preliminary plea or pleas, he shall be allowed his costs on such *enquête*:

Further provision if such preliminary plea be an *exception dilatoire*.

2. Provided also, that if such preliminary plea be an *exception dilatoire*, and the defendant succeeds thereupon, such defendant, notwithstanding his being foreclosed under the preceding section, may, if he has not pleaded to the action or merits, file within the delay prescribed by law (*such delay to be computed from the date of the interlocutory judgment maintaining the said exception*) his pleas to the action or merits, as if he had not been so foreclosed; but if he do not so plead within the said delay, such foreclosure shall have full effect; And if such defendant had pleaded to the action or merits, he shall be entitled to amend his plea or pleas or to plead *de novo* within the delay prescribed by law; and if he do not amend the plea or pleas filed by him, or file new pleas within the prescribed delay, he shall be deemed to abide by his plea or pleas originally filed;

3. And provided also that if the *exception dilatoire* so maintained relates to the delay required to call any *garant* into court, any such *garant*, after being so called in, may, if he is entitled so to do, file during the prescribed delays, any plea which he may have to plead in answer to the original demand, whether the original defendant has or has not pleaded to such action. 20 V. c. 44, s. 73.

If the delay be to call in a *garant*.

75. In any pleading in any contested civil case, every allegation of fact, the truth of which the opposite party does not expressly deny or declare to be unknown to him, shall be held to be admitted by him; and the costs of proving any such allegation of fact or any document proved in evidence, shall always be in the discretion of the court, so that the whole or any part of such costs may be awarded against a party denying or not admitting any fact or document which in the opinion of the court he must have known to be true or genuine, whatever be the event of the case. 12 V. c. 38, s. 85.

Any allegation of fact not denied in any pleading shall be held to be admitted.

76. To all allegations of fact in any pleading, the ordinary rules of legal construction shall apply, so that it shall be sufficient to support any pleading that the facts alleged in it agree sufficiently with those proved to maintain the conclusions of such pleading or some of them, and that the court is of opinion that the opposite party could not have been misled by such pleading as to the real nature and effect of the facts intended to be therein alleged and to be proved under such pleading:

Ordinary rules of legal construction to apply to allegations of fact.

2. And the court may in its discretion, at any time before judgment, and on such conditions as it deems just, allow any pleading to be amended, so as to agree with the facts proved, if the court is of opinion that the ends of justice will be promoted by allowing such amendment. 12 V. c. 38, s. 86.

Amendment of pleadings.

77. In civil cases no form of action or of words is or shall be necessary in any declaration, opposition or other pleading or paper, but the parties may and shall respectively state *bona fide*, and to the best of their belief, the real facts on which they intend to rely, and which they allege to be true and offer to prove, in plain and concise language, to the interpretation of which the rules of construction applicable to such language in the ordinary transactions of life do and shall apply, so that no allegation or statement may or shall be held to be insufficiently made, if it would be ordinarily understood to have the meaning intended by the party using it. 12 V. c. 37, s. 87.

No form of words necessary in any pleadings, &c.

78. But no party to any suit or case before the Superior Court, or to any appealable case in the Circuit Court or to any non appealable case therein returnable in vacation, in any district, except only the districts of Gaspé, Saguenay and Chicoutimi, shall be compellable to file any plea or answer, or otherwise

Except in certain districts: no party to a suit is bound to proceed therein during the vacation.

otherwise to proceed therein, between the tenth day of June and the last day of August, both inclusive, in any year, or shall incur any forfeiture, penalty or disadvantage by refraining from so doing between the said days, unless he is commanded to do so by some express order of the court or of some judge thereof made in such suit or case (which order the court or any judge thereof may always make :

How delays shall be computed in which the vacation intervenes.

2. And in the absence of such order no day from the tenth of July to the last day of August, both inclusive, shall be reckoned in computing the delay or time allowed for filing any plea or answer or taking any step or otherwise proceeding in any suit or case before the said courts ; but for the purpose of computing such time or delay, the first day of September shall be taken to be the day next following the ninth day of July, and such time or delay shall be computed by reckoning only the days before the tenth day of July and after the last day of August ;

But the prothonotary, &c., must conform to all orders at the time mentioned therein.

3. Provided always, that nothing in the foregoing provisions of this section shall extend to the said Districts of Gaspé, Saguenay or Chicoutimi, or shall prevent or excuse any prothonotary, sheriff, bailiff or other officer from returning any writ or doing any thing on the day when he would otherwise be bound to return or do the same or to prevent or excuse any party or person from obeying any process or order of the court, issued or made in or with reference to any particular suit or case, or from doing the thing which he may thereby be commanded to do at the time mentioned in such process or order. 16 V. c. 194, s. 10, and 22 V. c. 5, s. 59.

*Of experts,—of the oath of experts and arbitrators before a Commissioner for receiving affidavits, and witnesses before them.*

Appointment of accountants in cases of disputed accounts, &c.

79. In all cases involving the adjustment and settlement of accounts, the said courts, respectively, may order an account to be taken, and may refer any account or matters of account in question in any such case, to a person or persons conversant with such matters and skilled as accountants, with power to act and report thereon in the same way as *experts* in cases wherein *experts* can be by law appointed ;—and the reports of such accountants may be acted upon or homologated in the same way as reports of *experts* in other cases. 20 V. c. 44, s. 92.

In certain cases *expertise* may be had before the adduction of evidence.

80. Whenever in any case in the Superior Court or Circuit Court, the subject matter of litigation, or any material question incident thereto, is such that it ought to be referred to and investigated by *experts*, the court or the judge presiding at the *enquête* may, upon the motion of any of the parties, order an *expertise* according to law, before the adduction of evidence ; And the court or the judge presiding at the *enquête* in any case

in either of the said courts, may order an *expertise ex officio*, either before any evidence is adduced or at any time during the *enquête*, if in his opinion the subject matter of litigation or any material question incident thereto, is one which according to law ought to be referred to and investigated by *experts*. 22 V. c. 5, s. 10.

**81.** Any court of justice in Lower Canada, by commission under the seal of the court, and signed by one of the judges thereof, may give power to any commissioner appointed for receiving affidavits to be used in the Superior Court, or to any other person whom the court before which the cause is pending thinks proper to appoint for that purpose, to administer to all *experts* appointed by such court or by the consent of the parties to the causes pending in the said court, without regard to the distance between their residence or the place where the duty assigned to them is to be performed, and the place where the court is held, and jointly or separately, without the presence of the parties being in any wise necessary, the oath in the form number \_\_\_\_\_ in the schedule to this Act, which oath shall be signed by such *experts*, unless they are unable to do so, (and in such case mention shall be made of the reason why such *experts* have not been able to subscribe the same,) and certified by the person so named and empowered agreeably to the form number \_\_\_\_\_ in the said schedule. 48 G. 3, c. 22, s. 1,—and 13, 14 V. c. 38, s. 1.

Courts may vest power in commissioners to administer oaths to *experts*.

**82.** Any court of justice in Lower Canada may authorize all *experts* or arbitrators appointed by it, or by the consent of the parties in the cases pending before it, without regard to the distance between their residence or the place where the duty assigned to them is to be performed, and the place where the court is held, to take the oath required of them before proceeding to perform the duties of their office, before any commissioner appointed for receiving affidavits to be used in the Superior Court, or before any other person whom the court, in which the case is pending, thinks proper to appoint for the purpose. 13, 14 V. c. 38, s. 1.

Courts may authorize *experts* to take the oath.

**83.** The said *experts*, arbiters and arbitrators may administer the necessary oaths to the witnesses produced before them touching the matters referred to them, without regard to the distance of the residences of such witnesses or of the place where they are so required to attend from the place where the court is held, and the oath to be administered to such witnesses shall be in the form number \_\_\_\_\_ of the schedule to this Act. 13, 14 V. c. 38, s. 2,—48 G. 3, c. 22, ss. 2, 3.

*Experts* may administer oath to witnesses, &c.

**84.** The depositions of the witnesses examined before *experts* as aforesaid shall be reduced to writing, certified and annexed to the report of the said *experts*, and mention shall be made in the depositions, whether the witnesses are related

Depositions of witnesses to be reduced to writing.

or

or allied to either and which of the parties, and in what degree of consanguinity or alliance, or whether they are servants of either or any of the parties or interested in the cause; Provided nevertheless that nothing in this Act contained shall be understood to require that the depositions of such witnesses shall be reduced to writing in *non-appealable* cases. 48 G. 3, c. 22, s. 2.

*Of the proof of Bills of Exchange, Notes, &c.*

In actions *ex parte* on bills or notes the signatures, &c., to be presumed genuine.

85. If in any action on a bill of exchange or promissory note, *cédule*, check, note or promise, or other act or private agreement in writing, the defendant makes default, or for any other reason the plaintiff becomes entitled to proceed *ex parte*, then such bill or note, check, promise, act or agreement, and every signature and writing to or upon the same, shall be presumed to be genuine without proof thereof, and judgment may be rendered accordingly :

Proceedings to be taken by defendant if he wishes to deny the signature, &c.

2. If in any such action any defendant denies his signature, or any other signature or writing to or upon such bill, note, *cédule*, check, promise, act or agreement, or the genuineness of such instrument or of any part thereof, or that the protest, notice and service thereof (if any be alleged by the plaintiff) were regularly made, whether such denial be made by pleading the general issue or other plea, such instrument and signatures shall nevertheless be presumed to be genuine, and such protest, notice and service to have been regularly made, unless with such plea there be filed an affidavit of such defendant, or of some person acting as his agent or clerk and cognizant of the facts in such capacity, that such instrument or some material part thereof is not genuine, or that his signature or some other to or upon such instrument is forged, or that such protest, notice and service were not regularly made, and in what the alleged irregularity consists ;

*Recours en faux.*

3. But nothing in this section shall take away any *recours en faux*, or any remedy by *requête civile* after judgment if any such signature be forged. 20 V. c. 44, s. 87.

*Of statements (articulations) of facts, and of inscription for enquête.*

Statement of facts to be filed by each party after issue joined.

86. Within two days after any issue is joined upon which evidence is to be adduced, each party shall, unless otherwise agreed between the parties as hereinafter provided, file a statement (*articulation*) of facts pertinent to such issue and not admitted by the pleadings, which he proposes to prove, and shall serve a copy thereof upon the opposite party, and within three days after such service, the party on whom it is made shall file and serve his answer admitting or denying all or any of such facts or denying all or any of them to be within his knowledge ;

knowledge; and in default of such answer being filed and served within the delay aforesaid, the facts in the statement of the opposite party shall be taken as admitted by the party who ought to have filed and served such answer, as shall also any fact alleged in the statement and not expressly denied by the answer; or not denied to be within the knowledge of the party answering. 20 V. c. 44, s. 74.

87. If any fact *not mentioned* in such statement is afterwards proved by the party filing it, the costs of proving such fact shall be taxed against him, whatever be the event of the case; and if any fact denied in such answer is afterwards proved in the case, or any fact denied to be within the knowledge of the party answering is so proved and the judge is of opinion that it must have been within the knowledge of such party, the costs of proving such fact shall be taxed against him, whatever be the event of the case. 20 V. c. 44, s. 75.

As to costs of proving facts not mentioned in such statement.

88. Any document or writing which either party intends to use at the *enquête*, or at the trial in a case to be tried by Jury, shall be filed by such party with his statement of facts, if not previously filed in the cause; and if any document or writing not filed with or previously to such statement be afterwards used at the *enquête* or at the trial, by the party who ought to have so filed it, the costs *thereby occasioned* shall be taxed against him, whatever be the event of the case. 20 V. c. 44, s. 76.

Documents intended to be filed must be filed with statement.

89. After the expiration of the three days allowed for filing such answer, but not before, the case may be inscribed for *enquête*, or proceedings may be had for bringing the same to trial if it is to be tried by a jury; but notwithstanding the expiration of the said period, any party may file an admission of facts at or before the *enquête* or trial, or admit them orally at the same; but the costs previously incurred in or about the proof of such facts shall be taxed against the party admitting them, whatever be the event of the case. 20 V. c. 44, s. 77.

Inscription for *enquête* or proceedings for trial by jury.

90. If any party who might file and serve such statement of facts as aforesaid neglects so to do at the time above mentioned, or states that he has no evidence to adduce at the *enquête* or trial, and afterwards adduces evidence, the costs thereat occasioned by such evidence shall be taxed against him, as shall also the costs occasioned by the adduction of evidence to prove any fact not mentioned in such statement, whatever be the event of the case; And if the other party be in the opinion of the judge taken by surprise by the adduction of such evidence, the judge may postpone the *enquête* or trial, or make such other order and impose such terms upon the party in fault, as he deems just. 20 V. c. 44, s. 78.

As to costs of proving facts not mentioned in the statement.

Provision against surprise.

Facts, &c., on which costs are to be specially taxed to either party to be mentioned in judgment, &c.,

**91.** Whenever under the five next preceding sections or the *seventy-fifth* section of this Act, any portion of the costs in any case are to be taxed against a party who would not otherwise be chargeable therewith, the judgment shall mention the facts or the document or writing by reason whereof such costs are taxable against such party, and they shall be taxed against him accordingly; and the amount thereof may be recovered in the usual manner by the opposite party or deducted by him from the amount of any judgment or of any costs recovered against or chargeable to him in the case. 20 V. c. 44, s. 79.

Foregoing provisions to be in furtherance of the provisions of the 75th section of this Act.

**92.** The six next preceding sections shall be construed as being enacted in furtherance of the provisions contained in the *seventy-fifth* section of this Act, which shall always be enforced in the Superior and Circuit Courts, the rules of practice for which may contain any provision which may be deemed necessary for giving effect to the provisions of the said section. 20 V. c. 44, s. 80.

By consent of parties the statement of facts may be dispensed with.

**93.** With the consent in writing of all the parties to any case in the Superior or Circuit Court, the statement (*articulation*) of facts required by the *eighty-sixth* section of this Act, may be dispensed with in such case, and neither the said section nor any other provision of this Act respecting or depending on such statement of facts shall, after such consent, apply to such case, which may accordingly be inscribed for the adduction of evidence and final hearing on the merits, or proceedings may be had for bringing the same to trial if it is to be tried by a jury, at any time after issue joined:

This section not to apply to non-appealable cases.

This section shall not apply to non appealable cases in the Circuit Court, no statement of facts being required to be filed in such cases. 22 V. c. 5, s. 8.

*Of Enquête days out of Term—of Enquêtes—of faits et articles—of sick, absent or refractory witnesses.*

Days in term to be *enquête* days for certain matters only.

**94.** No day in any of the terms of the Superior Court to be holden at Montreal and Quebec shall be an *enquête* day, either for the Superior or for the Circuit Court at either of those places, unless in respect of default or *ex parte* causes or proceedings, or in respect of any proceeding of a summary nature, wherein the court or judge having cognizance thereof, has specially so ordered. 16 V. c. 194, s. 6.

How witnesses shall be examined in contested cases.

**95.** Every witness in any contested case in the Superior Court, and in every contested appealable case in the Circuit Court, shall be examined in the presence of a judge of such court, who may put any question to the witness which he deems pertinent to the issue, and who shall take down in writing, or cause to be so taken down by the prothonotary or clerk of the court, or a writer employed by him, but under the immediate

immediate direction of the judge, notes of the material parts of the evidence given by such witness, and of any objections insisted upon by any party and the adjudication thereon :

2. Such notes shall be read over, and if necessary, explained to the witness, who may have such additions or corrections made thereto or therein, as are necessary to make them truly state the material parts of his evidence, and he shall sign them if he can write, they shall then be signed by the judge, and shall stand as the evidence given by such witness ;

Witness to sign the notes of his evidence.

3. Provided that by consent of all the parties to any appealable suit or action pending before the Circuit Court, the evidence therein may be taken orally, as in non-appealable cases. 20 V. c. 44, s. 82,—12 V. c. 38, s. 160.

By consent, evidence may be taken orally.

96. The next preceding section shall not apply to the taking of evidence at trials by jury in civil cases, to which the provisions of the section of chapter of these Consolidated Statutes, in that behalf, shall apply. 20 V. c. 44, s. 83.

Next preceding section not to apply to jury trials.

97. The judge presiding at the *enquête* in any such case as last mentioned, or at a trial by jury in any civil case, shall take, or cause to be taken, by the prothonotary or clerk of the court, or a writer employed by him, notes of any oral admissions made by any party, and such notes being signed by the judge shall make part of the evidence in the case, and shall avail as if made in writing in due form by such party. 20 V. c. 44, s. 84.

Notes to be taken of oral admissions.

98. In any case in the Superior Court, or appealable case in the Circuit Court, where the defendant makes default, or the plaintiff becomes entitled to proceed *ex parte*, the evidence may be received by the prothonotary or clerk of the court at the place where the action is brought, and notes thereof made and signed by him, at any time in term or out of term, and he may swear the witnesses and do all other things with regard to the *enquête* in such case which a judge of the court might do. 20 V. c. 44, s. 85.

In *ex parte* cases notes may be taken by the prothonotary or clerk.

99. And whereas in causes and proceedings *ex parte* it is required by law that notice of the inscription thereof for *enquête* be given to the party foreclosed from pleading, and doubts may be entertained as to the extent of the rights of such party at the *enquête* : it is therefore declared that such party shall not be entitled to adduce evidence thereat, but may cross-examine all witnesses brought up against him, and resist the taking of any evidence in any wise illegal or inadmissible ; and if such *enquête* be proceeding, as hereinbefore is provided, before a prothonotary only, all objections taken by either party, shall by such prothonotary be taken down in writing, and kept

Recital.

Rights of foreclosed party attending an *enquête* defined.

of record in such cause or proceeding for adjudication by the court at the final hearing thereof. 16 V. c. 194, s. 8.

Parties summoned on *faits et articles* may be required to answer *visà voce*.

Effect of refusal to answer.

**100.** Any party summoned to answer interrogatories on *faits et articles* in any case in the Superior or Circuit Court, may by such summons be required to answer the same *visà voce* in open court, or at any *enquête* in the case, or at the trial thereof by a jury, and such answers shall be taken down by the judge or the clerk; and the judge presiding in such court, or at such *enquête* or trial, may put to such party *visà voce* any further questions pertinent to the interrogatories, and which he thinks necessary to their being fairly and fully answered, or to the facts intended to be proved by them being admitted by refusal to answer them, and the answer or refusal to answer any question so put by the judge, shall have the same effect as if such question were one of the interrogatories served on such party, and which he was summoned to answer, and any question so put by the judge which the party under examination refuses to answer, shall, under the direction of the judge, be put into writing by the prothonotary or clerk, or a writer employed by him, and shall remain of record, and have effect as aforesaid. 20 V. c. 44, s. 86.

Provision for examination of witnesses in case of sickness.

**101.** In case of sickness, and where the witnesses cannot attend the court, (to be ascertained by affidavit,) the court may in such cases, and of evident necessity, after issue joined, allow one of the judges in the presence of the parties, plaintiff and defendant, or their attorneys, or in their or either of their absence after due notice signified, to take the deposition of such witness in writing to be signed and sworn to, and to certify and record he same in the said court to be of legal effect, and such deposition so taken may be offered and read to the jury, as legal evidence, if such case be to be tried before a jury:

Or when about to leave Lower Canada.

2. And also in any causes instituted in the said courts, where any witness is about to depart from Lower Canada, by which means either party might be deprived of his testimony, (to be ascertained by affidavit,) any judge of the said court may take the deposition of such witness in presence of the parties or of their attorneys in the manner above expressed, and the same shall be of legal effect in every cause in the manner aforesaid. 25 G. 3, c. 2, s. 12.

Proof in causes by default.

**102.** In causes by default, every proof offered by the plaintiff in support of his action and demand, shall be filed in court and remain of record in the same manner as if the defendant had appeared and defended the action. 25 G. 3, c. 2, s. 7.

**103.** In every cause in which the fact is not verified by the verdict of a jury, but by other proof or the testimony of witnesses, the same shall be inserted in the record of the cause, that in case of appeal the whole proceedings may be regularly and fully be transmitted to be adjudged in the Court of Queen's Bench. 27 G. 4, c. 4, s. 7. Provision in case of appeal.

**104.** Any Judge presiding at *enquete* in term or out of term, either in the Superior Court or in the Circuit Court, shall have the same power to fine witnesses for non-attendance and to commit for contempt, as when sitting in term. 22 V. c. 5, s. 7. Penalty on witnesses not attending.

OF COMMISSIONS *rogatoires*.

**105.** And to avoid delays and prevent expenses, where the witnesses reside in the *Indian countries* and other remote places:—The testimony of such distant witnesses may be obtained by commission in the nature of the *commission rogatoire* the carriage whereof shall belong to the party moving for the same, and the commissioners shall be appointed in the manner following, viz: each party where both have joined in the commission, shall name four commissioners, and also alternately strike out two, and the commission shall issue to such three of the four remaining, as the judge issuing the commission shall name: In what cases commissions rogatoires may be issued.

2. And with the commission shall go such interrogatories and cross interrogatories as the parties have respectively filed in the office of the Prothonotary or clerk of the court out of which the commission issues, which interrogatories shall be kept secret, as shall also the depositions returned therewith, until a judge of the court has given his order for the publication thereof; Interrogatories to go with commission.

3. And in default of the parties joining in such commission the same may be issued and addressed to the commissioners named by the party moving for and having the carriage thereof. 31 G. 3, c. 2, s. 3. If the parties do not join in the commission.

**106.** The like powers enjoyed by the Superior and Circuit Court for issuing commissions for the examination of witnesses in remote places, may be also exercised by them for the issue of commissions for the examination of witnesses in any part of Lower Canada, and even in the district or county in which the cause is pending, if the witness to be examined reside thirty miles and upwards from the court house where the cause is to be adjudged, and such commissions may be obtained, issue, and be executed in the same manner, and shall have the like effect as those for the examination of witnesses in remote places: Such commissions may also issue in the district or county in which the cause is pending.

In what case only evidence so taken may be submitted, to a jury.

2. Provided that nothing above enacted shall be construed to authorize the giving in evidence to a jury the depositions taken by commission within the *county* where the trial by jury is had, without the consent of both parties entered upon the minutes of the court. 32 G. 3, c. 2, ss. 1, 3.

Effect of evidence so taken.

**107.** Whenever such commission has been executed according to the tenor thereof, and conformable to such instructions as the judge granting the same, ordered to be annexed thereto, under his signature, for the better execution thereof, the proofs and depositions returned therewith shall be as valid as if rendered in open court, in due form of law :

When such commission may be granted in vacation.

2. Any such commission may be granted in vacation by a *judge* of the Superior Court after due notice to, and hearing of the opposite party or his attorney or counsel, and it shall not be denied to any party requesting the same, whenever such cause is shewn therefore as would be sufficient by law for issuing a *commission rogatoire* for taking such proofs and testimony as could not be obtained within the limits in which the court in which the suit or action may be instituted, has jurisdiction ;

But, in certain cases, judgment may be given before the return of the commission.

3. Provided that nothing above contained shall be construed to prevent the court from proceeding in and determining the cause without a return of the commission whenever it appears that such commission was issued solely to obtain delay, or that the return thereof is retarded for a longer period than justice or equity requires, nor to give the proofs and depositions so to be obtained by commission any greater authenticity and admissibility than they would have upon the offer of them in open court. 31 G. 3, c. 2, s. 4.

### *Commissaires Enquêteurs*.

*Commissaires enquêteurs* may be appointed in certain cases.

**108.** In any case in the Superior or Circuit Court in which there is an *enquête* to be taken, the court before which such case is pending, may appoint a competent person as *commissaire enquêteur* to take such *enquête*, whenever from the nature of the suit, the number of witnesses to be examined, or the distance at which they reside, or the difficulty or multiplicity of the facts to be proved, or any other sufficient cause it is shewn to the court by any of the parties concerned, that by the appointment of such *commissaire enquêteur* the purposes of justice will be better attained in such suit or proceeding :

Judgment appointing them to fix the time and place of proceedings.

2. The interlocutory judgment appointing any *commissaire enquêteur* shall mention the place or places where the *enquête* is to be taken, and the period within which it must be completed ; but such period may be extended by the court for any cause which it deems sufficient ;

3. Every *commissaire enquêteur* shall be sworn before a judge of the Superior Court or a commissioner for receiving affidavits to be used in the said courts, to the due and faithful performance of his duties ; Oath of office.
4. He shall give at least eight days' notice to the parties of the time and place at which he will commence the *enquête* ; Notice.
5. The witnesses shall be summoned by subpoena from the court before which the cause is pending, to appear before him to give their evidence ; Summoning of witnesses.
6. He shall swear the witnesses ; Swearing witnesses.
7. He may adjourn the *enquête* from day to day or to such further day as he shall appoint until all the witnesses of the parties have been heard ; but he shall not so adjourn the *enquête* beyond the period fixed for its completion, by the interlocutory judgment, unless such period has been extended by the court ; Power to adjourn.
8. Every *commissaire enquêteur* shall, with regard to the suit or proceeding in which he is to take the *enquête*, have all the powers of a judge presiding at an *enquête* in the Superior Court ; General powers.
9. Every witness in any case referred to a *commissaire enquêteur* shall be examined in the presence of the latter, who may put any question to the witness which he deems pertinent to the issue, and he shall take down in writing or cause to be so taken down by a writer appointed by him and under his immediate direction, notes of the material parts of the evidence given by such witness, and of any objections insisted upon by any party, and his adjudication thereon ; and such note shall be read over, and if necessary explained to the witness, who may have such additions or corrections made thereto or therein as are necessary to make them truly state the material parts of his evidence, and shall then sign them if he can write ; they shall then be signed by the *commissaire enquêteur*, and shall stand as the evidence given by such witness ; Mode of taking evidence.
10. Every *commissaire enquêteur* shall also receive all pertinent documentary evidence adduced by the parties, and shall take or cause to be taken by a clerk to be employed by him, notes of any oral admissions made by the parties, and such notes, being signed by the *commissaire enquêteur*, shall make part of the evidence in the case, and shall avail as if made in writing in due form ; As to documentary evidence.
11. Any party summoned to answer interrogatories upon *faits et articles*, may, by the summons to be issued by the court in which the case is pending, be required to answer, *vivâ voce*, at the *enquête* before the *commissaire enquêteur*, who shall swear Parties may be examined on faits et articles.

Effect of refusal to answer.

swear the party so summoned to answer, take his answer in writing, if he appears for the purpose of answering, or record his default, if he does not appear; the *commissaire enquêteur* may also put to such party *viva voce* any further questions pertinent to the interrogatories and which he thinks necessary to their being fairly and fully answered, or to the facts intended to be proved by them being admitted by refusal to answer them; and the answer or refusal to answer any question so put by the *commissaire enquêteur*, shall have the same effect as if such question were one of the interrogatories served on such party, and which he was summoned to answer; and any question so put by the *commissaire enquêteur* which the party under examination refuses to answer, shall be put into writing by the *commissaire enquêteur*, and shall then remain of record and have effect as aforesaid;

Return to be made to the Court.

12. The *commissaire enquêteur*, after completing the *enquête* committed to him, shall make his return thereof to the court on or before the day fixed for that purpose by the interlocutory judgment by virtue of which he was appointed, or such further day as has been fixed by any subsequent interlocutory judgment;

Rules of practice.

13. The judges of the Superior Court, or any ten or more of them, as provided by this Act, may make any rules of practice which they deem necessary concerning the taking of *enquêtes* by *commissaires enquêteurs*, whether such *enquêtes* are in the superior court or in the circuit court, and also any tariff of fees for the *commissaires enquêteurs*, counsel, advocates, attorneys and other persons employed in the taking thereof, and not being salaried officers, or whose fees are to be fixed by a tariff to be made by the governor in council; and any such rule of practice or tariff may be altered or repealed by the said judges;

Foregoing provisions to apply to *enquêtes* in either Court.

14. All the foregoing provisions relative to the taking of an *enquête* by a *commissaire enquêteur*, shall apply to *enquêtes* to be taken in cases either in the Superior Court or in the Circuit Court, and as well in appealable as in non-appealable cases in the court last mentioned;

But the Courts may still issue commissions, &c.

15. The power to appoint *commissaires enquêteurs* shall not in any way impair the power of the said courts to issue commissions for the examination of witnesses or of any other persons. 20 V. c. 44, s. 93.

*Of the fine upon witnesses making default, and of the recovery thereof.*

Penalty upon witnesses making default—how it shall be recovered.

169. The fine upon a witness for his default in not attending to give testimony, shall be at the discretion of the court where the cause is pending, and shall not exceed the sum of forty dollars; and the court setting such fine may compel the

the payment thereof by process to any place in Lower Canada, though the same be not within the district or county where it sits, whether such default or contempt be to the court, or of the commissioners, or a single judge in manner aforementioned; And the same process shall be executed in any district by the officers therein as the process of the court thereof may be, but as the court issuing the same shall command; which fines so recovered shall be paid to the receiver general for the use of the crown, and without detriment to the right of a party injured by the default of a witness to his remedy by private action at law. 32 G. 3, c. 2, s. 4.

*Judgments that may be appealed from, to be motivés.*

**110.** Wherever the opinion or judgment of the Superior Court, or of the Circuit Court, in appealable cases, is pronounced upon any law, usage or custom of *Lower Canada*, an entry thereof shall be made in the minutes or record of the court, and shall be referred to and ascertained, that the real ground of the opinion or judgment may appear to the Court of Queen's Bench;—and upon all opinions conceived by any party to be to his injury, he shall be allowed his exception to be preserved in the minutes;—all which proceedings shall *if the case be appealed*, be transmitted to the said Court of Queen's Bench—appeal side, that Her Majesty's subjects, and especially Her Canadian subjects, by these means may be protected in the enjoyment of all the benefits secured to them for their property and civil rights by the Act of the British Parliament, passed in the fourteenth year of the reign of His Majesty George the third, intituled, *An Act for making more effectual provision for the government of the Province of Quebec, in North America.* 27 G. 3, c. 4, s. 3,---and see 12 V. c. 38, s. 36, as to Superior Court.

An entry of the judgment to be made in the records of the Courts in certain cases.

*Of the revision of judgments rendered in certain cases.*

**111.** If the defendant, upon whom a copy of the writ of summons and of the declaration is to be served, is absent in the upper country or in the lower parts of the province, that is to say, in or upon any place beyond the Long Sault, on the Ottawa river, or beyond Oswagetché, in the upper parts of the province, or in any place below Cap-Chat, on the south side, and the Seven Islands, on the north side of the river St. Lawrence, and such defendant hath not been personally served with such summons and declaration as abovesaid, no execution shall issue unless the plaintiff gives good and sufficient security, to be approved by the court, to refund to the defendant or his legal representative, as much as the defendant appearing by himself or his legal attorney within a year and a day, may be able to set aside and reverse of the said judgment, by such reconsideration of the said judgment in the court where given, as may be prescribed in the conditions expressed in the security to be given as abovesaid for rehearing of the merits of the cause. 25 G. 3, c. 2, s. 2.

In case defendant cannot be served personally, no execution to issue, unless plaintiff gives security.

When defendant has only been summoned by advertisement a rehearing allowed.

**112.** When judgment has been obtained against a debtor whose estate, debts or effects have been attached by *saisie-arrêt* or *arrêt simple*, in virtue of a writ issued out of any of the courts of civil jurisdiction in Lower Canada, and such writ has not been served upon him as required by law, by reason of his having departed from Lower Canada, or concealed himself therein, but, instead of such service, a notice has been inserted in a newspaper requiring such debtor to appear before the court within two months, and await the judgment of the court, and he has not appeared either in person or by attorney within the time specified in such notice, and has not shewn reasonable cause why the court should not proceed to judgment, every such debtor shall be entitled to a rehearing of the cause in which such judgment has been rendered at any time within the year and day after judgment; and the plaintiff in such action, before any execution shall issue on such judgment, shall give sufficient security, to the satisfaction of one of the judges of the court in which such judgment has been given to refund such sum of money as may be levied by virtue of such execution, in case the said judgment should be on such rehearing as aforesaid, with the costs thereof :

But this section not to apply to actions by raftsmen, &c.

2. Provided that nothing in this section respecting such security shall be construed to extend to persons who obtain judgment for wages, as having cut timber or conveyed the same in a raft to any part of Lower Canada, who may obtain and take out execution and cause such timber to be seized and sold in satisfaction of such judgment without being obliged to give such security. 9 G. 4, c. 28, ss. 1, 2, 3.

In case judgment goes by default and the writ has not been personally served, the defendant is entitled to a rehearing.

**113.** In every case where judgment is given upon the default or non-appearance of the defendant, and the writ of summons has not been personally served upon the defendant, then and in such case the defendant shall have the benefit of a rehearing of the cause, in the same manner as is provided with regard to absentees in remote parts of Lower Canada by section *one hundred and eleven*, upon the said defendant's making it appear that the place where the said process was served is not his real domicile or usual or actual residence. 41 G. 3, c. 7, s. 5.

#### *Judgments in Vacation, in certain cases.*

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

**114.** If any plaintiff desires to obtain judgment in vacation in any case in the Superior Court, or in any appealable case in the Circuit Court, or in any non-appealable case therein returnable in vacation, in which the defendant has made default or in which for any other reason the plaintiff is entitled to proceed *ex parte*, then provided the demand in such case be founded :—22 V. c. 5, s. 11.

If the action be founded on certain grounds.

1st.—On any *Acte Authentique* ; or—

2dly.—

2dly.—On any bill of exchange or promissory note, *cédule*, check, note or promise, or other act or private agreement in writing ;—(20 V. c. 44, s. 87,) or—

Notes, &c.

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

Accounts.

4thly.—On any verbal and specific agreement, by which any party has promised to pay a sum of money certain,—Such plaintiff may forthwith inscribe the case for judgment in vacation,—and the prothonotary, if it be a case in the Superior Court, or the clerk, if it be a case in the Circuit Court, shall thereupon draw up a judgment accordingly for the amount claimed by the plaintiff, and appearing to be due by any such *acte authentique*, bill of exchange or promissory note, *cédule*, check, note or promise, or other Act or private agreement in writing, account or agreement as aforesaid, whereon the demand is founded,—which judgment shall be held to be the judgment of the court and shall be recorded and executed accordingly, subject to the provisions hereinafter made ;

Agreements.

Inscription for judgment.

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

Affidavit required—to what effect and by whom.

Any affidavit under this section may be made before a judge of the Superior Court, or before the prothonotary or clerk of the Superior or Circuit Court at the place where the case is pending, or before any commissioner for receiving affidavits to be used in the Superior or Circuit Court. 22 V. c. 5, s. 11.

Before whom to be made.

115. Every judgment recorded under the next preceding section shall be served upon the defendant personally or at his domicile, by a bailiff of the Superior Court, and the bailiff's return of such service shall be filed and remain of record as part of

Judgment to be served on defendant.

of

of the proceedings in the case ;—and the prothonotary or clerk of the court shall enter and register as part of the said proceedings, the date at which such return was filed. 22 V. c. 5, s. 12.

Opposition may be filed to any such judgment.

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

Within what delay.

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

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

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

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

What the opposition must state.

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

Exhibits to be filed with it.

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

3. Any fact alleged by the plaintiff and not expressly and specially denied by the opposant, shall be deemed to be confessed and acknowledged by him ; and the plaintiff shall be bound to prove in due course of law such facts and such only as being alleged by him are expressly and specially denied by the opposant. 22 V. c. 5, s. 13.

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

**117.** No such opposition shall be received by the prothonotary or clerk, unless it be accompanied with an affidavit of the opposant (or one of the opposants if there are more than one,) or of some other credible person, that the facts stated in the opposition are true to the personal knowledge of the deponent,—nor unless the opposant deposits with the prothonotary or clerk, a sum sufficient to pay the costs (or proportion of the costs) incurred by the plaintiff after the return of the suit up to judgment, including the costs of the service thereof, which costs shall be paid to the plaintiff by the prothonotary or clerk as soon as they have been taxed, without regard to the issue of the case :

2. Any affidavit under this section may be in the form of schedule K to this Act, and may be made before a judge of the Superior Court, or before the prothonotary or clerk of the Superior or Circuit Court at the place where the opposition is to be filed, or before any commissioner empowered to receive affidavits to be used in the Superior or Circuit Court. 22 V. c. 5, s. 14.

Before whom the affidavit must be made.

118. No such opposition or *requête* shall be received by the prothonotary or clerk, unless a copy thereof for the plaintiff be delivered to him at the same time, which copy he shall deliver to the plaintiff or his attorney on demand; but one copy only need be so filed, although the party plaintiff should consist of two or more persons. 22 V. c. 5, s. 15.

119. The opposition and all proceedings thereon shall be filed and registered as part of the proceedings in the original suit, and the plaintiff shall be deemed to appear to such opposition or *requête* in the same manner as he has appeared in the original suit, without any new appearance. 22 V. c. 5, s. 16.

Copy of opposition to be filed for plaintiff.

120. The delays for pleading, answering and replying as regards such opposition, and the manner and time of foreclosing and proceeding in every matter incident thereto, shall, if the case be in the Superior Court, be the same as in an action in that court,—if the case be an appealable one in the Circuit Court, they shall be the same as in an action in any such case,—and if the case be a non-appealable one in the said court returnable in vacation, they shall be the same as in an action in such case;—the delay to plead to any such opposition shall reckon from the expiration of the delay allowed for filing the opposition. 22 V. c. 5, s. 17, *part*.

Delay for pleading to opposition.

121. A tariff of fees on such oppositions or proceedings incident thereto, may be made from time to time in like manner as in other cases, but until such tariff is made, the tariff applicable to the action to which the opposition relates, shall be applicable to proceedings incident to such opposition. 22 V. c. 5, s. 17.

Fees thereon.

122. If no opposition be filed at the office of the prothonotary or clerk, within the delay allowed for that purpose, the facts as alleged in the action or demand, shall be deemed to be acknowledged and confessed by the defendant, and duly proved, and the judgment recorded shall become executory after the expiration of the delay allowed by law for the issuing of execution in the court in which the judgment was rendered, reckoning such delay from the service of such judgment. 22 V. c. 5, s. 18.

Execution if no opposition be filed.

123. If any such opposition be maintained by reason of any irregularity in the proceedings on the part of the plaintiff in his action, the court may, in maintaining such opposition, with costs,

If the opposition is maintained.

costs, condemn the plaintiff to such further costs, not exceeding those deposited by the opposant on filing his opposition, as the court in its discretion may see fit. 22 V. c. 5, s. 19.

Oppositions in  
Magdalen Is-  
lands.

**124.** Any such opposition filed in the Circuit Court in the circuit of the Magdalen Islands, to any Judgment rendered in any case by default or *ex parte* for an amount exceeding two hundred dollars, shall, as regards pleading, answering and replying and the delays therefor, and as to all proceedings incident to such opposition, be considered as an appealable case in the Circuit Court. 22 V. c. 5, s. 20.

Opposition may  
be filed before  
service of judg-  
ment.

**125.** Any defendant may, before the service of the judgment recorded against him, file such opposition as aforesaid with his exhibits in support thereof, in the office of the prothonotary or clerk of the proper court, and deposit therewith the costs to be refunded to the plaintiff, with the copy of the opposition for him; but such defendant shall, in that case, give notice to the plaintiff of the day on which the opposition has been filed,—and the delay for pleading shall be reckoned from the service of such notice. 22 V. c. 5, s. 21.

Plaintiff may  
renounce judg-  
ment.

**126.** Any plaintiff having obtained any such judgment may renounce the same at any time before the service thereof,—and upon his renunciation, which shall be filed of record, he shall become entitled to proceed in the case in the manner provided with respect to cases by default or *ex parte*, as if such judgment had never been rendered; and the costs of such judgment shall be borne by him. 22 V. c. 5, s. 22.

Judgments  
against ab-  
sentees.

**127.** No such judgment shall be recorded against any absent defendant who has been notified to appear by advertisement in the public newspapers. 22 V. c. 5, s. 23.

Delay for ap-  
pealing.

**128.** The delay for appealing in any case in which judgment has been recorded as aforesaid by default, and in which an appeal lies, shall be reckoned from the expiration of the time allowed for filing an opposition to such judgment. 22 V. c. 5, s. 24.

As to grounds  
of appeal.

**129.** In any such case in which an appeal is brought,—

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

Case on *acte  
authentique*.

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

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

Case on notes, bills, &c.

4. If in any such case the action was founded upon a detailed account or on a verbal agreement, the amount claimed shall be presumed to have been duly proved by the affidavit of the plaintiff, or other person, that such amount was due from the defendant to the plaintiff, filed of record as hereinbefore provided. 22 V. c. 5, s. 24.

On accounts, &c.

130. The hypothec arising from any such judgment as aforesaid, shall be reckoned from the time when the return of the service of such judgment on the defendant is filed in the office of the prothonotary or clerk of the proper court, who shall register such return as part of the proceedings in the case :

Hypothec on such judgment.

2. And in order to enable the plaintiff to have such judgment registered in the proper registry office, the said prothonotary or clerk, in addition to the usual certificate on the copy of the judgment that it is a true copy thereof, shall, if required, append thereto a further certificate of the date at which such judgment was served on the defendant and of that at which the return of the service was filed at his office ; And any copy of such judgment with such additional certificate shall be registered by the Registrar to whom it is presented for that purpose. 22 V. c. 5, s. 26.

Registration of judgment.

131. In case any such judgment so registered is wholly or partially set aside, upon any such opposition as aforesaid, the opposant shall be entitled to have the judgment to that effect on his opposition registered for the purpose of wholly or partially cancelling the registration of the former judgment recorded against him. 22 V. c. 5, s. 27.

Registration of judgment on opposition.

132. The foregoing provisions shall not deprive any plaintiff of the right to proceed to judgment in the usual manner, in any case by default or *ex parte*, if he thinks fit so to do, instead of adopting the proceedings mentioned in the said provisions. 22 V. c. 5, s. 28.

Plaintiff not bound to proceed under the foregoing provisions.

*Of Writs of Saisie-Arrêt (after (?) Judgment) when the Defendant resides in another District or Circuit—of the service and subsequent proceedings.*

133. Whenever a writ of attachment issues out of the Superior Court or Circuit Court for the attaching of moneys, goods

Service of writs of attachment

in another district.

goods or effects in the hands of a person within the district or circuit in which such attachment issues, and the person against whom such attachment so issues resides in any other district or *circuit*, the said court may issue a writ addressed to the sheriff or any bailiff of the Superior Court (according as such writ may by law be served by a sheriff or a bailiff) in the district or *circuit* in which such person resides, which writ of attachment, after a copy thereof has been served upon such person so residing in another district or *circuit*, shall have the same force and effect as if it had been served upon him in the district or *circuit* in which such moneys, goods or effects have been so attached as aforesaid. 4 W. 4, c. 4, s. 2.

Attachment of moneys, &c., in the hands of a third person.

**134.** Whenever the plaintiff in any suit, after judgment in his favor, wishes to attach moneys, goods or chattels belonging to the defendant, in the hands of a third person resident in any district other than that in which such suit was instituted, such plaintiff may obtain a writ of attachment from the court in the district or *circuit* in which such judgment was rendered, addressed to the sheriff of the district in which such third person resides, commanding such sheriff to summon such third person to appear and answer according to the tenor of such writ within the delay fixed by law for the appearance of defendants summoned in virtue of writs of summons, and such writ shall be in all respects obeyed by the said sheriff. 4 W. 4, c. 4, s. 3.

Effect of declaration by *tiers-saisi*.

**135.** If the declaration made by the *tiers-saisi* residing in any district other than that in which the writ of attachment issues be not contested by the plaintiff, such plaintiff may move for and obtain judgment from the court in the district or *circuit* in which the writ issued pursuant to such declaration, and may after the expiration of fifteen days from the day on which such judgment is served on the *tiers-saisi*, sue out of the court in the district or circuit in which the judgment has been given, a writ of execution against such *tiers-saisi* addressed to the sheriff or to a bailiff of the Superior Court, (according as such writ may be by law executed by a sheriff or a bailiff,) of the district in which such *tiers-saisi* resides, and such writ shall be in all respects obeyed by such sheriff or bailiff. 4 W. 4, c. 4, s. 4.

When the *tiers-saisi* resides in another district.

**136.** Whenever a writ of attachment, *saisie-arret*, either before or after judgment, issues from the Superior Court for Lower Canada or the Circuit Court for Lower Canada, to attach moneys, goods or effects in the hands of any person resident in any district other than the one from which such writ issues, the *tiers-saisi* upon whom such writ of attachment has been served or executed by the sheriff of such other district, shall (subject to the provision hereinafter made,) be bound to answer and make his declaration to such writ according to the exigency thereof at the place where the same issues, and default

default duly obtained against such *tiers-saisi* shall have the same effect as if he were summoned to answer in the district where he is domiciliated and had made default to appear and answer there :

2. And in the event of a contestation of the declaration of the *tiers-saisi*, the same may be had in the district where the action has originated, and the *tiers-saisi*, upon service on him of such contestation, shall be bound to answer and plead thereto in such last mentioned district, and the Superior Court and Circuit Court holden within the said district, shall have jurisdiction to hear and adjudge upon the merits of such contestation and upon all matters connected with and relating thereto ;

If his declaration is contested.

3. Provided nevertheless, that such *tiers-saisi* may on or before the return day of the writ of attachment, *saisie-arrêt*, so served upon him or them as aforesaid, appear at the office of the Prothonotary of the Superior Court within the district where he resides, and make his declaration before such Prothonotary or a judge of the Superior Court, either of whom is hereby empowered to administer the requisite oath or affirmation, or to receive such declaration, which shall have the same effect as if it were made at the place where the writ of attachment is returnable. 16 V. c. 194, s. 17.

Where he may appear.

**137.** Whenever any declaration of a *tiers-saisi* made (as provided for in the next preceding section) at the office of the Prothonotary of the Superior Court in a district other than the one from which the writ of attachment issues, the Prothonotary where such declaration is made, shall forthwith transmit the same to the Prothonotary or clerk of the court at the place where the writ has issued, and subsequent proceedings may be had thereon against the *tiers-saisi* or defendant in the cause, in the same manner as if the declaration of the *tiers-saisi* were made before the court, judge, clerk or Prothonotary at the place where the writ of attachment issued :

Duty of Prothonotary as to transmission of such declaration.

2. And where the *tiers-saisi* has made default to answer on the return day of the writ at the place where the writ is returnable, the certificate of the Prothonotary of the Superior Court in the district where the *tiers-saisi* is resident, to the effect that the *tiers-saisi* has made default to appear and make declaration to such writ on or before the return day thereof, shall be sufficient to enable the plaintiff to obtain the benefit of default against such *tiers-saisi*. 16 V. c. 194, s. 18.

If *tiers-saisi* makes default..

**138.** The exigency of all writs of *saisie-arrêt*, whether before or after judgment, to be issued out of the Superior Court, or out of the Circuit Court in appealable cases, shall in effect be, as regards every *tiers-saisi* therein named, to require such *tiers-saisi* to appear and make the declaration required of him, at the office of the proper Prothonotary or clerk of the court

Exigency of writs of *saisie-arrêt*.

court before which he is summoned, during office hours, on or before the return day of such writ, or on the juridical day next thereafter; and if, after due return of such writ into such office, any *tiers-saisi* thereby summoned, fails to appear and make such declaration within the time so enjoined, his default shall on the next-following juridical day be recorded, and shall thereupon have the same effect to all intents as though ascertained and recorded in open court, saving always the right of such *tiers-saisi* to appear in the district in which he resides as hereinbefore provided; and the Prothonotary or clerk may administer the proper oath to every such *tiers-saisi*:

Certificate to accompany declaration of *tiers-saisi*.

2. Provided that no such declaration made by a *tiers-saisi* before the day of the return of the writ, shall be received by the Prothonotary or clerk unless it is accompanied by a bailiff's certificate, shewing that notice has been given to the plaintiff or his attorney, at least twenty-four hours previously, of the intention of the *tiers-saisi* to make such declaration before the return of the writ. 16 V. c. 194, s. 19.

*Of writs of execution or Attachment against the body, to be executed within the district or in another,—Of goods exempt from seizure,—Of the penalties for resisting the seizure, sale, &c., and of the opposition à fin de conserver of the lessor.*

What the writ of execution shall contain.

**139.** Every writ of execution issued by the Superior or Circuit Court, shall be directed to the sheriff of the district, or to a bailiff of the Superior Court as prescribed by law, and shall set forth the judgment of the court between the parties, the kind of execution which the law according as the case may be, directs, and whether the same be to levy a sum of money out of any one's goods and chattels, lands and tenements, or to do any special matter or thing whatever, and when such writ is issued out of the Superior Court, it shall be tested and signed by the Prothonotary of the said court, the date of the judgment shall be endorsed thereon. 25 G. 3, c. 2, s. 30,—12 V. c. 38, ss. 67, 70,—22 V. c. 5, s. 42.

Judges need not sign or endorse them.

**140.** It shall not be necessary for the judges of the Superior Court to affix their official signatures to Writs of Execution from the Superior Court, or to indorse the same, but the signature of the Prothonotary to any such Writ shall be sufficient. 22 V. c. 5, s. 42, *part*.

Execution against person in another district.

**141.** Any judge of the Superior Court in one district may grant a writ of execution or attachment against the body of a person residing in another district, in cases where such execution or attachment against the body is allowed by law, directed to the sheriff of the district in which the person to be arrested and imprisoned resides, and such sheriff executing the writ or order to him in such case directed shall convey such person to the prison of the district wherein such person is arrested. 25 G. 3, c. 2, s. 39, *part*.

**142.** In all cases wherein a writ of execution is issued, upon any judgment obtained in *any court* in Lower Canada, it shall not be lawful for the sheriff or other officer executing such writ, to seize the bedding or the necessary wearing apparel of the debtor, or of his or her family; nor shall such sheriff or officer seize every cow, sheep and hog, nor every stove, nor all the firewood belonging to such debtor; but one cow, three sheep, one hog, one stove, and one cord of firewood, to be selected by such debtor out of any larger number he may have, shall be exempt from seizure under any such writ :

Certain articles exempted from seizure under execution.

2. Provided that no cow, sheep, hog, stove or firewood shall be exempt from seizure in satisfaction of any debt contracted for the same, or for money borrowed to pay for it. 2, 3 V. c. 28,—25 G. 3, c. 2, s. 6, *part 8*.

Proviso.

**143.** In all causes or matters whatsoever, and for whatever amount, if the defendant conveys away or secretes his effects, or with violence, or by shutting up his house, store or shop, opposes his effects being seized, in all such cases, on due proof thereof, an execution shall go against his person, and he shall be taken and detained in prison until he satisfies the judgment. 25 G. 3, c. 2, s. 37.

Penalty on secreting effects, &c.

**144.** Every court of justice shall have the same powers in case of resistance to its process as regards any sale or other incidental proceeding, as it now has by the laws of Lower Canada, in case of such resistance as regards any seizure. 14, 15 V. c. 90, s. 3.

Resistance to process.

**145.** Every judge of any such court shall have in vacation, at chambers or at his residence, the same powers as the court whereof he is a member, in all cases of resistance to its process. 14, 15 V. c. 90, s. 4.

Powers of the Judge.

**146.** In all cases of the taking of goods and chattels in execution by virtue of a writ issuing out of *any court* in Lower Canada, wherein a lessor claims a privilege or lien for rent, such lessor may not prevent the sale of such goods and chattels by opposition, but he may deliver to or lodge with the sheriff or the bailiff who has seized such goods and chattels, his opposition *afin de conserver*, either before or after the sale, and if the same be so delivered or lodged before the sale, the sheriff or bailiff shall nevertheless proceed to the sale of the goods and chattels by him seized, and make his return thereof; and upon such return the lessor shall have his privilege or lien upon the proceeds of the sale of such goods and chattels, and be collocated accordingly :

In case of execution, the lessor to proceed for rent by opposition *afin de conserver*.

2. Provided that when any such opposition or any other opposition *afin de conserver* upon moneys levied by virtue of a writ *de bonis* directed to a bailiff, is delivered to and lodged with

Duty of the bailiff in such case.

with the bailiff before he has paid the proceeds of the sale to the party suing out such writ, the bailiff shall forthwith make his return of the said writ according to law; and pay over into the hands of the clerk of the court in which the case is pending, the proceeds of the sale to abide the judgment of the court. 12 V. c. 38, s. 96.

*Of rules of practice, tariffs of fees, and of the taxing of costs, in the Superior and Circuit Courts.*

Recital.

**117.** And for the purpose of ensuring uniformity in the practice and proceedings of the Superior Court and Circuit Court in the several districts and circuits in Lower Canada :

Tariffs of fees and rules of practice to be made by judges of S. C.

The Superior Court, or any ten or more of the judges thereof, shall agree upon, make and establish tariffs of fees for the officers the of said courts respectively, (except the sheriffs, prothonotaries of the Superior Court, clerks of the Circuit Court or of the *circuits*, criers or tipstaffs of the said courts,) and the counsel, advocates and attorneys practising therein, and also such rules of practice as are requisite for regulating the due conduct of the causes, matters and business before the said courts, respectively, or the judges thereof, or any of them, and in term or out of term, and all process and proceedings therein or thereunto relating ;

And entered on the registers of the Courts.

2. Such tariffs of fees and rules of practice, respectively, being signed by any ten of the said judges, shall, without further formality, and immediately upon the receipt thereof, or of a copy certified by the prothonotary of the Superior Court having the custody of the original, be entered by the prothonotaries and clerks of the Superior Court, or of the Circuit Court, in the registers of the said courts respectively, and shall then have full force and effect in each district or *circuit* in which they have been so registered, until they are repealed or amended, as hereinafter mentioned, and until such repeal or amendment has been registered as aforesaid ;

Amendment of rules of practice.

3. The judges of the Superior Court, or any six or more of them, may from time to time repeal or amend the said tariffs and rules of practice, or any part thereof; and such repeal or amendment being signed by any six or more of the said judges, shall be registered as aforesaid by the proper prothonotaries or clerks, and shall have effect accordingly ;

Proviso.

4. Provided that no such rule of practice shall be contrary to or inconsistent with this Act, or any other Act or law in force in Lower Canada, otherwise the same shall be void. 12 V. c. 38, s. 100, *omitting proviso No. 2 as effete*,—20 V. c. 44, s. 89,—41 G. 3, c. 7, s. 16. See 18 V. c. 98, s. 8,—20 V. c. 44, s. 143.

**148.** In all suits, actions and proceedings in the Circuit Court, the fees to be specified in the tariffs then in force for the Circuit Court, shall be deemed and taken to be the lawful fees for the discharge of the several duties therein mentioned; and no other fees or emoluments shall be received or taken upon any pretence whatever for any act done or service performed *under the authority of this Act*, and if any officer or person receives any other or greater fee or emolument than is specified in the said tariffs, for any of the duties aforesaid, he shall forfeit the sum of eighty dollars for each such offence, which penalty may be recovered by civil action in the Circuit Court; and one half of such penalty shall belong to Her Majesty, Her Heirs and Successors, and the other half to the person who sues for the same. 12 V. c. 38, s. 68,—18 V. c. 98, s. 8,—20 V. c. 44, ss. 143, 149.

Penalty on persons taking higher fees than those fixed for C. C. by tariff.

**149.** Each of the clerks of the Circuit Court shall cause to be continually and openly posted as well in his office as in some conspicuous place in the hall or apartment in which the Circuit Court is held, a fair and legible copy of the tariffs of fees made by the Superior Court, and by the Governor in council, and a notice of the penalty to which any person will become liable for receiving any other or greater fee than is set forth in the said tariff;—and in default of so doing, such clerk shall be deemed guilty of a misdemeanor, and shall be liable to be punished accordingly. 12 V. c. 38, s. 60,—10 V. c. 98, s. 8,—20 V. c. 44, ss. 143, 149.

Tariffs for C. C. to be posted.

**150.** Rules of practice and tariffs of fees in force in the Superior Court or Circuit Court when this section takes effect, shall remain in force until it is otherwise ordered by competent authority, and shall apply to the Superior and Circuit Courts in all the districts and places, except in so far as they may have been made applicable to particular districts or places only. 20 V. c. 44, s. 88.

Present rules and tariffs to remain in force till altered.

**151.** The prothonotary of the Superior Court, and the clerk of the Circuit Court at any place, shall have full power to tax costs in causes and proceedings in their respective courts at such place; and such taxation shall be made under and in the same manner and subject to the same rules, and shall have the same effect, as if made by a judge of the court, except that it shall be subject to revision by any judge of the Superior Court in the same district, and at the same place, in any term of the court in which the judgment was rendered, at any time within six months after such taxation by the prothonotary or clerk, and after sufficient notice (of which sufficiency the judge shall decide) to the opposite party or his attorney:

Rules for taxation of costs.

2. Neither the non-expiration of the time allowed for such revision, nor any correction made by the judge in the course of such revision, shall operate to stay execution or be a ground of

The delay for revision shall not stay execution.

of any opposition, but any sum deducted by the judge shall be deducted from the amount to be paid or levied, and if levied, shall be returned to the proper party by the sheriff or bailiff levying it, or if paid, shall be repaid by the party who received it to the party who paid it, and the said judge's order for deducting such sum shall have the effect of a judgment for the same, and may be enforced by execution accordingly. 20 V. c. 44, s. 90.

Costs in actions  
in C. C. at the  
*chef-lieu*.

**152.** No defendant sued before the Circuit Court at the *chef-lieu* shall be liable to pay more costs (including the taxation of witnesses) than he would have been liable to pay if he had been sued before the Circuit Court in and for the county in which he resides, (if the Circuit Court has been directed to be held in such county) provided the cause of action has originated in the said county. 22 V. c. 5, s. 62.

Effect of taxa-  
tion of a wit-  
ness.

**153.** The taxation of any witness in the Superior or in the Circuit Court, shall stand as a judgment in his favour for the amount of such taxation, against the party on whose behalf he was summoned; and if such sum be not paid, execution may issue accordingly at the expiration of the delay allowed for the issue of execution on judgments in the same court, such delay being reckoned from the date of the taxation. 22 V. c. 5, s. 9.

*Of the order to do something in another District or Circuit, and of the service of such order.*

Proceedings  
upon such  
order.

**154.** Whenever under any Act or law any thing has been ordered by the Superior Court, or by the Circuit Court, to be done in any case or matter therein pending, by or before the Superior Court, or the Circuit Court, or any judge or officer thereof, in some district or circuit other than that in which such case or matter is pending, then, after the order has been four clear days in the hands of the prothonotary or clerk of the court at the place where such thing is to be done, all parties may proceed as if the case or matter were pending there; and if any notice or paper required to be served on any party in relation to the thing so required to be done, it shall be held validly served if left for him at the office of such prothonotary or clerk, unless he have previously filed at the office of that officer, an election of domicile, where such service may be made, within one mile of the said office, or unless personal service be required by law. 12 V. c. 38, s. 99.

Notice how to  
be served.

*Of Bailiffs---their admission, security and removal,—of their duties, and of the recourse against them, and their sureties,—and of their incompetency as witnesses when they have served the writ of summons.*

What persons  
may act as

**155.** The persons who immediately before the time when the Act 12 V. c. 38 came fully into effect, were bailiffs of the Court

Court of Queen's Bench for any district in Lower Canada, without any new appointment became and shall be bailiffs of the Superior Court, for the same district, and all bonds and securities which such persons may have respectively given for the due performance of the duties of their office as bailiffs of the Court of Queen's Bench for such district, shall remain in full force, and shall be held to be conditioned for the due performance of the duty of such persons respectively as bailiffs of the Superior Court, and shall accordingly enure to the benefit of all parties damnified by the non-performance, mal-performance, or neglect of such duty, as if such bonds and security had been given after the coming of this Act fully into effect, and in the manner and form hereby required; but nothing herein contained shall prevent any such person from being removed from the office of bailiff, as if he had been appointed under this Act; and such bond shall likewise, notwithstanding this Act, remain in full force with regard to all damages sustained by any person by reason of any thing done or neglected by such bailiff before this Act shall come fully into effect, and such damages shall be recoverable accordingly. 12 V. c. 38, s. 105.

bailiffs of the  
Superior Court.

**156.** The bailiffs of the Superior Court appointed for the district of Montreal, and resident within the district of Ottawa shall, without any new appointment or order, be bailiffs of the Superior Court for the said district of Ottawa, but not for the rest of the district of Montreal, and the bailiffs of the Superior Court appointed for the district of Quebec, and resident within the district of Kamouraska shall be bailiffs of the Superior Court for the said district of Kamouraska, but not for the rest of the district of Quebec, until in either case, they have been removed from office. 12 V. c. 38, s. 106.

Who to be  
bailiffs in Ot-  
tawa and Ka-  
mouraska.

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

Bailiffs for Old  
Districts to be  
bailiffs for the  
New Districts  
in which they  
reside.

Bailiffs in the district of Chicoutimi.

2. And every Bailiff for the District of Saguenay, resident in the District of Chicoutimi hereinafter mentioned, at the time when the said New District was established for all purposes of the administration of justice in civil matters, did thereupon become a Bailiff of the said Court for the said District of Chicoutimi, and ceased to be such Bailiff for the District of Saguenay as thereafter constituted ;

Former bailiffs to continue to act as such.

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

Their securities &c., to remain in force.

4. And every bond or security which any such Bailiff gave for the due performance of the duties of his office in such Old District, or in the District of Saguenay, has remained and shall remain in full force notwithstanding such alteration in the local limits within which such duties are to be performed, and shall be held to be conditioned for the due performance of such duties within the locality for which he is hereby declared a Bailiff, after such alteration, as well as for the due performance of such duties in the Old District or in the District of Saguenay before such alteration. 22 V. c. 5, s. 72.

Qualifications of bailiffs.

158. No person shall be admitted as a bailiff of the Superior Court of Lower Canada and registered as such, unless he is able, at the time of his admission, to write with sufficient grammatical correctness the French or English language :

Examination of candidates.

2. Every petition addressed to the said court for the purpose of getting the petitioner included in the number of bailiffs of the court, shall be by the justices thereof, or one of them, referred to the prothonotary, who shall examine the candidate and report to the said court touching his qualifications, both as regards those required by this act and by law : and the prayer of such petition shall not be granted, unless it appears by the report of the prothonotary that the petitioner can write with sufficient grammatical correctness as aforesaid. 18 V. c. 109, s. 1.

Fees for examination.

159. The prothonotary shall receive from each petitioner the sum of four dollars for each examination, which sum shall include the cost of his report to the court. 18 V. c. 109, s. 2.

Court to retain its discretionary power.

160. Nothing herein contained shall exempt a candidate from the qualification at present required, nor deprive the court of its discretionary power to reject such petition, even though the petitioner possesses the qualification above mentioned. 18 V. c. 109, s. 3.

Exception as to Gaspé.

161. The District of Gaspé shall not be subject to the operation of the three next preceding sections.

**162.** Every person who is appointed a bailiff of the Superior Court, shall, before acting as such, enter into a bond, with two good and sufficient sureties who shall justify their sufficiency to the satisfaction of the person before whom the bond is given unto Her Majesty, Her Heirs and Successors, in the penalty of four hundred dollars, conditioned for the due performance of the duties of the said office, and such bond shall be taken before the prothonotary of the Superior Court, for the district in which the bailiff has been so appointed, and shall remain of record in the office of the said prothonotary; and every copy of such bond delivered by such prothonotary under his hand, and the seal of the court, shall be deemed and considered an authentic copy to all intents and purposes:

What security all bailiffs shall give.

2. It shall be incumbent on such prothonotary and his successors in office to inquire and ascertain when such sureties die, or become insolvent, or resident out of Lower Canada, (in any of which cases it shall be the express duty of the bailiff to give notice of the fact to the prothonotary for the district,) and in such case or cases to require the bailiff to give other and further security as aforesaid;

In case of sureties dying, &c.

3. Every bond so given shall stand and be as and for a security to the amount thereof, for the damages sustained by any person or party by reason of the culpable negligence or misconduct of the bailiff. 12 V. c. 38, s. 108.

Effect of such bond.

**163.** The bailiffs of the Superior Court appointed for any district, shall be bailiffs and officers of the Circuit Court for the same district, without any other appointment, and shall be amenable to the Circuit Court as such officers, and the security given by them shall extend and be applicable to all their acts or omissions as bailiffs of the Circuit Court, as fully as to their acts or omissions as bailiffs of the Superior Court:

Bailiffs of the S. C. to act for the Circuit Court.

2. The sheriff of each districts shall also be the officer of the Circuit Court, and shall, within his district, obey the orders of the said court in all matters pending before it, and the clerk of the Circuit Court at any place shall be the officer of the said court, and shall within his *circuii* obey the orders of the said court,—in what place soever such orders may be made and directed to such sheriff or clerk, and they shall be respectively amenable to the said court accordingly. 12 V. c. 38, s. 109.

The Sheriffs, &c., to be officers of the Circuit Court.

**164.** The bailiffs of the Superior Court may act as such within the limits of the district for which they have been appointed for the service and execution of all writs, orders and process issuing, as well from the Superior Court as from the Circuit Court and from all other courts in Lower Canada, which may lawfully be directed to a bailiff:

Bailiffs may act within the limits of the district for which they have been appointed.

2. The said bailiffs shall be removable by the judges of the Superior Court at any term or sitting thereof, or by any judge of the

Bailiffs removable by any

judge of the  
Superior Court.

the said court, or by any judge when holding the Circuit Court.  
12 V. c. 33, s. 107.

Penalty on  
bailiff refusing  
to execute pro-  
cess entrusted  
to them.

**165.** Any bailiff who neglects or refuses duly to execute any writ of summons or execution issued out of the Circuit Court in any district other than that in which he is empowered to act as a bailiff, and which has entrusted to him, or who improperly executes or returns any such writ of summons or execution shall be liable in damages at the suit of the plaintiff or other interested person or persons, for all injury or loss sustained by such neglect or refusal, or by such improper execution or return of any such writ, and the sureties of such bailiff shall be holden as in other cases according to law. 16 V. c. 195, s. 5.

Bailiffs respon-  
sible for mo-  
neys levied by  
them.

**166.** Any bailiff, to whom a writ of execution issued out of the Circuit Court in any district other than that in which he is empowered to act as a bailiff, is directed, who has levied the amount of the said writ, or any part thereof, shall be held responsible for the due payment thereof to the plaintiff, or unto the court from which the writ is issued in the cause, and shall be *contraignable* for the same by the ordinary course of law, and by the order of the Circuit Court at the place where such writ of execution issued. 16 V. c. 195, s. 6.

Penalty on  
bailiffs guilty of  
extortion or  
misconduct.

**167.** If any bailiff, or any officer of any court acting under colour or pretence of the process of such court, is guilty of extortion or misconduct, or does not duly pay or account for any money levied or received, by him the Superior Court or any judge holding the Circuit Court, if the party aggrieved thinks fit to complain to him, may inquire into such matter in a summary way, and for that purpose summon and enforce the attendance of all necessary parties, and may make such order thereupon for the repayment of any sum of money extorted, or for the due payment of any money so levied or received as aforesaid, and for the payment of such costs to the party aggrieved as such court or judge thinks just; and in default of immediate payment of any sum of money so ordered to be paid by such bailiff or by such officer, the judge may commit the offender to the common gaol of the district, there to be detained until such payment be made in full. 12 V. c. 38, s. 111.

Bailiff who has  
served the writ  
not competent  
as a witness  
for the plaintiff.

**168.** No bailiff who has made the service of the writ of summons in any suit or action, shall be competent to be examined as a witness in support of the plaintiff's demand in such suit or action, save and except as to what may relate to the service of such writ of summons. 12 V. c. 38, s. 110.

#### PROVISIONS APPLYING TO THE CIRCUIT COURT ONLY.

##### *Of Process generally—Service and return of writs of summons.*

Form, &c., of  
writs issuing  
out of C. C.

**169.** All writs and process issuing out of the Circuit Court, shall run in the name of Her Majesty, Her Heirs or Successors,  
and

and shall be sealed with the seal of the court, and signed by the clerk whose duty it is to prepare the same, and shall not be tested in the name of any judge, but the words "in witness whereof we have caused the seal of our said court to be hereunto affixed" shall be instead of such *teste*, and all such writs and process may be either in the English or in the French language. 12 V. c. 38, s. 51.

**170.** In any action brought in the Circuit Court, the first process to be issued for bringing the defendant before the court, to answer the *demande* made in such action, shall be a writ of summons, in which the plaintiff's cause of action shall be briefly stated, unless there is attached to such writ of summons a declaration setting forth the cause of action, in which case it shall be sufficient that in the writ of summons, reference be made to the declaration for the cause of action :

Process, &c., by which actions shall be commenced.

2. Such writ of summons may be in the form contained in the schedule to this Act subjoined, and shall be served at least five days (of which neither the day of service nor the day of return shall be reckoned as one) before the day fixed for the return thereof, if there be not more than five leagues from the place of service to the place where the court is held ; and if, in any such case, there be more than five leagues, then there shall be an additional delay of one day for every additional five leagues ; and such writ of summons shall be directed to and executed by any bailiff of the Superior Court, appointed in and for the district in which the same is issued ;

Delay between service and return of writ of summons.

3. The copies of the writ of summons and of the declaration, if any there be, to be served upon parties according to law, shall be certified as true copies, either by the clerk of the Circuit Court or by the attorney of the plaintiff ;

Copies of writ how certified.

4. Provided that in all cases cognizable in the said Circuit Court, and when by law the writ of summons may be executed in any district other than the district in which the same issued, such writ of summons, may, at the option of the plaintiff, be addressed either to the sheriff of such other district, or to any bailiff of the Superior Court in such other district, to be by such officer executed and returned into the Circuit Court at the place where the same issued, according to the exigency of such writ and to law ; and such writ so returned shall be received, and the certificate of due service or execution, shall be authentic as in ordinary cases. 12 V. c. 38, s. 50,—16 V. c. 195, s. 1.

Service of writs in districts other than those in which they issued.

**171.** When in any case cognizable in the Circuit Court, any writ of summons requires to be executed in two or more districts, such writ may, at the option of the plaintiff, be addressed either to the sheriff of the district other than that in which the same issued, or to a bailiff of the Superior Court in such other district, to be by such sheriff or bailiff executed and returned into

When writ requires to be executed in two or more districts.

into the Circuit Court at the place where the same issued, according to the exigency of such writ and to law; and such writ so returned shall be received, and the certificate of due service or execution shall be authentic as in ordinary cases; and as many original writs of summons may issue as there may be districts in which the same are to be executed. 16 V. c. 195, ss. 1, 2.

Writs of summons out of C. C. may be executed in another district by a bailiff.

**172.** Any writ of summons *ad respondendum* issued out of the Circuit Court in any district to be executed in any other district, may also be served and returned in such other district by a bailiff of the Superior Court for the district in which the writ issues, but such last mentioned bailiff shall be entitled to no more costs and emoluments for serving and returning the same, than a bailiff for the district in which the service is made and residing nearest to the place of service, would have been entitled to for so doing. 22 V. c. 5, s. 55.

How such service shall be made.

**173.** A copy of every writ of summons issued out of the Circuit Court, and of every declaration, shall be served upon the defendant personally, or left at his dwelling house or ordinary place of residence, with some grown person there, and the person serving the same shall inform the defendant or such grown person of the contents thereof. 25 G. 3, c. 2, s. 36, p. 3.

Every day to be a return day.

**174.** For all cases in the Circuit Court, every day in term or in vacation, not being a Sunday or holiday, shall be a return day:

In case the judge is not present to receive the returns.

2. If by illness, accident or any other cause the judge by whom any Circuit Court ought to be holden, is not present on the first or any other juridical day, being a return day in any term, the clerk of such court may receive all returns to be made on such day, in non-appealable cases, and cause any defendant or party in any such case, summoned to appear on such day, to be called, and to enter his appearance, or record his default, notwithstanding the absence of the judge. 12 V. c. 38, s. 79, and 22 V. c. 5, s. 29.

*Of the Saisie-arreté before judgments in suits under \$40 and exceeding \$5.*

In what cases it may issue.

**175.** Process of attachment, *arrêt simple* or *saisie arrêt*, prior to trial and judgment, may issue from the Circuit Court, in all cases under forty dollars and not less than five dollars, upon the affidavit of the plaintiff or his agent to the effect that the debtor is secreting or about to secrete his estate, debts and effects, or is about to abscond, such affidavit to be conformable to the laws then in force in Lower Canada, with reference to cases exceeding forty dollars. 18 V. c. 107, s. 1.

Clerks may receive the

**176.** The clerk of the Circuit Court in and for any circuit, or any person authorized by law to act as such clerk, may receive

receive the necessary affidavits and issue such writs of attachment, *arrêt simple* or *saisie arrêt*, in the same manner as by law the clerks of the said Circuit Court may do in cases exceeding forty dollars :

necessary affidavits.

2. Provided however, that nothing herein contained shall prevent any judge of the Superior Court from receiving such affidavit upon which to issue such writs of attachment as aforesaid ; and the said judges may administer the necessary oaths and receive the said affidavits, and grant a *fiat* or order for any such writs returnable into the said Circuit Court, to be therein heard, tried and determined, according to law and the course of practice of said Court. 18 V. c. 107, s. 2.

Judge or Commissioner may also receive it

177. The additional costs of issuing and executing such writs of attachment as hereinbefore provided for, shall be taxed by the judges holding the court wherein the said proceedings are had, at such sum as shall in their discretion seem reasonable, subject always to the provisions of any tariff now in force or hereafter to be adopted in reference to such cases. 18 V. c. 107, s. 3.

Costs, how taxed.

*Of Evocation.*

178. If any suit or action brought in the Circuit Court, relate to any title or lands or tenements, or to any sum of money payable to Her Majesty, or to any fee of office, duty or rent, revenue, annual rents or such like matters or things where the rights in future may be bound, or be a suit or action in which a trial by jury may by law be had, and in which the defendant in and by his evocation declares his choice and option to have a trial by jury, the party defendant, before making his defence to the merits of any suit or action, may evoke the same, and by such evocation require that the said suit or action be removed and carried for hearing, trial and judgment, to and in the Superior Court, in the same district :

Certain actions in certain cases evocable to the S. C.

2. Every such evocation shall be filed and entered of record, and the said suit or action shall thereupon be removed into the said Superior Court, which shall, at any sitting thereof, in or out of term, proceed to hear and determine in a summary way, whether the said evocation is well founded ; and if it maintains the said evocation and adjudges the same to be well founded, proceedings shall thereupon be had in the said Superior Court, to trial and judgment and execution, according to the rules of proceeding in the said court, as if the said suit or action had been originally instituted therein ; and if the said evocation be overruled, the said suit or action shall be remitted to the Circuit Court there to be heard, tried and finally determined. 12 V. c. 38, s. 47.

Proceedings on evocation.

179. If in any suit or action which might be evoked from the Circuit Court to the Superior Court, the defendant does not evoke the

If plaintiff's title be disputed the

ted by the defendant, plaintiff may evoke the action.

the same, but makes any plea or defence by which the plaintiff's title to any lands or tenements is disputed or called in question, or by which, if maintained, his rights in future would be impaired or injuriously affected, the plaintiff may evoke such suit or action, in the same manner and with the same effect as the defendant might have done, and such evocation and the suit or action so evoked shall be subject to the provisions made as to suits or actions evoked by the defendant. 12 V. c. 38, s. 48.

*Of pleadings, foreclosure and inscription ex parte.*

In appealable cases the pleadings to be in writing.

**180.** In appealable cases the pleadings shall be in writing and the delay for pleading, answering and replying, shall be as hereinafter provided :

Delay for filing preliminary pleas and the answers thereto.

1. Whether the appearance in appealable cases before the Circuit Court be filed in term or in vacation, no exception *à la forme*, *exception déclinatoire*, *exception dilatoire*, or other preliminary plea shall be received unless the same be filed within four days from the day of the return of the writ or the filing of the pleading to which such preliminary exception or plea is opposed ; the plaintiff or other party opposing shall be allowed five clear days to answer thereto, and there shall be a like delay of five days allowed for replying or filing each further pleading allowed by law to join issue on such *exception à la forme*, *exception déclinatoire*, *exception dilatoire*, or other preliminary plea ; and whether the said appearance be filed in term or in vacation, the defendant shall be allowed five clear days from his appearance to file his pleas to the merits (or pleadings other than *exceptions à la forme*, *exceptions déclinatoires*, *exceptions dilatoires*, or other preliminary pleas,) the plaintiff shall have a like delay to answer, and there shall be a like delay between each further pleading allowed by law ; 12 V. c. 38, s. 25,—16 V. c. 194, ss. 20, 21.

In case any pleading is not filed within the delay prescribed.

2. If at the expiration of the delay allowed for any pleading (except an *exception à la forme*, *exception déclinatoire*, *exception dilatoire*, or other preliminary plea, but not the answers or replications to them,) and for the filing of which a delay of five days is allowed in appealable cases before any Circuit Court, the same is not filed, the opposite party may demand the same, and if it be not filed on or before the third juridical day after such demand, may foreclose the party by whom it ought to have been filed, and the filing of the return of service of such demand shall be sufficient to authorize the clerk upon application in writing for act of foreclosure, to grant and record the same without further notice or formality ; provided always that the party foreclosed shall nevertheless be entitled to at least one clear day's notice of the inscription of the cause for *enquête* or hearing, before such *enquête* shall be commenced or the cause shall be heard ; 12 V. c. 38, s. 25,—16 V. c. 194, s. 20.

PROVISO.

3. The delay for pleading may in any case be enlarged by order of the Circuit Court, or of a judge of the Superior Court out of term on special application, of which notice shall be given to the opposite party at least one clear day before it is made, and any party may file any pleading within the time hereby allowed for filing the same. 12 V. c. 38, s. 26,—16 V. c. 194, s. 20.

Delay for pleading may be enlarged.

*Of Enquêtes, and of Inscription for Enquêtes and for final hearing.*

**181.** Every day of the term of any Circuit Court shall be an *enquête* day for contested appealable cases pending in such circuit, and any judge holding a Circuit Court may fix in term any days out of term as *enquête* days for all such cases pending before such court;—but in circuits in which there is no resident judge, the parties shall, on the day fixed for proof, proceed to the examination of their witnesses in open court in such contested appealable cases, and no such *enquête* shall be proceeded with on any such day out of term, unless notice of the intended holding of such *enquête* be given to the opposite party at least ten days previous to the day fixed for such *enquête*. 12 V. c. 38, s. 60,—16 V. c. 194, s. 9,—18 V. c. 104, s. 4.

Every day of term to be an *enquête* day for contested appealable cases.

**182.** In appealable cases in the Circuit Court, the evidence shall be taken in the manner hereinbefore provided in such cases and in cases in the Superior Court; and such appealable cases shall be inscribed for the adduction of evidence and for final hearing on the merits at the same time, and shall be heard as soon as the evidence is closed, unless the court, after the witnesses present have been heard and notes of their evidence taken, deems it conducive to justice to adjourn the case on account of the absence of any material witness or other evidence:

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

2. But nothing in this section shall be construed to prevent the evidence from being taken orally as in non-appealable cases, by consent of all the parties. 20 V. c. 44, s. 57.

But by consent evidence may be taken orally.

**183.** In such appealable cases, if the party against whom any issue of law is raised by any pleading, or answer or replication inscribes the cause for *enquête* and hearing, then such issue of law raised upon the pleadings, shall be reserved and argued at the final hearing on the merits, after the evidence in the case has been taken, and shall then be decided. 20 V. c. 44, s. 58.

Issues of law to be argued with the merits if so inscribed.

*Of the notice of Inscription EN DROIT, for ENQUÊTE and for final hearing.*

**184.** Notice of the inscription of every contested appealable case *en droit*, for *enquête* or for final hearing, shall be given by causing a copy of the inscription to be served on the opposite party at least one clear day before the day fixed, if such

How notice of inscription for *enquête* or hearing shall be given.

such notice be given in term, or at least four clear days previous thereto if such notice be given in vacation. 18 V. c. 104, s. 7.

*Of the enquête in any place other than that in which the Court ordering it is held.*

*Enquêtes may be ordered to be taken in any other circuit.*

**185.** The judge holding any Circuit Court, may as well in court as out of court, or in vacation, order the *enquête* in any suit or action to be taken, or any witness or party to be examined, before a judge of the said court, in any other circuit on any day to be appointed by such judge, and any order the transmission of the record or of any portion thereof to such other circuit, in like manner as the Superior Court or any judge thereof, and such order shall be obeyed accordingly by the clerk of the court for the circuit in which such *enquête* is to be taken, or such witness or party is to be examined; and the provisions made in similar cases with reference to the superior court, or to any judge thereof, by the section or by the section of this Act, (ss. 30 and 31 of 12 V. c. 38), shall apply to the cases mentioned in this section. 12 V. c. 38, s. 61.

*Of witnesses residing at a distance of more than five leagues.*

*Distance from which witnesses may be compelled to attend.*

**186.** No person shall be bound to attend the Circuit Court as a witness in any suit or action pending therein, unless he is resident within fifteen leagues of the place at which he shall be summoned to attend, or within the circuit in which such place shall be, or unless he is summoned to appear as such witness, in accordance with the provisions of chapter 79 of the Consolidated Statutes of Canada, and subject to the conditions therein set forth. 12 V. c. 38, s. 62,—18 V. c. 9.

*Non-appealable cases.*

*Every day to be a return day.*

**187.** Every day in term or in vacation, not being a Sunday or Holiday, shall be a return day in non-appealable cases in the Circuit Court. 22 V. c. 5, s. 29.

*How non-appealable cases shall be dealt with in the Magdalen Islands.*

**188.** Except only in the circuit of the Magdalen Islands, as to which special provision is made,—every such non-appealable case in which the writ of summons is made returnable in term, shall be dealt with and continue to be dealt with in the manner hereinafter provided. 22 V. c. 5, s. 30.

*Of procedure before judgment in non-appealable cases generally.*

*Default in non-appealable cases.*

**189.** If the defendant in any non-appealable suit or action instituted in the Circuit Court, does not appear personally or by his attorney, on the day fixed for the return of the writ of summons, his default shall be recorded; and in any such case it shall

shall not be necessary that the defendant be called on the third day, or at any other time thereafter, nor shall he be entitled to appear at any other time and have the said default taken off, unless express permission be given to him by the court :

2. After the default has been so recorded, the court, after due proof of the service of the writ of summons, in a summary manner, may receive evidence and hear the plaintiff in support of his *demande* in such suit or action, and thereupon make and render such judgment as law and justice require ;

Proceedings after default.

3. If the defendant appears on the said day, either personally or by his attorney, and the plaintiff does not appear either personally or by his attorney, or appearing does not prosecute his suit or action, the same shall be dismissed with costs to the defendant against the plaintiff ;

Plaintiff not appearing.

4. And if the plaintiff in any such suit or action establishes his demand, he shall be entitled to recover the sum of money or thing by him demanded, and costs against the defendant. 12 V. c. 38, s. 57.

Plaintiff establishing his demand.

**190.** In non-appealable cases, the pleadings after the declaration shall be oral or in writing, at the option of the defendant, unless the court expressly orders the same to be in writing ; and if the defendant choose to plead in writing, he shall file his plea upon appearing, unless further delay be granted to him by the court, but if he is ordered to plead in writing, he shall have such delay as the court may allow him by such order ; and in either case no answer in writing by the plaintiff shall be necessary unless expressly ordered by the court :

Pleadings in non-appealable cases.

2. And if the defendant do not plead in writing, he shall, on appearing, be called upon by the court to state orally or in writing, what facts (if any) alleged in the plaintiff's declaration he is willing to admit, and his admission shall be recorded, and if he refuses or neglects to make such statement, he shall be deemed to have denied them all, and shall be liable for the costs of the proof thereof ; and if the plaintiff be ordered to answer in writing, he shall have such delay to answer as the court may allow him by such order. 12 V. c. 38, s. 58.

How to be made if oral.

**191.** In non-appealable cases it shall not be necessary to reduce to writing the depositions of the witnesses, but such witnesses shall be examined *vivâ voce*, in open court, nor shall it be necessary that any notes of the evidence be taken by the judge. 12 V. c. 38, s. 60.

Oral evidence in non-appealable cases.

*Non-appealable cases returnable in vacation.*

**192.** In every such non-appealable case in which the Writ of Summons is made returnable in vacation, the defendant may,

Proceedings when the writ

in such case is made returnable in vacation.

may, on the return day or on the next following juridical day, file his appearance personally or by attorney,—the pleadings shall be in writing but in a summary form, and the delay for pleading shall be five clear days from the time allowed for such appearance; there shall be a like delay of five clear days for answering, to be reckoned from the expiration of the delay allowed for pleading,—and there shall be also a like delay of five clear days for replying, to be reckoned from the expiration of the time allowed for answering:

Provido.

Provided that no demand of any plea, answer or reply, shall be necessary in any such case, in order to foreclose the party entitled to file the same; but the party entitled to file any plea, answer or reply, shall be foreclosed from filing the same by the mere lapse of the delay allowed him for filing it. 22 V. c. 5, s. 31.

Joinder of issue.

**193.** In every such case, issue shall be held to be joined by the pleadings filed within the delay allowed for filing the same respectively. 22 V. c. 5, s. 32.

Preliminary pleas—delay for filing.

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

Delay for other pleas.

Plaintiff may demand the pleas to the action before answering preliminary pleas.

2. Provided that the plaintiff may, before answering any such preliminary plea, demand of the defendant his plea or pleas to the action or merits, and if such last mentioned plea or pleas be not filed on or before the fifth juridical day after such demand, such defendant shall, without any *Acte* of foreclosure, become foreclosed from thereafter filing any plea to the action or merits, and there shall then be no issue raised between the plaintiff and defendant except on such preliminary plea or pleas, with regard to which the provisions of the *seventy-fourth* section of this Act (20 V. c. 44, s. 73) shall apply in so far as they are consistent with the express provisions of this Act *relative to proceedings in non-appealable cases*. 22 V. c. 5, s. 33.

Inscription for *enquête* and hearing.

**195.** As soon as issue is joined in any such case, any party thereto may inscribe it for the adduction of evidence and final hearing on the merits at the same time on any subsequent day in term, provided notice of such inscription be given to the opposite party, at least three days before the day for which the case is so inscribed, or such other number of days as may, from time to time, be fixed by any rule of practice to be made in

in that behalf,—in the districts of Quebec and Montreal, by the majority of the judges residing therein respectively, and promulgated by any one of them sitting in term,—and in any other district by any judge of the Superior Court when in such district. 22 V. c. 5, s. 34.

**196.** If the defendant in any such case do not appear, or having appeared do not, within the delay above limited, file any plea, the case shall be dealt with as a non-appealable case by default returnable in term, and the plaintiff may proceed therein in the manner prescribed with regard to a non-appealable case by default when returned in term; but the plaintiff may inscribe any such case, as by default, for the adduction of evidence and final hearing on the merits at the same time on any day in term, without giving notice to the defendant or opposite party. 22 V. c. 5, s. 35.

If defendant do not appear or proceed, plaintiff may inscribe the case as by default.

**197.** If in any such case returned in vacation, the defendant desires to confess judgment, he may do so in the manner and to the effect provided as to appealable cases in the Circuit Court by the *sixty-ninth and seventieth* sections of this Act :

Confession of judgment.

2. Provided that in non-appealable cases returned in term, the defendant may confess judgment orally in open court in the manner and to the effect provided by the said sections. 22 V. c. 5, s. 36.

May be oral.

**198.** Any tariff of fees and costs for non-appealable cases in which pleadings in writing have been ordered by the court, shall apply to contested non appealable cases returned in vacation, in any circuit where such tariff is in force. 22 V. c. 5, s. 37.

Costs in non-appealable cases.

*Of judgment granting delay.*

**199.** The Circuit Court may, if the judge holding the same thinks proper, order the sum for which judgment has been given in any case, to be levied by instalments; provided the delay allowed for the payment of the last instalment does not exceed the space of three months from the day of the judgment; and provided also, that in default of payment of any one such instalment at the time it becomes due, execution may issue in satisfaction of the judgment, as if such delay had not been granted. 12 V. c. 38, s. 66.

Amount of judgment may be levied by instalments.

*Of Writs of Execution, and of the persons who may execute them, both in the Districts or Circuits in which they issue, and in others.*

**200.** Every writ of execution *de bonis* ordered by the Circuit Court, shall contain an exception of the party's beasts of the plough, implements of husbandry, and the tools of his trade, unless

Certain articles not to be taken in execution in certain cases.

unless his other goods and chattels prove insufficient, in which case such beasts of the plough, implements of husbandry and tools of his trade shall be sold. 25 G. 3, c. 2, s. 36, par. 8. *as to cases over £10.*

Writs of execution need not be endorsed by a judge.

**201.** It shall not be necessary that any writ of execution issuing out of the Circuit Court, be Signed or indorsed by any judge. 12 V. c. 38, s. 67.

Execution of judgments of C. C.

**202.** In every case where judgment is rendered in the Circuit Court, awarding or adjudging the payment of any sum of money, the clerk of the court may, at the expiration of fifteen days after the rendering of the judgment, issue under the seal of the court, a writ of *feri facias* against goods and chattels; which writ shall be signed by him, and made returnable to the court, and shall be directed to any of the bailiffs of the Superior Court appointed for the district in which the judgment has been rendered, who is hereby authorized to levy the sum of money mentioned in such writ, and the costs of execution, upon and from the goods and chattels of the party against whom such judgment has been rendered, which are found within the district, in the same manner, and according to the same rules and regulations of law, under which any sheriff may levy money by virtue of a writ of *feri facias* issuing out of any of Her Majesty's courts of civil jurisdiction in Lower Canada :

To whom the writ shall be directed.

No percentage to bailiffs.

2. But the said bailiff shall not be entitled, out of the moneys so levied by him, to the commission of two and a half per cent. in such case by law allowed to sheriffs, or to any commission whatever;

Return of writ.

3. And the said writ, on or before the day fixed for the return thereof, shall be by the said bailiff returned into the Circuit Court at the place where it issued, with his proceedings thereon. 12 V. c. 38, s. 70,—25 G. 3, c. 2, ss. 32, 36, par. 7.

Proviso as to cases under \$40.

**203.** For the satisfaction of any such judgment, execution shall (except in hypothecary actions, and in those for *rentes constituées*, to be created in virtue of the Seignorial Act of 1854, go only against the moveable property of the party condemned, in cases where the sum of money awarded by the judgment does not exceed forty dollars :

In cases above \$40 and in hypothecary actions.

2. In cases where the sum of money so awarded exceeds forty dollars, execution shall go not only against the moveable, but also against the immoveable property of the party condemned, as it shall also in all hypothecary actions against the immoveable property declared by the judgment to be hypothecated for the payment of the sum for which such judgment has been rendered, and in those for *rentes constituées* to

to be created in virtue of the Seignorial Act of 1854, whatever be the amount demanded or recovered in each description of action in the suit ;

3. When execution upon any such judgment is sued out against the immoveable property, a writ of *feri facias de terris* shall be issued from the Circuit Court at the place where the judgment was rendered, under the seal of the said court, and signed by the clerk thereof, and such writ shall be made returnable to the Superior Court in the district in which the judgment was rendered, and shall be directed to the sheriff of the said district, who is hereby authorized to levy the sum of money mentioned in such writ, and the costs of execution, upon and from the immoveable property of the party against whom such judgment was rendered, or upon and from the immoveable property declared by the judgment to be so hypothecated as aforesaid (as the case may be) in the manner and according to the rules and regulations of law, by and under which any sheriff may levy money by virtue of a writ of *feri facias de terris* issuing out of any of Her Majesty's courts of civil jurisdiction in Lower Canada ;

Executions against immoveables.

4. The said writ, on or before the day fixed for the return thereof, shall be by the said sheriff returned into the Superior Court, with his proceedings thereupon, in the same manner as if such writ had issued from the said court; 12 V. c. 38, s. 90, and 18 V. c. 3, s. 27.

Return of the writ.

5. All ulterior proceedings of what kind soever, consequent upon the issuing of such writ, or necessary for the execution thereof, as well with regard to the plaintiff and defendant as with regard to other parties, who, according to law, have intervened in the cause by opposition or otherwise, shall be had in the Superior Court, as effectually and in the same manner as if the cause in which such writ issued had been originally brought and determined in the said court. 12 V. c. 38, s. 70, and 18 V. c. 3, s. 27.

Ulterior proceedings, oppositions, &c.

204. When the party against whom judgment has been rendered in the Circuit Court, has not, within the district in which such judgment was rendered, sufficient goods, chattels, lands or tenements to satisfy the said judgment in capital, interest and costs, but has goods, chattels, lands or tenements within any other district in Lower Canada, an *alias* writ *de bonis* or *de terris*, as the case may be, shall issue from the court at the place where the judgment was rendered, under the seal of the said court, and signed by the clerk thereof; which *alias* writ shall be made returnable to the court out of which it issues if it be a writ *de bonis*, and to the Superior Court in the district in which the judgment was rendered, if it be a writ *de terris*. 12 V. c. 38, s. 71.

When the property of executee is in another district.

Writ *de bonis* may in such case be addressed either to the Sheriff or a Bailiff.

**205.** Such alias writ *de bonis* shall, at the option of the plaintiff, be addressed either to the sheriff of such other district or to any bailiff of the Superior Court and by such sheriff or bailiff duly executed in the said last district as though it were a writ of execution issued out of the Superior Court, and it shall be returned by such sheriff or bailiff, with his proceedings thereon, to the Circuit Court at the place where it issued, and the said Circuit Court shall receive the return of execution as in other cases. 12 V. c. 38, s. 71,—16 V. c. 195, ss. 3, 4.

Writ *de terris* to be addressed to the sheriff.

**206.** And such alias writ *de terris* shall be directed to the sheriff of such other district; and executed in the latter district by the sheriff thereof, as if it were a writ of execution issued from the Superior Court, and in the same manner and according to the same rules and regulations of law; and the said writ shall be, by the said last mentioned sheriff, with his proceedings thereon, duly returned into the Superior Court in the district in which the judgment was rendered; and all ulterior proceedings of what kind soever consequent upon the issuing of such writ *de terris*, or necessary for the execution thereof, as well with regard to the plaintiff and defendant, as with regard to other parties who, in due course of law, have intervened in the cause by opposition or otherwise, shall be had in the Superior Court, as effectually, and in the same manner as if the cause in which such writ issued had been originally brought and determined in the said court:

Uterior proceedings.

As to property hypothecated and *délaissé*.

2. In all cases where execution may issue in any hypothecary action against any immoveable property declared by the judgment to be hypothecated for the payment of the money to be levied under such execution, and *délaissé* under such judgment, and situate in a district other than that in which the writ issues, such writ shall be issued, executed and returned; and the subsequent proceedings relative to the same shall be had as herein provided with regard to *alias* writs *de terris*, without its being necessary that any other writ should previously issue. 12 V. c. 38, s. 71.

*Of the transmission of the Record to the Superior Court when the Writ de terris is returned into the said Court.*

Superior Court may call up the records when lands are seized.

**207.** When any such writ *de terris*, issuing from the Circuit Court, has been, in the manner hereinbefore provided, returned into the Superior Court, the said last named court, may direct the record of the cause in which such writ of execution issued, to be removed into the Superior Court, there to be proceeded with according to law, by an order made by the said court and addressed to the clerk of the Circuit Court at the place from which the record is to be transmitted, and such clerk shall forthwith cause the record and proceedings in the said cause to be transmitted to the said Superior Court. 12 V. c. 38, ss. 72, 65.

*Of the opposition to the execution of the Writ de bonis.*

**208.** Every opposition made to the execution of a writ *de bonis* issued from the Circuit Court shall be made returnable to the Circuit Court at the place where the cause is pending :

Oppositions to writs *de bonis*.

2. The bailiff charged with the execution of the writ shall immediately after he has been served with a true copy of the said opposition return the same and the writ with his proceedings thereon to the said court in which the proceedings are pending, and any judge of the Superior Court although he is not then within the limits of the circuit, or the clerk of the Circuit Court out of which the writ issued, may make the *fial* or order to stay proceedings upon such writ *de bonis* in consequence of any such opposition, and to that effect such judge or clerk may administer all oaths in such cases required by law ;

Duty of bailiff on being served with the opposition.

3. The said Circuit Court may hear and determine all such oppositions whatever may be the amount or the value of the sum or thing thereby claimed. 12 V. c. 38, s. 73,—18 V. c. 104, s. 8.

Jurisdiction of C. C. as to oppositions.

*Of execution against the person.*

**209.** The Circuit Court sitting in any district, county or circuit, may award any execution against the body of a person residing in a district, not including such district, county or circuit, in any case where such execution is by law allowed :

C. C. may award execution against the body.

2. Such execution shall be directed to the sheriff of the district in which such person resides, and such sheriff shall execute the same and shall convey the body of such person to the common gaol of the district wherein such person is arrested, and such execution shall be executed in the same manner and to the same effect as an execution issued in the Superior Court in a district against the body of a person residing in another district would have to be executed. 22 V. c. 5, s 57,—25 G. 3, c. 2, s. 39.

How it shall be executed.

**OF THE JUDGMENTS, PROCEEDINGS AND RECORDS OF THE COURTS ABOLISHED OR SUPERSEDED.**

**210.** The registers, muniments, records, official acts, papers and other proceedings of the late Provincial court of the inferior district of St. Francis, which were immediately after the passing of the act 12 V. c. 38, transmitted into the Circuit Court for the Sherbrooke circuit, at the town of Sherbrooke in the district of St. Francis, make part of the records, muniments, and other judicial proceedings of the said Circuit Court, and the judgments of the said late Provincial court may be executed as if they were judgments of the said Circuit Court. 14, 15 V. c. 90, s. 1.

Registers, &c., of the late Provincial Court of St. Francis to be transmitted to Sherbrooke Circuit Court.

Judgments of Court of K. B. before 21st April, 1844, to be executed by C. C.

**211.** The judgments of the several Courts of King's Bench sitting in inferior term in Lower Canada, and existing on and before the twenty-first day of April, one thousand eight hundred and forty-four, shall be executed as if they were judgments rendered since the going into effect of the act 12 V. c. 38, by the Circuit Courts sitting at the places at which the said several Courts of King's Bench in the inferior term thereof were respectively held: 11 V. c. 4,—12 V. c. 38, ss. 40, 41.

As to transmissions of records, &c.

2. And sections *forty* and *forty-one* of the Act 12 V. c. 38, directing the transmission of the records and muniments of the said courts in inferior term to the Circuit Court at the same places, respectively, shall continue in force so far as any thing remains to be done under them, and the said records and muniments shall be records and muniments of the Circuit Court at such places. 12 V. c. 38, ss. 40, 41.

Continuance of certain suits.

**212.** Sections *seventy-seven* and *seventy-eight* of the said Act, 12 V. c. 38, providing for the continuance of certain suits pending in the Circuit Court at places where the said court was not to be held after that time, or in circuits of which the limits were then altered, shall continue in force so far as any thing remains to be done under them. 12 V. c. 38, ss. 77, 78.

12 V. c. 38, s. 81, to remain in force while any thing remains to be done under it.

**213.** Section *eighty-one* of the said Act, 12 V. c. 38, providing for the abolition of Commissioners' Courts in Quebec, Montreal and Three Rivers, and the transmission of the records of, and the continuance of matters pending in the said courts, shall remain in force so far as any thing remains to be done under it. 12 V. c. 38, s. 81.

As to transmission of records, &c., of Commissioners' Courts ceasing to exist.

**214.** The transmission of the records, and of the execution of the judgments of the Commissioners' Courts, which have ceased to exist, or which may hereafter cease to exist, is provided for by section of chapter *ninety-four* of these Consolidated Statutes.

Certain provisions of 18 V. c. 104, to remain in force.

**215.** The provisions made by the Act 18 V. c. 104, for the transmission of suits then pending for amounts above sixty dollars from the Circuit Court to the Superior Court at Quebec and Montreal, on the first July, 1855, and the continuance of such suits, shall continue in force so far as any thing remains to be done under them, and the records and proceedings therein shall make part of those of the said Superior Court at the said places respectively. 18 V. c. 104, ss. 1, 2, 3.

Causes, &c., pending in any circuit not affected by any change in the limits of such circuit.

**216.** No change made by any Act, or any proclamation under such Act, in the limits of any circuit, shall affect any action, suit or proceeding commenced in any such circuit before such change; but the same and all proceedings and matters incident thereto, whether before or after execution, shall, so far as any thing remains to be done therein, be continued

continued and dealt with as if the limits of the circuit in which such action, suit or proceeding was commenced had not been changed or affected. 16 V. c. 194, s. 12,—18 V. c. 166, s. 10,—19, 20 V. c. 55, s. 7.

3. Except that all cases pending in the Richmond circuit on the first day of August, one thousand eight hundred and fifty-five, arising out of or relating to the township of Chester, separated from the said circuit and annexed to the Act (18 V. c. 168) to the circuit of Arthabaska for all judicial purposes whatsoever, shall, so far as any thing remains to be done in them, be continued in the said Richmond circuit. 18 V. c. 168, ss. 1, 2.

Exception as to certain cases pending in the Richmond circuit on 1st August, 1855.

#### INTERPRETATION.

**217.** The word “sterling,” in any Act relative to the administration of justice, and in force in Lower Canada, shall, with regard to any suit or action commenced after the fourteenth day of June, one thousand eight hundred and fifty-three, and with regard to all proceedings therein, be held to have the meaning assigned to the said word by the Act respecting the currency, chapter fifteen of the Consolidated Statutes of Canada, that is to say: each pound sterling, in any sum mentioned in such Act, shall be held to be equal to one pound four shillings and four pence currency or four dollars eighty-six cents and two-thirds of a cent. 12 V. c. 38, s. 91,—16 V. c. 158, s. 4.

Word “sterling,” how to be interpreted.

**218.** All the provisions of *any Act in these Consolidated Statutes relating to the Administration of Justice*, shall be liberally construed so as best to promote the attainment of justice in every case, and no construction shall be deemed right which leaves any provision thereof without effect; and if there be any case in which *immediately* before the said Consolidated Statutes took effect, a party would have had the means of enforcing or defending some just claim or right in some court then existing, and no provision is found in the said Acts under which such claim or right can be enforced or maintained, such provision shall be made by the rules of practice to be made under the said Acts, and until it be so made, no proceeding for enforcing or maintaining such claim or right not inconsistent with the said Acts, or with the law, shall be held to be illegal or void: 12 V. c. 38, s. 113.

How the provisions of the Acts relating to Administration of Justice shall be construed.

2. The provisions of the said Acts shall be construed with reference to each other, and as parts of the same law. 20 V. c. 44, s. 149.

Construction of certain expressions.

**219.** The several expressions “Court of Queen’s Bench at (any place)” — “Superior Court at (any place)” — or “circuit court at (any place)” — in this or any other Act, or in any document or proceeding, shall be understood to mean any judge or judges lawfully holding such court or exercising the power thereof at such place, — and shall not be construed to mean all the judges of such court, or any majority or other number of them, unless it be so expressed or the context shall clearly require such construction :

Citation of other Acts in these Acts.

2. And whenever in this or any other Act in these Consolidated Statutes any Act is referred to as the Act of 12 V. c. 38, (or as the case may be), such reference shall be understood as meaning the Act of the legislature of this province passed in the year of the reign of \_\_\_\_\_, the then Sovereign, indicated by the words or figures inserted after it, and the chapter inserted after it in words or figures shall be understood as being the chapter it forms in the copies of the Acts of the said legislature, printed and published by authority, by Her Majesty’s printer ; But this provision shall not be construed to impair the effect of the Interpretation Act, under which any abbreviated form of reference to any Act or part of an Act is and shall be sufficient if it is intelligible. 20 V. c. 44, s. 150.

Not to impair effect of Interpretation Act.

SCHEDULE. (Referred to in Section \_\_\_\_\_.)

A

Province of Canada, }  
Circuit, } IN THE CIRCUIT COURT.

A. B. of \_\_\_\_\_ &c. Plaintiff ;  
and  
C. D. of \_\_\_\_\_ &c. Defendant.

[L.S.] VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith :

To C. D., the defendant above mentioned.

Whereas A. B., the plaintiff aforesaid, demands of you the sum of \_\_\_\_\_ currency, due by you to him for (*state sufficiently the cause of action*) which said sum you have (as he saith) refused to pay him. (*If the action be to recover a thing wrongfully detained, &c., vary the statement of the cause of action accordingly. If there be a declaration annexed, refer to it ; and omitting the words after “the plaintiff aforesaid,” say, “hath, by his declaration hereunto annexed, made complaint against you in the manner therein set forth.”*) And the plaintiff prays judgment accordingly.

You

You are therefore required to satisfy the *demande* of the said plaintiff in this cause, with costs, or to appear in person or by your attorney before our said court, at the court house, at ( ) in the said circuit, (at o'clock in the forenoon, *omit these words if the case be appealable*), on the day of instant (or next), to answer the said *demande*; otherwise judgment may be given against you by default.

In witness whereof, we have caused the seal of our said court to be hereunto affixed, at this day of in the year of our Lord, one thousand eight hundred and

E. F.

Clerk of the said court for the said circuit.  
Schedule A, 12 V. c. 38.

B

FORM NUMBER ONE—AFFIDAVIT FOR WARRANT OF ARREST

A. B., of being duly sworn, doth depose and say, that C. D., of personally indebted to in a sum exceeding *ten pounds sterling*, to wit: in the sum of

That this deponent is credibly informed, hath every reason to believe, and doth verily and in his conscience believe, that the said immediately about to leave the Province of Canada (*allege specially the reasons which lead to the belief that the defendant is about to leave the province of Canada*), whereby the said, without the benefit of a warrant of attachment against the body of the said, may be deprived of remedy against the said: and this deponent hath

Sworn before me, this day of

C

FORM NUMBER TWO—AFFIDAVIT TO OBTAIN WARRANT OF ATTACHMENT.

A. B., of being duly sworn, doth depose and say that C. D., of is indebted to of in a sum exceeding *ten pounds sterling*, to wit: in the sum of

That this deponent is credibly informed and hath every reason to believe, and doth verily and in his conscience believe, that the said now about immediately to secrete estate, debt and effects, and do abscond and do intend



shall be found in the \_\_\_\_\_, to the value of \_\_\_\_\_  
 and the said \_\_\_\_\_ keep and detain in your charge and  
 custody for the period of twelve days, from the date hereof, and  
 no longer, unless before the expiration of twelve days, the said  
 \_\_\_\_\_ shall be seized by writ of attachment issuing from  
 the Superior or Circuit Court (*as the case may be*) at  
 at the suit of the said \_\_\_\_\_

Given under my hand and seal, at \_\_\_\_\_ this \_\_\_\_\_  
 day of \_\_\_\_\_ in they \_\_\_\_\_ ear of the reign of Her Majesty.

*The four next preceding forms are from 9 G. 4, c. 27.*

F

FORM NUMBER ONE—THE OATH TO BE ADMINISTERED TO EXPERTS.

I, A. B., of the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, habitant, (*if there be two or more persons to be sworn, say, I, A. B., of \_\_\_\_\_, and I, C. D., of \_\_\_\_\_*) do make oath and swear, that in the presence of E. F., the plaintiff, and G. H., the defendant, named in an interlocutory sentence pronounced in (*here insert the name of the court*) in the district of \_\_\_\_\_, bearing date the \_\_\_\_\_ day of \_\_\_\_\_, or in their absence, after due notification shall have been given them, to attend at a place to be designated, and on a day and hour to be specifically named to them respectively, I will faithfully proceed as an *expert* to the view and examination required by the said interlocutory sentence; and that I will truly report my opinion in the premises, without favour or partiality towards either of the said parties: So help me God.

G

FORM NUMBER TWO—CERTIFICATE TO BE MADE AND SIGNED BY THE COMMISSIONERS, OF THE DUE ADMINISTRATION OF THE OATH.

Sworn before me, \_\_\_\_\_, a commissioner appointed for receiving affidavits to be used in the Superior Court in the district of \_\_\_\_\_, (*or sub-delegate authorized by the commission (or the judgment, as the case may be, hereunto annexed, as the case may be,*) at \_\_\_\_\_, on the \_\_\_\_\_ day of the month of \_\_\_\_\_, in the year \_\_\_\_\_.

H

FORM NUMBER THREE—THE OATH TO BE ADMINISTERED TO WITNESSES.

I, \_\_\_\_\_, (*insert the name, profession or quality and place of residence of the witness,*) do make oath and swear that

I am not related or allied to, or a servant or domestic of E. F., the plaintiff, or G. H., the defendant, and that I am not interested in the event of the cause depending between them, (*or, if witness says he is, state in what degree he declares himself to be related or allied to either and which of the parties, or what situation he holds in the family of either of them,*) and I do also swear that the evidence which I shall give between the said parties before the experts, (*or arbiters or arbitrators, as the case may be,*) named in the interlocutory sentence pronounced by (*here insert the name of the court*), in the said cause, shall be the truth, the whole truth, and nothing but the truth : So help me God.

*The three next preceding forms are from 48 G. 3, 22.*

## I

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

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

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

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

Sworn before me, at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_.

Signature, A. B.  
J. S. P.

*Signature of the Judge, Prothonotary, Clerk or Commissioner.*

## J

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

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

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

E. F., of \_\_\_\_\_, being duly sworn, doth depose and say, that to his personal knowledge, the sum of \_\_\_\_\_ being the whole (*or part, as the case may be*) of the amount demanded of \_\_\_\_\_

of the defendant in this cause, is justly due by him to the plaintiff (or plaintiffs) for the causes in his (or their) *demande* mentioned; and the said deponent hath signed, (or hath declared himself unable to sign, being thereunto duly required).

Signature, A. B.

Sworn before me, at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_  
18 \_\_\_\_\_

J. S. P.

*Signature of the Judge, Prothonotary, Clerk or Commissioner.*

K

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

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

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

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

Signature, A. B.

Sworn before me, at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_  
18 \_\_\_\_\_

J. P.

*Signature of the Judge, Prothonotary, Clerk or Commissioner.*

L

*Affidavit of Service under Section \_\_\_\_\_ of this Act, to be indorsed on the Writ of Summons.*

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

Defendant (or as the case may be) therein named, on the  
 day of \_\_\_\_\_, 18\_\_\_\_, at \_\_\_\_\_ o'clock in the  
 at \_\_\_\_\_,  
 in the said County, by delivering to *him* personally a true copy  
 of the said Writ (or as the case may be) by leaving a true copy  
 thereof for the said C. D. with a grown up person of *his* family  
 at *his* domicile in the said County: and Deponent hath signed.

A. B.

Sworn before me, at \_\_\_\_\_ }  
 this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, }

J. P.

*Signature of the Commissioner or Justice of the Peace.*

[N. B.—Omit the words “that he is a Bailiff entitled to serve  
 process of the County Court of the County of \_\_\_\_\_ in Upper  
 Canada,”—when the service has been made by a literate person  
 who is not a Bailiff, or being a Bailiff is not entitled to serve  
 process of the County Court in such County. See sect. 58.]

*The four next preceding forms are from 22 V. (1858) c. 5.*

## C A P. L X X X I V .

## An Act respecting the selecting and summoning of Jurors.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

QUALIFICATION OF JURORS,—EXCEPTIONS AND DISQUALIFICATIONS.

- 1.** Every male inhabitant of Lower Canada, between twenty-one years of age and sixty years of age, who is qualified in the manner hereinafter mentioned, (those hereinafter exempted excepted) shall have a right and shall be liable to serve as a Grand Juror and as a Petit Juror in all the Courts of Lower Canada, as well for Civil as Criminal matters. 10, 11 V. c. 13, s. 1. All male inhabitants of a certain age qualified as jurors.
- 2.** The Members of the Legislative Council and of the Clergy,—Members of Her Majesty's Executive Council,—Members of the Legislative Assembly,—Advocates and Attorneys practising in the Courts,—Clerks and Prothonotaries of the Court of Queen's Bench and of the Superior Court,—Clerks of the General or Quarter Sessions of the Peace or of the Circuit Courts respectively,—Officers of Her Majesty's Courts,—Coroners, Gaolers, Keepers of Houses of Correction, Sheriffs' Officers, Constables or Bailiffs,—Officers of the Customs,—All persons in the civil service of Her Majesty's Government, under either Imperial or Provincial appointment,—Persons employed in the public offices,—Persons employed in the service of the post office,—Naval and Military officers on full pay,—Officers employed in military service,—Physicians, surgeons and apothecaries,—Pilots duly licensed,—School masters not exercising any other profession,—Masters of and persons engaged in navigating steamboats,—Engineers and other conductors of railway trains,—And all persons employed in the working of any grist mill,—are declared exempt from service as jurors and their names shall not be inscribed in the lists of Jurors. 10, 11, V. c. 13, s. 22,—25 G. 3, c. 2, s. 23,—14, 15 V. c. 89, s. 2. Certain officers, &c., exempt from serving as jurors.
- 3.** No person convicted of Treason or Felony, or who has been condemned to any infamous punishment, shall be inscribed on any list of Jurors, nor serve and act as a Juror. 10, 11 V. c. 13, s. 24. Certain persons disqualified.
- 4.** Aliens shall only be Jurors in cases in which a Jury *de medietate linguæ* is prayed for and obtained. 10, 11 V. c. 13, s. 23. Aliens may serve in certain cases.

## LISTS OF GRAND JURORS IN CRIMINAL MATTERS AND OF PETIT JURORS AND JURORS FOR CIVIL MATTERS.

*Grand Jurors.*

Sheriff to prepare Grand Jury lists.

5. The Sheriffs of the several districts shall prepare, in the manner hereinafter mentioned, two lists, the first containing the names of all persons residing within the limits of their respective districts and qualified to serve as Grand Jurors at the terms of the Courts of Queen's Bench held for the cognizance of Criminal matters, and at Courts of Oyer and Terminer and General Gaol Delivery; and the second, the names of those qualified to serve as Grand Jurors at the Courts of General Sessions of the Peace:

And Petit Jury lists.

2. They shall also make lists of Petit Jurors and Jurors in civil cases in the manner hereinafter provided. 10, 11 V. c. 13, s. 2.

How such lists shall be made.

6. The said Sheriffs shall make the said lists of Grand Jurors in the manner hereinafter prescribed for making the lists of Jurors for Civil matters, and for Petit Jurors in Criminal matters, and shall deposit them in the same manner in the offices of the Clerks of the Courts for which they have been made, and shall follow the same order of rotation in summoning the Jurors. 10, 11 V. c. 13, s. 3.

Qualifications requisite as Grand Jurors for Queen's Bench.

7. The Sheriffs shall not insert in the lists of Grand Jurors for the Courts of Queen's Bench and Oyer and Terminer, the name of any person who is not a proprietor of real property of the yearly value of one hundred dollars, over and above all ground rents and incumbrances to which such real property is liable,—unless such person then occupies as tenant a house in one of the Cities of Quebec or Montreal, for which he *bond fide* pays a yearly rent of two hundred and forty dollars, or upwards, or in the City of Three-Rivers or Town of Sherbrooke at the rate of one hundred and sixty dollars, or upwards, nor unless such person has resided in such City or town during one year before the time at which such lists are made:

Qualifications for Grand Jurors for Quarter Sessions.

2. And the Sheriffs shall not insert in the lists of Grand Jurors for the Courts of General Quarter Sessions of the Peace, the name of any person not being a proprietor of real property to the yearly value of sixty dollars, over and above all ground rents or incumbrances payable out of or affecting the same,—unless such person occupies as tenant a house in one of the said Cities of Quebec or Montreal for which he *bond fide* pays a yearly rent of one hundred and sixty dollars, or upwards, or in the said City of Three-Rivers or Town of Sherbrooke at the rate of eighty dollars, or upwards, and has resided therein for the length of time hereinabove mentioned. 10, 11 V. c. 13, s. 4.

8. In the district of Gaspé every inhabitant, who has been *donâ fide* in public and peaceable possession as proprietor, by himself or by the persons through whom he derives his title, during the period of five years consecutively, of any real property, the yearly value of which would qualify him to serve as a Grand Juror, (or a Petit Juror under the provisions hereinafter contained,) shall be considered in all respects to be a proprietor for the purposes of this Act :

Qualifications in district of Gaspé.

2. But this Act shall not give to any such inhabitant a stronger title to such property than he would otherwise have had, nor affect the rights of Her Majesty, nor those of any other person, body politic or corporate whatever. 10, 11 V. c. 13, s. 5.

Title to property not affected by this Act

*Petit Jurors and Jurors in Civil cases.*

9. And whereas by reason of the great extent of several districts of Lower Canada, the unequal distribution of the population therein, and the difficulties of communication in many places, and other obstacles of the same nature, the summoning of Petit Jurors in criminal matters, and of Jurors for the trial of Civil causes, from all parts of the said districts respectively, would be accompanied by difficulties which are for the present insurmountable :

Recital.

2. Therefore, in the lists of Petit Jurors in Criminal matters, and of Jurors to attend the Superior Court, the Sheriffs of the several districts in Lower Canada shall include only such persons as reside within ten leagues around the places of holding the Courts in the *old* districts respectively, in every Municipality or place, and are proprietors of any real property the annual value of which is equal to forty dollars, over and above any ground rent (*rente foncière*) or incumbrance to which such property is subject, and after the surname of every Juror, shall add his Christian name, his profession and his residence ;--they shall also indicate every Juror who is proprietor of real property of the annual value of not less than sixty dollars nor exceeding one hundred dollars, over and above any ground rent or incumbrance with which such real property or hereditaments is charged. 10, 11 V. c. 13, s. 6.

Who only shall be included in Petit Jury lists, &c.

10. The Sheriffs of the districts of Quebec, Montreal, Three-Rivers and St. Francis, respectively, shall inscribe on the lists of Petit Jurors, the name of every person resident in the Cities of Quebec, Montreal and Three-Rivers and the Town of Sherbrooke, respectively, or resident within ten leagues of the said Cities and Town, and occupying any house as tenant, and paying for the same a yearly rent of or above the sum of thirty dollars, and less than one hundred and sixty dollars, and not specially exempted by law from serving as a Petit Juror. 16 V. c. 197, s. 2.

Who may be Petit Jurors in Montreal, Quebec, Three-Rivers and Sherbrooke.

## MODE OF MAKING THE LISTS.

Certain officers,  
Sec., bound to  
assist in mak-  
ing lists.

**11.** In making the lists of Jurors in each Parish, Township or place known as such and reputed to be such, the Sheriff may require the Mayor, Assessors or Officers appointed to take the Census, the Senior Notary, Church-warden or Officer of Militia, or any of them, to assist in making out and preparing the lists of all persons liable and qualified to serve as Jurors and resident within the limits of every such Parish or Township, for which such Mayor, Notary or Officer has respectively been appointed, or wherein he resides. 10, 11 V. c. 13, s. 9.

Penalty on  
refusing.

**12.** Every such Mayor, Assessor, Officer appointed to take the Census, or Senior Notary, Church-warden or Officer of Militia, who refuses or neglects to comply with the requirements of this Act respecting the formation of the said lists, shall thereby incur a penalty not exceeding twenty dollars, for the first offence, nor forty dollars for any subsequent offence. *ibid*, s. 10.

How the Sher-  
riff shall make  
the lists.

**13.** In making out the lists of Jurors, for the several Courts as aforesaid, the Sheriff shall successively insert therein, one after the other, the first name in every list made for the Parishes, Townships or places from which Jurors may be summoned to attend the Courts for which the lists is to be made; and if any such list contains double the number of names in another list, then the Sheriff shall take two names from the most numerous list for every name taken from the list containing half as many, and a greater number in *like* proportion, and successively from every other list, and shall insert the same in the lists for the said Courts in the order hereinbefore directed, until the local lists have been gone through. *ibid*, s. 12.

Lists to be  
made in dupli-  
cate—where  
they shall be  
deposited.

**14.** The lists of Jurors shall be made in duplicate, and signed by the Sheriff, who shall keep a duplicate deposited in his office; and the other duplicates of the said lists shall be deposited as follows, that is to say: The lists of Jurors to attend the Superior Court, in the Offices of the Prothonotaries of the said Court;—the lists of the Grand Jurors and of Petit Jurors for the Courts of Queen's Bench sitting for the cognizance of Criminal matters or of Oyer and Terminer, in the office of the Clerk of the Crown;—and the respective lists of Grand Jurors, and of Petit Jurors to serve at the Courts of General Quarter Sessions, with the Clerks of the Peace respectively:

Access thereto.

**2.** All persons shall have free access to the lists so deposited in the Sheriff's Office, and in the offices of the said Prothonotaries or Clerks between the hours of nine in the morning and four in the afternoon of every day, without becoming thereby liable to the payment of any fee or charge whatsoever. *ibid*, s. 11,—20 V. c. 44, s. 81.

**15.** The said lists of Jurors for the several Courts prepared in the manner hereinbefore directed, shall be written in Registers in which the names of the Jurors shall be entered one after another without interruption, and when the said lists have been once made and deposited, as by this Act directed, they shall not be changed or altered in any manner whatsoever, except at the time and in the manner hereinafter directed. 10, 11 V. c. 13, s. 13.

Lists to be entered in registers.

**16.** The said lists of Jurors shall be renewed and made in the manner hereinbefore directed, in the month of July in every second year after such lists have been first made, except in the districts of Quebec and Montreal, the Sheriff's of which districts shall not be required to complete the renewal of the said lists before the fifteenth day of August in every second year. *ibid*, s. 14,--16 V. c. 197, s. 3.

Lists to be renewed every second year.

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

Proceedings in case they have not been renewed within the time fixed by law.

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

Effect of lists so renewed.

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

Costs of such renewal.

But nothing in this section shall relieve the Sheriff from any penalty or liability incurred by his default to make or renew any such List at the time prescribed by law. 22 V. c. 5, s. 53.

Liability of Sheriff however to remain.

**18.** The new lists shall be made by leaving out the names of all persons deceased or absent, or who, during the preceding

How the new lists shall be made out.

two years, have ceased to be qualified, and by adding the names of all new comers who are qualified at the time such lists are renewed, and without otherwise changing the order in which the first lists have been made. 10, 11 V. c. 13, s. 15.

## CORRECTION OF JURY LISTS.

Jury lists may be amended by order of the Superior Court.

**19.** Nothing contained in the preceding sections of this Act shall be construed to prevent any lists of Jurors from being altered or changed by order of the Superior Court sitting in term, whenever complaint has been made before that Court by any person, that the Sheriff hath, in making the said lists, made any error and inserted therein the name of any person not qualified to serve as Jurors at any Court, or has omitted to insert therein the names of persons fit and qualified to serve as such, or that the said lists have not been made in the manner by this Act directed; in all which cases the Court may, on proof being made in a summary manner of the truth of such allegations, order the names of all unqualified persons to be struck out of such lists, or the names of the persons duly qualified to serve as Jurors to be inserted therein, as the case may be. 10, 11 V. c. 13, s. 16,--20 V. c. 44, s. 81.

Judge sitting in Circuit Court may hear complaints in respect of such lists.

**20.** The Judge, sitting in any Circuit Court, may hear all remonstrances and complaints made before him with respect to the local lists of Jurors of any class whatsoever hereinbefore mentioned, by any person within the Circuit in which he is so sitting, but shall report the same to the Superior Court, in order that the whole matter may be brought before the Superior Court at the next term thereof, and such further proceedings had with respect to the said remonstrances or complaints, as are directed by the next preceding section of this Act, and as to law and justice shall appertain. 10, 11 V. c. 13, s. 17.

Right of challenging not affected.

**21.** Nothing in this Act shall be construed to deprive any party to any cause of the right of challenging any Juror, not qualified in the manner herein required, or for any lawful cause of challenge, nor to prevent the Judge or Judges from proceeding to determine the validity of such challenge, in the manner prescribed by law. *ibid*, s. 18.

## JURORS IN CRIMINAL MATTERS.

Grand and Petit Jurors to be taken in turn.

**22.** All Grand and Petit Jurors, summoned to serve at any Court of Criminal Jurisdiction, shall be taken in turn by following uninterruptedly and successively the order of the list, beginning at the name next after the names of those last summoned, and so on successively, until the number on the list has been entirely gone through, and then beginning again and going through in like manner:

2. At every Term of the Superior Courts of Criminal Jurisdiction, or at any Court of Oyer and Terminer, no more than sixty Petit Jurors shall be summoned, nor more than forty-eight at every General Quarter Sessions of the Peace. 10, 11 V. c. 13, s. 19, *part*—14, 15 V. c. 89, ss. 1, 3, *par* 2.

Number to be summoned at the different criminal terms.

23. Of the Grand Jurors and Petit Jurors, summoned to serve before any Court holding criminal jurisdiction at the Cities of Quebec and Montreal, one half shall be composed of persons speaking the English language, and the other half of persons speaking the French language, to be selected by the Sheriff from the lists of Grand Jurors and Petit Jurors in the order in which the names of each class, respectively, are inscribed therein. 14, 15 V. c. 89, s. 3, *par* 3.

Numbers of Jurors in Montreal and Quebec as regards language.

24. In the districts of Quebec and Montreal, the Sheriff shall, (in addition to the number of persons to be summoned as Petit Jurors for the Courts of Criminal Jurisdiction to appear on the first day of the Term or Session thereof,) summon a second set of Petit Jurors for each of the said Courts in the same manner, at the same time, and to the same number as those summoned for the first day of the Session;—and such second set of Petit Jurors shall for the Court of Queen's Bench and Court of Oyer and Terminer, be summoned to attend on the eighth juridical day of the Term thereof, and for the Court of General Quarter Sessions, on the sixth juridical day of the Session thereof; and every such second set of Petit Jurors shall attend and serve for the residue of every such Term or Session. *ibid*, s. 3, *par* 4.

Second set of Petit Jurors to be summoned in Montreal and Quebec.

25. No person shall be summoned or be liable to serve as a Petit Juror, before any Court held at a distance of more than ten leagues from his place of residence. *ibid*, s. 3, *par* 1.

Certain persons not liable to serve.

26. Jurors for criminal matters shall, in every case, be summoned at least ten days before the day on which they are enjoined to attend. 10, 11 V. c. 13, s. 20.

Notice to criminal Jurors.

27. Saving the exceptions contained in this Act, no Sheriff shall be required to return a special panel of Petit Jurors for the trial of any criminal case. 14, 15 V. c. 89, s. 3, *par* 5.

Special panels.

28. The names of the Petit Jurors summoned to attend any Court shall be called over in the order in which they stand on the list, and the first twelve Jurors whose names are so called, and who are present in Court, and are not lawfully challenged, shall be sworn for the first trial; and the Clerk shall, in every trial, begin at the name next after that of the last Juror sworn, and so on until he has gone through the list, when he shall begin at the top thereof again, and go through it as aforesaid, omitting the names of any Jurors who may then be engaged in trying any case. 10, 11 V. c. 13, s. 19.

In what order Petit Jurors shall serve.

Except in certain cases first twelve appearing, &c., to form the jury.

**29.** Unless the prosecuting officer, and the party prosecuted consent that the trial Jury be composed exclusively of persons speaking the English language or of persons speaking the French language, or unless the party prosecuted demand, in the manner and at the time hereinafter provided, a jury composed, for the one half, at least, of persons skilled in the language of his defence, (if such language be either the English or French language,)---the said jury shall be composed of the first twelve persons, who, being called from the General Panel, appear, and are not lawfully challenged. 14, 15 V. c. 89, s. 3, *par. 6.*

Right of party arraigned as regards language of Jurors.

**30.** Whenever any prosecuted party, upon being arraigned, demands a Jury composed for the one half at least, of persons skilled in the language of his defence, if such language be either English or French, he shall be tried by a Jury composed, for the one half, at least, of the persons whose names stand first in succession upon the General Panel, and who, on appearing, and not being lawfully challenged, are found in the judgment of the Court to be skilled in the language of the defence. 14, 15 V. c. 89, s. 3, *par. 8.*

In case of deficiency of persons skilled in the language of the defence.

**31.** Whenever from the number of challenges, or from any other cause, there is in any such case, a deficiency of persons skilled in the language of the defence, the Court shall fix another day for the trial of such case, and the Sheriff shall supply the deficiency by summoning, for the day so fixed, such additional number of jurors skilled in the language of the defence as the Court may order, and as are found inscribed next in succession on the list of Petit Jurors. 14, 15 V. c. 89, s. 3, *par. 9.*

Crown prosecutors only to challenge for cause.

**32.** Those who sue or prosecute in the Queen's name in any criminal cause, shall not in any case challenge any Juror except for cause, and the ground of such challenge shall not be declared sufficient by the Court, unless legal proof is made of the truth of the fact alleged as forming the same :

Peremptory challenges limited.

2. No person arraigned for murder or felony shall be admitted to any peremptory challenge above the number of twenty; 10, 11 V. c. 13, s. 21.

#### PAYMENT OF PETIT JURORS.

Remuneration of persons serving as Petit Jurors.

**33.** A sum not exceeding one dollar shall be paid by the Sheriffs of the *Old Districts of Lower Canada respectively*, to each person who serves as a Petit Juror before any Court of Criminal Jurisdiction, for every day he is by reason of his being such Juror, necessarily absent from his usual place of abode ; except that no such remuneration shall be granted to any Petit Juror whose usual residence is situate within the limits of the City, Town or Village in which the Court is held. 18 V. c. 98, s. 1.

**34.** Sums not amounting in the whole to more than twenty thousand dollars, may be advanced to the said Sheriffs respectively, by warrant of the Governor, out of the Consolidated Revenue Fund of this Province, in such proportion and at such times as to the Governor in Council shall seem fit, for the purpose of enabling the said Sheriffs to pay the allowance to Petit Jurors authorized by the next preceding section. 18 V. c. 98, s. 2.

Advance to Sheriffs for the purpose.

**35.** Separate accounts shall be kept of all moneys disbursed under the two next preceding sections, to the end that an equal sum may be appropriated by Parliament for the several City and County Municipalities in Upper Canada, for the general purposes of such Municipalities, and to be divided among them in proportion to their population by the last census. 18 V. c. 98, s. 3.

Accounts of moneys disbursed.

SUMMONING OF JURORS IN CRIMINAL MATTERS IN THE DISTRICT OF GASPÉ.

**36.** In case during the sitting of the Superior Court at Percé or New Carlisle in the district of Gaspé, there are any criminal matters requiring despatch, the said Court may fix such day or days in the course of the sittings thereat as may best suit the public convenience for the hearing, trial and disposal of such criminal matters, and may issue the necessary precepts addressed to the Sheriff for summoning Grand and Petit jurors, but without such special order of the Court, no precept shall issue for summoning jurors to attend any criminal sitting of the said Court; and in case of the issuing of any such precept, the Sheriff of the district of Gaspé shall cause such precept to be executed with all possible despatch, and with as little expense as possible to the Province for mileage or other incidental charges arising therefrom: 7 V. c. 17, s. 18.

Jurors in Gaspé not to be summoned without special precept from the Court.

**2.** No precept shall issue for summoning Grand or Petit Jurors to any General Sessions of the Peace in the District of Gaspé, nor shall any such General Sessions be held unless, in addition to the signatures of some three Justices of the Peace to such precept, the same is also signed by the Judge of the Superior Court, residing in the county where the Sessions are to be held;—nor shall the Sheriff execute, or be held to obey any precept to him addressed by any three or more Justices, unless as a voucher for the urgency or expediency of summoning Jurors to attend such General Sessions, the signature of such Judge of the Superior Court appear upon the precept to him addressed; and whenever any precept so signed is addressed to the said Sheriff, it shall, as provided in the like case by the next preceding section, be in like manner the duty of the Sheriff of the District of Gaspé to cause such precept to be executed with all possible despatch, and at as little expense as possible to the Province for mileage or other incidental charges: 9 V. c. 13, s. 1.

Sessions of the Peace in Gaspé not to be held unless precept be also signed by Judge of the Superior Court.

Certain provisions in force notwithstanding this Act.

3. The several provisions relating to the summoning of Grand and Petit Jurors contained in the Act 7 V. c. 17, have been and shall remain as fully in force as if the Act 10, 11 V. c. 13 had never been passed. 16 V. c. 197, s. 4.

LISTS AND SUMMONING OF JURORS IN THE DISTRICTS OF  
KAMOURASKA AND OTTAWA.

Jury lists to be prepared Ottawa and Kamouraska.

**37.** The Sheriff for each of the Districts of Kamouraska and Ottawa, shall make and prepare (in duplicate) the following lists of Jurors, that is to say :

*Firstly.* A list of all persons qualified to serve as Grand Jurors at any of the Courts of Queen's Bench or of Oyer and Terminer, to sit in the said Districts respectively, for the cognizance of criminal offences ;

*Secondly.* A list of all persons qualified to serve as Petit Jurors before the said Courts of Superior Criminal Jurisdiction ;

*Thirdly.* A list of all persons qualified to serve as Grand Jurors at any term of the Court of General Sessions of the Peace hereafter to be held in the said Districts respectively ;

*Fourthly.* A list of all persons qualified to serve as Petit Jurors before the said Court of General Sessions of the Peace ;

*Fifthly.* A list of all persons qualified to serve as Special Jurors upon the trial of civil cases before the Superior Court or any of the Judges thereof, in the said Districts respectively ;

Lists to be renewed every second year.

2. The Sheriff of each of the said Districts, shall renew the said lists every second year, to be reckoned from the month in which the first lists were completed ; and the said Sheriffs shall make, prepare and renew the aforesaid lists of Jurors, and shall summon the Jurors therein named, in the manner provided by the Act 10, 11 V. c. 13, as amended by the Act 14, 15 V. c. 89, and shall keep deposited in his office a duplicate of each of the said lists, and shall deposit the other duplicate of each of the said lists as follows, that is to say :

Where the lists shall be deposited.

3. The other duplicate of the list of Grand Jurors, and the other duplicate of the list of Petit Jurors qualified to serve as such, respectively, before the Court of Queen's Bench and the Court of Oyer and Terminer, shall be deposited in the office of the Clerk of the Crown in and for such District ;

4. The other duplicate of the list of Grand Jurors and Petit Jurors qualified to serve as such respectively before the Court of General Sessions of the Peace, shall be deposited in the office of the Clerk of the Peace in and for the said Districts ;

5. The other duplicate of the list of Special Jurors, shall be deposited in the office of the Prothonotary of the Superior Court in each of such Districts; 14, 15 V. c. 89, s. 5.

6. Except as herein specially provided, this Act shall apply to the said Districts of Kamouraska and Ottawa, as fully to all intents and purposes as if the said Districts had been in existence at the time of the passing of the Acts 10, 11 V. c. 13, and 14, 15 V. c. 89, respectively, and had been mentioned in the first of the said Acts. 14, 15 V. c. 89, s. 6.

This Act to apply to Ottawa and Kamouraska.

**LISTS AND SUMMONING OF JURORS AND PAYMENT OF PETIT JURORS IN THE NEW DISTRICTS OF TERREBONNE, JOLIETTE, RICHELIEU, SAGUENAY, CHICOUTIMI, RIMOUSKI, MONTMAGNY, BEAUCE, ARTHABASKA, BEDFORD, ST. HYACINTHE, IBERVILLE AND BEAUHARNOIS.**

38. The provisions of this Act regulating the making of Jury lists and the summoning of Jurors in the Districts of Kamouraska and Ottawa, (including those provisions which apply to those Districts in common with other Districts) shall apply to and regulate the making of jury lists and the summoning of Jurors in the New Districts constituted by the Act 20 V. c. 44 :

Certain provisions of this Act to apply to the New Districts.

2. Except that there shall be only one list of Grand Jurors which shall include those persons qualified to serve as such either at the Court of Queen's Bench or of Oyer and Terminer, or at the Court of Quarter Sessions, and the persons on such list shall served as Grand Jurors at any of the said Courts ;

But there shall be but one list of Grand Jurors.

3. And except that there shall be only one list of Petit Jurors for the Courts of Criminal Jurisdiction, which shall include those persons qualified to serve as such, either at the Courts of superior Criminal Jurisdiction or at the Quarter Sessions; and the persons on such lists shall and may serve as Petit Jurors at any Criminal Court in the district. 20 V. c. 44, s. 98.

And one list of Petit Jurors.

39. The allowance to be paid to each person serving as a Petit Juror before any Court of Criminal Jurisdiction in any of the New Districts, shall be fixed from time to time by the Judge holding such Court, but shall not be less than fifty cents nor more than one dollar for each day such Juror is necessarily absent from his usual place of residence; but he shall have no further allowance for travelling expenses, nor shall any such allowance be paid to any Petit Juror whose usual residence is within the limits of the city or town, or of the parish or township, in which such Court is held. *ibid.*, s. 99.

Remuneration of Jurors in the New Districts.

**JURORS IN CIVIL MATTERS.**

*Of Lists of Special Jurors.*

40. The Sheriffs of the several Districts respectively, shall make lists of the Special Jurors qualified under this Act, by taking

How lists of Special Jurors shall be made.

taking from the proper local lists, and in the order in which they occur therein, the names of all the persons residing as aforesaid, qualified to serve as Grand Jurors in the Courts in Criminal matters, or at the Courts of Oyer and Terminer, or at the Sessions of the Peace, and the name of every Notary inserted in such local lists of Jurors. 10, 11 V. c. 13, s. 33.

What such lists shall contain.

**41.** In every list of special Jurors in any other District than those of Montreal and Quebec, the Sheriff shall, in addition to the persons by law qualified to serve as Special Jurors, also inscribe the name of every person resident within five leagues of the Court House of the District, occupying any house or farm, and paying for the same a yearly rent of or above eighty dollars. 14, 15 V. c. 89, s. 4, p. 5.

Certain persons not liable to serve.

**42.** No person shall be summoned or be liable to serve as a Special Juror in any civil suit, before any court to be held in the districts of Quebec and Montreal, at a distance of more than three leagues from his place of residence, or before any Court to be held in any other District at a distance of more than five leagues from his place of residence, nor shall any Sheriff include in any list of Special Jurors, the name of any person hereby exonerated from serving as such Special Juror. *ibid*, s. 4, p. 4.

#### JURORS IN MERCANTILE SUITS.

*Of the selection of Jurors and of the Jury de medietate linguæ, where they may be summoned by consent, and of their summons.*

In mercantile suits the jury may be composed of merchants.

**43.** In any civil suits of a mercantile nature between merchants, traders and trading corporations, or between merchants, traders or trading corporations and persons not engaged in trade, the Court, or a Judge thereof may, upon the unopposed demand of either of the parties, order that the Jurors to be summoned for the trial of any issue raised in such suit, be selected from those persons who are designated in the list of Special Jurors as merchants and traders, in the order in which their names successively stand in the said list, omitting the intermediate names of those not being merchants or traders :

In case of opposition one half the jury may be merchants.

2. And if such demand be opposed by any other party to any such suit, the Court or Judge shall order that the Jurors to be summoned for such trial be composed in equal numbers of those persons who are designated in the list of Special Jurors, as merchants and traders, and of those who are not designated in the said list as such ;

How jury shall be struck in such case.

3. And on the striking of such Jury the Prothonotary shall accordingly call over the names of at least twenty-four Jurors, being merchants and traders, (omitting names of others not being so) after twenty-four names of such others have been called ;

called; and in any such case either of the parties shall strike from the list of Jurors, prepared by the Prothonotary, the names of more than six persons therein designated as merchants or traders, and of six persons not therein designated as such. 10, 11 V. c. 13, ss. 35, 36, and 14, 15 V. c. 89, s. 4, p. 8.

44. If in any case mentioned in this Act there are not upon any such list the number of merchants or traders who ought to be summoned to form the jury, the number shall be completed by taking other names from the said list in the order hereinbefore prescribed, but the names of the Jurors being merchants or traders shall be called before those of the other Jurors at the trial. 10, 11 V. c. 13, s. 37.

In case there is not a sufficient number of merchants on the list.

JURORS SPEAKING EITHER LANGUAGE.

45. Upon the unopposed demand of any party to any civil suit in which a trial by Jury may be legally had, the court or any one Judge thereof, may order that the Jurors to be summoned to try any issue in such suit, shall be composed exclusively of persons speaking the English language or of persons speaking the French language :

In certain cases jury may be wholly composed of men speaking but one language.

2. And if any such demand be opposed by any other party to the suit, the said Court or Judge shall order that the Jurors summoned for such trial shall be composed in equal numbers of persons speaking the English language and of persons speaking the French language ;

Or of persons speaking English or French in equal numbers.

3. And when a Jury *de medietate linguæ* has been so ordered to be summoned, neither of the parties shall strike from the list of Jurors prepared by the Prothonotary, in the case, the names of more than six persons speaking the English language, and of six persons speaking the French language. 14, 15 V. c. 89, s. 4, par 7.

In the latter case only six speaking each language may be struck from the list by either party.

46. In any civil case where both parties consent that the Jury be summoned from the parish of Quebec, or from the parish of Montreal alone, the Court may order that the Jury be so summoned, and they shall be so summoned accordingly. 10, 11 V. c. 13, s. 40.

Jury may be summoned by consent exclusively from one parish.

47. Whenever it is required that a Jury be summoned to serve in a civil case, from among the special Jurors hereinbefore mentioned, the Prothonotary of the Court shall take the forty-eight Jurors whose names are first on the list, and shall continue to take them in that order until the lists are gone through; and each party, Plaintiff and Defendant or their Attorneys respectively, may strike out of the said lists the names of twelve of the said Jurors, and the twenty-four Jurors remaining after such striking out shall be the Jurors to be summoned by the Sheriff, and from and among whom shall be taken the

How jury in a civil case shall be struck.

twelve

twelve Jurors who shall be sworn to hear and determine the matter at issue between the said parties, calling their names in the order in which they stand upon the lists, and swearing the first twelve who answer to their names. 10, 11 V. c. 13, s. 25.

Notice to Special Jurors.

**48.** Persons required to serve as special Jurors in civil matters shall be summoned at least four days before the day on which the are enjoined to attend as Jurors. 14, 15 V. c. 89, s. 4, *par* 6.

#### CHALLENGES, TALESMEN, ALLOWANCE TO JURORS.

How challenges shall be made.

**49.** Every challenge or exception to the panel or to any particular Juror returned thereon, shall be taken, made and determined upon in open Court and conformable to the laws of England. 25 G. 3, c. 2, s. 20.

When and how talesmen may be taken.

**50.** If a part of the Jurors summoned in any case be challenged or make default, so that twelve Jurors fit and qualified cannot be sworn, the Court or Judge presiding may, with the consent of the parties, and not otherwise, order the Sheriff or Officer by whom the Jury was summoned, to complete the number by forthwith taking as many persons qualified to be Jurors, from among the persons present in Court, as are wanted to complete the required number. 10, 11 V. c. 13, s. 38.

Remuneration of Jurors in civil suits.

**51.** In every civil suit, each of the trial Jurors shall be allowed one dollar for each day's attendance on the trial, which shall be paid to such Jurors by the party requiring such trial before the said Jurors shall be held to render their verdict in such suit, and shall form part of the costs to be taxed against the unsuccessful party :

On failure of such payment.

**2.** On failure of such payment, the Jury shall be discharged without verdict ; and in such case, the said allowance shall form part of the taxed costs against the party demanding the trial by Jury and when recovered, shall be paid over by the Prothonotary of the Court to the said Jurors. 14, 15 V. c. 89, s. 4, *par* 12,—10, 11 V. c. 13, s. 41.

#### MISCELLANEOUS PROVISIONS.

Penalty on sheriff contravening this Act.

**52.** Every Sheriff who wilfully or negligently offends against any of the provisions of this Act shall, for the first offence, incur a penalty not exceeding sixty dollars, nor less than forty dollars, and, for the second offence, a penalty not exceeding eighty dollars, nor less than sixty dollars ; and, for the third or any subsequent offence, a penalty not exceeding two hundred and eighty dollars, nor less than one hundred and twenty dollars. 10, 11 V. c. 13, s. 42.

**53.** Every person summoned to serve as a Juror under the authority of this Act, who refuses or neglects to serve as such without assigning some lawful cause or excuse therefor, shall incur a penalty not exceeding twenty dollars, which shall be levied on a rule or order of the Court by the Sheriff on the goods and chattels of such person, and in default thereof by imprisonment for such time not exceeding fifteen days, as the said Court may direct, with power to reduce or mitigate the said penalty or imprisonment upon good cause shewn to the said Court. 10, 11 V. c. 13, s. 43.

Penalty on persons refusing to serve when summoned.

**54.** Every person who refuses to furnish to the persons employed to make the lists of Jurors required by this Act, the information necessary for making the same, shall incur a penalty of not less than one dollar nor exceeding four dollars, to be recovered with costs in a summary manner on complaint before one Justice of the Peace. 10, 11 V. c. 13, s. 44.

Penalty on refusing information, &c.

**55.** The penalties hereby imposed must be sued for within six months next after the offence committed, and not afterwards; and where no other mode of recovering them is herein provided, shall be recovered, with costs, by suit in any Court having Civil Jurisdiction to the amount of the penalty, in the district within which the offence has been committed; and every such penalty shall be levied with costs in the ordinary course of law :

Limitation of suits for penalties.

2. If any action, brought under this Act against the Sheriff, is declared by the judgment to be unfounded and vexatious, the Sheriff, who is discharged therefrom shall be entitled to and shall recover full costs. 10, 11 V. c. 13, s. 45.

Protection of sheriff from vexatious suits.

**56.** One moiety of the penalties hereby imposed shall belong to Her Majesty, and be paid into the hands of the Receiver General, for the public uses of the Province, and make part of the Consolidated Revenue Fund thereof, and the other moiety shall belong to and be paid to the person suing for the penalty. 10, 11 V. c. 13, s. 46.

Appropriation of penalties.

## CAP. LXXXV.

## An Act respecting seizures and sales by authority of Justice.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

## SEIZURES IN EXECUTION.

Personals to be first disposed.

**1.** In all cases where execution issues against real and personal estates, the sheriff shall first dispose of the personal property, and if the proceeds thereof fall short of the amount of the judgment, the real estate, or so much thereof as will produce the amount, shall be sold for that purpose. 25 G. 3, c. 2, s. 31.

Manner of selling personals.

**2.** Where moveables are seized by the sheriff, under an execution, he shall cause the seizure to be published at the church door of the parish, immediately after divine service, on the first Sunday succeeding such seizure ; and shall at the same time cause to be proclaimed, the day and place, when and where he means to proceed to the sale thereof ; but the place of sale shall be in the same parish in which the seizure is made :

Eight days' notice.

**2.** The sheriff shall not sell any chattels, so seized and notified, until eight days after the notification of sale ;

Goods may be taken to Quebec or Montreal.

**3.** At the request of the plaintiff, the sheriff may cause goods and merchandizes so seized, to be transported from the parish where seized to the city of Montreal or Quebec, (being in the district where seized) there to be sold after due notice ;

When execution shall be made returnable.

**4.** Execution so issued against chattels or personal estate, shall be made returnable at such day as the court from whence it may issue, judges reasonable ; and the execution shall issue against chattels, or personal or real estate, in one and the same writ, but such execution shall be first levied upon the chattels or personal estate, and be returnable as to such first levy, yet nevertheless, shall have force and effect and be returnable also, at a more distant period, as to the second levy on real estate, for the full satisfaction of the execution. *ibid*, s. 32.

Certain articles exempt from seizure.

**3.** In all cases wherein a writ of execution is issued, upon any judgment obtained in any court in Lower Canada, it shall not be lawful for the sheriff or other officer executing such writ, to seize the bed or bedding or the necessary wearing apparel of the debtor, or of his family ; nor shall such sheriff or officer seize every cow, sheep and hog, nor every stove, nor all the firewood belonging to such debtor ; but one cow, three sheep, one hog, one stove, and one cord of firewood, to be selected by such debtor out of any larger number he has, shall be exempt from seizure under any such writ :

2. But no cow, sheep, hog, stove or firewood shall be exempt from seizure in satisfaction of any debt contracted for the same, or for money borrowed to pay for it. 2 V. (3) c. 28, and 25 G. 3, c. 2, s. 36, par. 8. Proviso as to debts contracted for purchase.

4. When lands and tenements are seized by the sheriff under a writ of execution, he shall advertise the sale thereof, three several times in the *Canada Gazette*, to be on some certain day after the expiration of four months from the date of the first advertisement, and proclaim the said sale at the church door of the parish in which the premises are situated, immediately after divine service, on the three Sundays next preceding the sale, and cause a copy of the said advertisement to be fixed on the door of the parish church; and lands *en roture* shall be sold at the door of the church of the parish where seized: Proceedings in the sale of real property.

2. And the sheriff shall moreover, *in such advertisement*, require all persons having any claims on said lands and tenements, by mortgage, or other right or incumbrance, to give notice thereof at his office, either before or after the sale, where the law makes a distinction, and the sale then made by the sheriff, without any other formality, shall have the same force and effect as the *decret* formerly had. 25 G. 3, c. 2, s. 33,—12 V. c. 26, s. 1,—6 W. 4, c. 15, s. 24. Notice to persons having claims thereon.

5. Whenever any real property is situate partly in one District or Circuit and partly in another, and the plaintiff has brought a real or mixed action with respect to such property in either of the said Districts or Circuits, the whole of such real property may be seized and sold under judgment obtained in such action, in the same manner as if the said real property were wholly situate in the District or Circuit in which the judgment was rendered: In case real property is partly situated in two districts.

2. And this provision shall apply to any judgment rendered for any cause whatsoever against a defendant possessing any real property situated partly in one District or Circuit and partly in another. 14, 15 V. c. 60, s. 2. Application of this section.

6. The sheriff on receipt of any writ of *feri facias de terris*, writ of *venditioni exponas*, or *alias* writ of *feri facias*, may demand and have from the persons presenting the same, the sum of four dollars, and no more, in advance, to enable him to defray the expenses of publication or otherwise: Sheriff on receiving writ may demand a certain sum in advance.

2. When desired by the party at whose instance the seizure has been made, a concise statement of the charges subject to which the said land or immoveable property is to be sold, shall be inserted in such advertisement immediately after the description of the said land or immoveable property. 6 W. 4, c. 75, s. 25, and see 22 V. c. 5, s. 52. Certain details may be set forth in the advertisement.

## FORM OF ADVERTISEMENT.

Form of advertisement.

7. The sheriff shall advertise the sales of immoveable property, by him to be made, according to the form in the annexed schedule A, which advertisements shall be printed consecutively under one heading, in the form prescribed by the said schedule A. 6 W. 4, c. 15, s. 24.

Duty of sheriff when more than one plaintiff or defendant is named in any writ.

8. When more than one plaintiff, or more than one defendant, are mentioned in any writ under the authority of which lands and tenements are advertised for sale by any sheriff in Lower Canada, or when the plaintiff sues as tutor, or the defendant is sued as tutor to the minor children of any person deceased, it shall be sufficient that the sheriff advertising in such case, do mention the first plaintiff and first defendant in such writ named, stating always that there are other plaintiffs or other defendants, as the case may be, or the name of the firm, if there be one, and that he state generally, in the other case, that such tutor is tutor to the minor children of the persons deceased, without specifying at length the names of such minor children. 6 W. 4, c. 15, s. 28.

Sheriffs, &c., at sales may not become the purchasers.

9. No sheriff, deputy-sheriff, coroner, bailiff or other officer employed by any sheriff or coroner at the sale or adjudication of any moveables or effects, lands or other real property, shall, directly or indirectly, become the purchaser (*adjudicataire*) of any moveables, effects, lands or other real property, by him sold, under pain of nullity of such adjudication, and of all costs, damages and interests towards the parties. 6 W. 4, c. 15, s. 14.

## RIGHTS OF PLAINTIFF PURCHASING.

If plaintiff be the purchaser he may retain a certain amount of the purchase money.

10. When any plaintiff who has sued out the writ of execution, in virtue of which any real property has been put to sale, becomes the purchaser of the whole or any part of such property, such plaintiff may retain in his hands so much of the purchase money as does not exceed the amount of the sum remaining due and unsatisfied on such writ of execution, until a return thereof has been made by the sheriff, and the court from whence such writ issued has ordered a final distribution of the proceeds, on which such purchaser shall be held to pay into the hands of the sheriff so much of his purchase money, as exceeds the sum decreed by such order of distribution, to be due to such purchaser, and thereon the sheriff shall execute to such purchaser a good and sufficient deed of sale for the property so by him purchased :

But he must give security to the sheriff.

2. But such plaintiff shall give good and sufficient security to the sheriff, for insuring the damages that may result to the parties concerned, in case of non-payment of the sum which the said plaintiff will be bound to pay to the sheriff, after the judgment of order and distribution. 41 G. 3, c. 7, s. 15.

**11.** When any party having a privilege of *baillieur de fonds*, or other privilege or hypothec on any real property seized and advertised to be sold by any Sheriff under any Writ to him directed, has filed his opposition at the Sheriff's Office according to law before the day on which the writ is returnable, or before the actual return of such writ, with the titles, documents and certificates of registration requisite to support his claim,—then if such party becomes the purchaser of the whole or of any part of such real property, he may retain in his hands so much of the purchase money as shall not exceed the sum due and unsatisfied on the said privilege or hypothec and for which his opposition is so filed, until the return of the Writ is made by the Sheriff and the Court to which it is returnable shall have ordered a final distribution of the proceeds, on which such purchaser shall forthwith pay into the hands of the Sheriff the sum by which his purchase money exceeds the sum decreed by such order of distribution to be payable to such purchaser, and upon such payment the Sheriff shall execute to such purchaser aforesaid, a sufficient Deed of Sale of the property so by him purchased :

*Baillieur de fonds* or holder of hypothecs on property seized, purchasing the same may retain a certain amount of the purchase money.

2. But any such party so becoming such purchaser shall give good and sufficient security to the Sheriff, for insuring the damages that may result to any party concerned, in case of the non-payment of the sum which such purchaser will be bound to pay to the Sheriff after such order of distribution. 22 V. c. 5, s. 51.

But he must give security to the sheriff.

**12.** To every return of a seizure of any goods and chattels or lands and tenements, the *procès-verbal* of seizure shall be annexed, and shall contain an accurate and detailed inventory of the goods and chattels, and a legal description of the lands and tenements which have been seized. 6 W. 4, c. 15, s. 12.

*Procès-verbal* of seizure to be annexed to the return.

**13.** On every execution the sheriff shall be allowed all his disbursements, and shall be authorized to charge over and above at the rate of two and a half per cent, to be deducted out of the moneys he levies, and to belong to the Officers of Justices Fee Fund. 25 G. 3, c. 2, s. 35,—13, 14 V. c. 37,—16 V. c. 196, s. 1.

Sheriff's percentage.

SEVERAL WRITS, ON JUDGMENTS GIVEN ON THE SAME DAY.

**14.** If two or more writs of execution are issued upon judgments given the same day, against the same defendant, and so marked on the writs, such executions shall have the same privilege, and be satisfied in the same proportion :

Certain writs of execution to have the same privilege.

2. But if any oppositions or claims are entered at the sheriff's office, either before the sale of moveables, or before or after the sale of immoveables, and where required by law, in the one or the other case above mentioned, or where the moveables seized

Return and adjudication of oppositions, &c.

may be claimed by any other person; as to him pertaining,—in all such cases, the sheriff shall return the same at the proper periods, into the court whence such writ of execution issued, that the said court may, on hearing such claims and oppositions, and the parties therein concerned, adjudge them according to law. 25 G. 3. c. 2, s. 34.

OPPOSITIONS, WHEN TO BE FILED.

Within what times oppositions must be filed.

**15.** No opposition to the sale of any immoveable property seized by the sheriff by virtue of a writ of execution, whether such opposition be *afin d'annuller* or *afin de distraire* the whole or a part of the property so seized, or *afin de charges* or *servitudes* on the same, shall be lodged in the hands of the said sheriff or received by him, except previous to the fifteen days next before the day fixed for the sale and adjudication thereof :

Oppositions to sales by *venditioni exponas*.

2. And no such opposition shall be received by the sheriff to the sale of any immoveable property had by virtue of any writ of *venditioni exponas*, when all the previous notices and advertisements of the sale, by virtue of the first execution, have been made and published, according to law; provided that the sheriff has made known in advertising the sale, that such opposition will not be received during the fifteen days previous to the sale of the same, as above enacted ;

The claim may be converted into an opposition *afin de conserver*.

3. But the person who neglects to make such opposition before the fifteen days immediately preceding the day appointed for the sale of the said immoveable property as aforesaid, may convert his right to such opposition, to an opposition *afin de conserver* on the proceeds of the sale of the said property, which he may always file within the time fixed for lodging such opposition *afin de conserver*. 41 G. 3, c. 7, s. 11,—6 W. 4, c. 15, s. 24.

Duty of sheriff as regards oppositions.

**16.** In all cases of opposition, whether *afin d'annuller*, or *afin de charges* or *afin de servitudes*, the sheriff shall, in the course of twenty-four hours after such opposition is lodged in his hands, make his return thereof, and deposit such opposition, with his return in the office of the prothonotary of the court. 41 G. 3, c. 7, s. 12.

Upon failure of opposition, the opposant to pay certain damages.

**17.** Every *opposant* who lodges his opposition to the sale of any immoveable property, and fails in the prosecution of the same, shall, besides the costs and charges to the plaintiff prosecuting the sale, or to the defendant, pay all damages occasioned thereby, in which damages shall be included the interest of the sum due to the plaintiff for the time that the said sale has been stopped or suspended by virtue of such opposition :

Right of plaintiff to interest.

2. The plaintiff prosecuting the sale, shall be collocated upon the proceeds of the immoveable property for the interest of the sum found due to him, according to his right of collocation ;

3. Whenever an opposition of the nature last above mentioned is lodged in the hands of the sheriff, he shall not delay or suspend the advertisements and publications of the sale of the property seized, but he shall not proceed to the sale of the same until such opposition is adjudged and decided on. 41 G. 3, c. 7, s. 13.

Opposition not to delay the proceedings previous to the sale.

OF FOLLE ENCHÈRE.

18. Whenever it appears to the Court out of which any writ *de terris* has issued, by the return of the Sheriff or of any other officer of the Court duly authorized to act in such seizure, that the purchaser of real property taken in execution has neglected to pay the price of his adjudication according to the conditions of the sale,—the Court at the instance of the plaintiff or defendant or of any opposing party, shall order the sheriff or other officer to proceed anew with the sale of the said real property at the *folle enchère* of the purchaser, after three advertisements on three successive Sundays, at the church door of the parish where the said real property is situated, and two advertisements in a public paper or gazette; and shall direct the said Sheriff or other officer to require every bidder presenting himself at the time of such second sale, before his first bidding is received to deposit and pay a sum equal to the amount of the costs then due to the plaintiff for costs of judgment and seizure; and the said purchaser shall be also liable to all costs and damages resulting from his said refusal and neglect. 16 V. c. 194, s. 23, and 41 G. 3, c. 7, s. 14.

In what case the sheriff shall make a new sale at the *folle enchère* of the first purchaser.

Liability of first purchaser.

19. If any bidder refuses to pay such sum, such Sheriff or officer of the Court shall go on with the said second sale, starting from the next preceding bidding, as if such bidder had not offered any bidding. 16 V. c. 194, s. 24.

If bidder refuses to pay.

20. In case of a third sale and adjudication in consequence of the neglect of the second purchaser to deposit the price of his purchase, the Court, if thereto required by any interested party, may order such Sheriff or officer of the Court to require every bidder, before bidding, to deposit and pay into his hands a sum equal to one third of the debt due the plaintiff, including capital, interest and costs; but such sum shall in no case exceed four hundred dollars. *ibid*, s. 25.

A larger deposit may be required in case of a third sale.

21. When the plaintiff or his Attorney *ad litem*, or any person duly authorized to act on behalf of the plaintiff, authorizes such Sheriff or officer of the Court either in writing or in the presence of two competent witnesses, whose names such officer shall enter in his return of proceedings, to receive the bidding of a bidder without requiring the deposit of moneys in the cases above mentioned, such Sheriff or officer shall receive such bidding, and shall proceed to the sale and adjudication of the real property seized, without requiring the deposit and payment

Plaintiff may authorize the sheriff to receive a bidding without deposit.

payment of the sums aforesaid or of any sum whatsoever. *ibid*, s. 26.

In certain cases bidder may be required to make a deposit to the amount of costs incurred before his bid is received.

22. If after the issue of the *Writ de terris* and before the first adjudication, the plaintiff or his Attorney in the cause declares on oath before one of the Judges of the Court, that he is credibly informed and believes that the defendant, with a view to retard the sale of the real property seized, will cause the real property to be adjudged to insolvent or unknown purchasers, the Court may order such Sheriff or officer of the Court; (who shall obey such order) to require every bidder at the sale of any real property to deposit and pay into his hands a sum equal to that due for costs up to the day of sale, before receiving such bidding, unless such Sheriff or officer is, at the time of the sale, authorized by the plaintiff, or by his Attorney *ad litem*, or by some party duly authorized to attend to his interests, to receive such bidding without requiring such deposit or payment. *ibid*, s. 27.

If property is not adjudged to him the deposit to be immediately returned.

23. Such Sheriff or other officer shall, immediately after the adjudication, return to the bidder to whom such property has not been adjudged, the moneys deposited by them respectively, and the amount deposited by the person to whom the property is adjudged shall be considered as part payment of the purchase money. 16 V. c. 194, s. 28.

*Fol adjudicataire* liable for all damages and subject to *contrainte par corps*.

24. In every case the *fol enchérisseur et adjudicataire* shall, in addition, be required to pay all other damages and interest accruing to the judgment creditor;—and *contrainte par corps* may issue against such bidder for the recovery of the difference between the amount bid by him and that of the re-sale on *folle enchère*, but he shall not be entitled to claim any overplus, and any such overplus shall be paid to the other creditors in their order, or in the absence of other creditors, then to the judgment debtor. *ibid*, s. 29.

How such *contrainte par corps* shall be ordered.

25. The said *contrainte par corps* shall be ordered by the Court at the instance of the plaintiff, or of the defendant, or of any opposant not collocated for the full amount of his debt, who makes it appear by production before the court, of the record and of the proceedings on the seizure of the real property, that such bidder has not paid in and deposited the purchase money, and that a difference exists between the price of such bidder and that of the second sale; and such *contrainte* shall be ordered and shall last until such pretended bidder has paid the amount of such difference; and of all costs incurred in the obtaining of such *contrainte par corps*. *ibid*, s. 30.

How notice, &c., may be served upon the *adjudicataire*.

26. In matters of *folle enchère* in the Superior or Circuit Court, any notice of any rule or order required to be served upon any purchaser (*adjudicataire*) of any personal or real property sold by virtue of a writ or order of execution, shall be well served upon such purchaser when left for him at the office

office of the Prothonotary or of the Clerk (as the case may be) of the Court in which such notice is given or such rule or order has issued; if the purchaser do not reside in the District in which the sale or adjudication was made. 22 V. c. 5, s. 56.

#### OF THE WRIT OF POSSESSION.

27. If by the return of the sheriff it appears that the defendant refuses or neglects to deliver up to the said Sheriff or to the purchaser or *adjudicataire*, possession of the real property so seized and sold, the purchaser or *adjudicataire*; upon a motion in court, may obtain a writ of possession directed to the Sheriff, to enable him to enter into possession of the said real property, and the said defendant shall be also liable to all costs and damages resulting from his said refusal or neglect. 41 G. 3, c. 7, s. 14.

If defendant refuses to deliver up the real property a writ of possession may issue.

#### PLACE OF SALE, &C., IN GASPÉ.

28. All sales of real or immoveable property of whatsoever description, to be made in the District of Gaspé by the Sheriff thereof, under any judgment, writ of execution, or order of Court, shall be made in the township, settlement, or place where the property for sale is situate, and on the spot if practicable, or otherwise at the most public place nearest thereto, in the township, settlement, or place within which the property for sale is situate, and of which most public place the Sheriff shall give particular notice in his official publication of the sale, in addition to the other notices which by law he is bound to give. 7 V. c. 17, s. 27.

Where sales under execution in the district of Gaspé shall be made.

#### OF THE DETERIORATION OF IMMOVEABLES UNDER SEIZURE.

29. Any person who, personally or by the intervention of others, injures or wastes or diminishes the value of any immoveable property, (whether belonging to such person or to any other person) seized in execution under any judgment, by destroying, carrying away or selling any house, out-house, or building whatsoever, or by wilfully deteriorating the same, or by destroying, carrying away or injuring any timber or fences, or any fixture in any house or building on the property so seized, being part of, and belonging to such property, so that the creditor, at whose suit the execution was issued, may be deprived of his just rights, shall be liable to be proceeded against by attachment against his body (*contrainte par corps*); and such process may be awarded by the court, or by any judge thereof, in term or in vacation, after a rule or order to shew cause, duly served on such person, personally or at his domicile, and after proof made to the satisfaction of the said court or judge, of the facts alleged against such person, who may be committed to prison and there detained for a period not exceeding six calendar months. 2 (3) V. c. 48, s. 1.

Any person injuring property under seizure may be proceeded against by attachment against the body.

Party seizing not deprived of other legal recourse.

**30.** The next preceding section shall not extend to deprive the party at whose suit any such property was seized, of any other legal recourse against the person or property of the debtor, which such party would otherwise have had, if this Act had not been passed. 2 (3) V. c. 48, s. 2.

FRAUDULENT SEIZURES OF TOWNSHIP LANDS.

Wilfully seizing township lands knowing them not to belong to the defendant to be a misdemeanor.

**31.** If any person knowingly, wilfully and maliciously causes or procures to be seized and taken in execution, any lands and tenements, or other real property, situate within any township in Lower Canada, not being, at the time of such seizure, the *bonâ fide* property of the person or persons against whom, or whose estate, the execution is issued, knowing the same not to be the property of the person or persons against whom the execution is issued, the person so offending shall be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the court before whom the trial and conviction is had, to be imprisoned for any time not exceeding one year, or to be imprisoned and kept at hard labour in any common gaol or house of correction, for any term not exceeding six months. 6 W. 4, c. 26, s. 1,—and see 14, 15 V. c. 2, s. 2.

Not to prevent recovery of damages.

**32.** Nothing in this Act shall debar any person injured by such fraudulent seizure from having his action in damages against the party offending as aforesaid. 6 W. 4, c. 26, s. 2.

SCHEDULE A—SHERIFF'S SALES REFERRED TO IN SECTION

“ *To wit* :”—

“ Public notice is hereby given, that the undermentioned  
“ lands and tenements have been seized and will be sold, at the  
“ respective times and places as mentioned below ; all persons  
“ having claims on the same, are hereby required to make them  
“ known according to law : All oppositions *afin d'annuler*,  
“ *afin de distraire*, or *afin de charge*, except in cases of *vendi-*  
“ *tioni exponas*, to which no such oppositions are by law al-  
“ lowed, are required to be filed with the undersigned, at his  
“ office, previous to the fifteen days next preceding the day of  
“ sale ; oppositions *afin de conserver* may be filed at any time  
“ within two days next after the return of the writ.

“ No.

*Fieri Facias.*

“ A. B., of the city of \_\_\_\_\_, in the county of \_\_\_\_\_, in  
“ the district of \_\_\_\_\_, against C. D., of \_\_\_\_\_, in the  
“ county of \_\_\_\_\_, in the district of (as the case may be),  
“ (insert the description of the land or other immoveable property,  
“ the

“ the parish, seignory or township, and the county and district  
 “ in which the same is situate,) in the county, &c.,  
 “ bounded, &c. To be sold, at , on the day of  
 “ , at o’clock In the morning; the said writ  
 “ returnable on the day of next.

“ A. B., Sheriff.”

“ No. *Venditioni exponas.*

“ No. *Alias fieri facias.*”

## C A P. L X X X V I.

An Act respecting Acts of Emancipation, and meetings of relations and friends before notaries for the appointment of tutors, *subrogés* tutors and curators.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

## ACTS OF EMANCIPATION.

Acts of Emancipation—how allowed or set aside.

1. Acts of emancipation may be allowed out of court, before one of the judges of the Superior Court, subject nevertheless to be set aside and annulled by the Superior Court, in manner and form as provided by section *four* of this Act respecting acts of *tutelle* and *curatelle*. 41 G. 3, c. 7, s. 19.

## MEETINGS BEFORE NOTARIES BY ORDER OF A JUDGE.

Recital.

How meetings of relations and friends may be called for certain purposes.

2. Whereas great inconveniences may arise by requiring the personal attendance of relations or friends, before one of the judges of the Superior Court for Lower Canada, to counsel and advise upon the appointment of guardians or tutors, curators to absentees, or to vacant estates, and other matters which require such counsel and advice, where the said relations or friends reside at the distance of five leagues and upwards from the places of sitting of the said court, although within the district; therefore the said Superior Court, or any judge thereof, may, upon application of parties, authorize some notary, and for want of a notary, some other fit person residing near the habitation of such relations or friends, to call them together and administer an oath according to law, and to receive their counsel and opinion touching the matter so committed to them in trust, and the same to set down in writing in due form, and transmit to the court or judge from which such power and authority was received; and any judge thereof may proceed thereupon, and grant every such act, order or appointment, in as ample a manner as if the said relations or friends had been present, and personally given their counsel on the matter in question before him; and any judge of the said Superior Court may appoint such notary, or other fit person as above said, for affixing and taking off seals, upon petition presented to that effect. 34 G. 3, c. 6, s. 9.

Notaries may be authorized to hold such meetings.

3. Notaries, and for want of notaries, other fit persons authorized by any one of the judges of the Superior Court, to receive counsel and advice of relations or friends, touching the appointment of guardians, or tutors, *subrogé tuteurs* or curators to absentees, or to vacant estates, and other matters which require such counsel and advice, are authorized after such election, to administer the oath of office

to

to the guardians, tutors, sub-tutors or curators, named by the said relations or friends, and the same shall set down in writing, to be transmitted, to the court or judge from which such power was received. 48 G. 3, c. 22, s. 4.

4. In all cases of appointment of *tuteurs* or *curateurs*, either to the person or to the estate, or *ad hoc*, homologated before one of the judges of the Superior Court for Lower Canada, out of court, the said Superior Court, may, upon petition, (of the relations nearest of kin,) in order to set aside and annul such appointment of *tuteurs* or *curateurs*, after having taken cognizance of the case and heard the *tuteurs* or *curateurs* appointed by act, homologated as aforesaid, set aside and annul such appointment, for reasons sufficient in law, and may order that a new election and appointment be held in the usual form and manner. 41 G. 3, c. 7, s. 18.

How appointments of *tuteurs*, &c., may be set aside.

MEETINGS BEFORE NOTARIES WITHOUT THE AUTHORITY OF A JUDGE.

5. Whenever it is necessary to call a meeting of relations and friends to give their counsel and advice upon the appointment of guardians or tutors, subrogate tutors, curators to absentees, or to vacant estates, and other matters which require the counsel and advice of relations and friends, any notary near the residence of such relations and friends, or who will be on the spot when the meeting is to be held,--whatever be the distance from the residence of the said relations and friends to the place of sitting of the Superior Court, in the district or of the Circuit Court, and without the formal authorization of a judge of the said Superior Court, may call such meeting :

Meeting in such case to be called by a Notary.

2. And such notary, at the request of any of the parties on whose application any such judge could have called such meeting, may call a meeting of the said relations and friends, administer to them the oath by law prescribed, and receive their counsel and advice respecting the matter submitted to their decision, and may also administer the oath of office by law required, to the tutors, curators, and other persons so appointed with the advice and consent of the said relations and friends. 14, 15, V. c. 58, s. 1.

Notary may administer prescribed oath, receive advice, &c.

6. Before calling any such meeting of relations and friends, the party requiring such meeting shall state to the notary, truly and correctly, the object and purpose of the meeting, and the reasons for the same; in the same manner as he is required to do in applications made to the judges for similar purposes, of all which the said notary shall grant *Acte* in the form of Schedule A.

Notary to make a minute of the declaration of the party requiring such meeting.

2. But several persons, having a common interest, may jointly make such declaration, and appear and act together in all

Several persons may act conjointly.

all the proceedings and instruments hereinafter mentioned. 14, 15 V. c. 58, s. 2.

The Notary may cause relations and friends to come before him, &c.

**7.** In all cases of the appointment of guardians or tutors, subrogate tutors or curators, any notary may cause to come before him the relations, and in default of the relations, the friends of the parties, (such default of relations being previously declared and established),—he shall administer the usual oath to the persons composing such meeting, and read to them the contents of the *Acte* mentioned in the next preceding section, and receive their advice and opinion, administer the oath of office to the guardian, tutor, subrogate tutor, curator or other person so appointed, and shall grant *Acte* thereof in the form of Schedule B, stating the degree of relationship, residence and quality of the persons composing the said meeting,—and if there be any opposition or difference of opinion, he shall state in the said *Acte* the reasons given by the several persons composing the said meeting. *ibid*, s. 3.

Judge of S. C. may homologate or refuse to homologate the proceedings.

**8.** The judges, or any one of the judges of the Superior Court, may homologate or refuse to homologate, as the case requires, all or any such proceeding had before notaries, under this Act, and may do, make and grant such acts, orders and appointments and in as full and ample a manner, as if the relations and friends had been present, and had personally given their opinion before such judge or judges upon the matter in question. 16 V. c. 91.

Notaries may, in certain cases, call meetings without being authorized by a judge.

**9.** In all cases and matters, in which the law allows a judge in Lower Canada to delegate the power to receive the counsel and advice of relations and friends, any notary may, without being thereunto previously authorized by a judge, call and preside at such meetings of relations and friends, administer the requisite oaths, and receive the counsel and advice of such relations and friends, but a report of all such proceedings shall be made to the proper judge, for homologation, if the same ought to be homologated; the formalities prescribed by the four next preceding sections of this Act, and the requirements of law, being observed, in so far as may not be inconsistent with this section. 18 V. c. 17.

Judge of S. C. may himself call meetings, &c.

**10.** Nothing in the five next preceding sections of this Act shall prevent any judge of the Superior Court, from calling any such meeting of relations and friends, or from authorizing any notary or other person, on the application of parties, to call such meeting in the manner by law prescribed, and as such judge deems expedient for the ends of justice. 14, 15 V. c. 58, s. 4.

## SCHEDULE A.

On the            day of           , in the            noon, in the year one thousand eight hundred and           , before me, the undersigned public notary, for Lower Canada, residing in the district of           , came and appeared A, residing            who hath declared that            whereupon            requires the counsel and advice of the relations and friends of

Whereof *Acte* at

## SCHEDULE B.

On the            day of           , in the            noon, in the year one thousand eight hundred and           , before me, the undersigned public notary for Lower Canada, residing in the district of           , came and appeared B, residing

Who ha            caused to be assembled before me the said notary, for the purposes mentioned in the above declaration made before me on the            (or made before any notary on           ) to the intent that            to wit:            in default of relations,

Who, after having been duly sworn on the Holy Evangelists, taken communication of the declaration above mentioned and maturely deliberated together, were unanimously of opinion that the said            be            who being present ha voluntarily accepted the said office           ; and promised under oath to fulfil.

Whereof *Acte* at            the duties thereof. *Schedules A and B to 14, 15 V. c. 58.*

## CAP. LXXXVII.

## An Act respecting arrest and imprisonment for debt and the relief of Insolvent Debtors.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

## OF CAPIAS AD RESPONDENDUM—SECURITY—AND ALLOWANCE TO THE PRISONER.

Writ of *capias* may issue in certain cases on affidavit that defendant is about to abscond, &c.

1. Subject to the provisions and exceptions hereinafter made,—In all cases in which a judge of the Superior Court, a prothonotary of the said court, or a clerk of the Circuit Court, in the district in which he is prothonotary or clerk, is satisfied by the affidavit of the plaintiff, or his book-keeper, clerk or legal attorney, that the defendant is personally indebted to the plaintiff in a sum amounting to or exceeding forty dollars, lawful money of this province, and also that such plaintiff, his book-keeper or legal attorney hath reason to believe, and doth verily believe, upon grounds to be specially set forth in such affidavit, that the defendant is immediately about to leave the province of Canada, with intent to defraud his creditors generally or the plaintiff in particular, and that such departure would deprive the plaintiff of his remedy against the defendant, or that the defendant hath secreted or is about to secrete his property with such intent, such judge, prothonotary or clerk may grant a *capias* or attachment against the body of such defendant, to be directed to the sheriff or a bailiff of the Superior Court, as prescribed by law, to take and arrest such defendant, who may be held to bail by the sheriff for his appearance in the manner prescribed by law ; and in default of bail, such defendant shall be committed to prison and there remain until special bail be given by such defendant, or other security according to law : 25 G. 3, c. 2, s. 4,—12 V. c. 42, ss. 2, 12,—12 V. c. 38, ss. 19, 63.

Arrest may be made on affidavit before Commissioner for receiving affidavits.

2. Such arrest may also be made, on an affidavit to the like effect made before a Commissioner for receiving affidavits to be used in the Superior Court, under a warrant of arrest to be issued by such Commissioner, under and subject to the provisions of *section fifty-four* or chapter eighty-three of these Consolidated Statutes. 9 G. 4, c. 27, s. 2, &c.

On what affidavit a person resident in U. C. may be arrested.

2. No writ of *capias ad respondendum* shall be granted or issued at the suit of any person residing in Upper Canada against any person residing within the limits of Upper Canada, unless, in addition to the affidavit required by this Act and by any other law, the plaintiff or some other person makes oath before a judge of the Superior Court, or before any other

other officer authorized to receive such oath, that the defendant is immediately about to resort to some country or place without the limits of Upper Canada, and hath not, within the limits of Upper Canada, any lands or other immoveable estate out of which the plaintiff can reasonably expect to be paid the amount of his debt. 5 G. 4, c. 2, s. 3.

**3.** The condition of every recognizance of special bail or bail to the action to be given or put in by any defendant who has been arrested by virtue of any writ of *capias ad respondendum* issued agreeably to law, shall be such that the cognizors thereof shall not become liable unless, the defendant leaves Lower Canada without having paid the debt, interest and costs for which the action is brought; and such special bail shall not be received unless it be given on the day of the return of the said writ or at any time before the said day, or within the eight days next after the day of such return; But the court may, upon special application and sufficient cause shewn, extend the time for putting in such special bail. 5 G. 4, c. 2, s. 1,—12 V. c. 42, s. 12.

Condition of recognizance of special bail, &c.

**4.** If any defendant, so bound in recognizance by special bail, surrenders himself in open court during the action or at any time within one month after judgment obtained, or surrenders himself unto the Sheriff of the district where such court has jurisdiction, at any time within fifteen days, after the day on which the plaintiff might legally, *before the passing of the Act 12 V. c. 42*, have and obtain execution by *capias ad satisfaciendum* upon judgment obtained, then such surrender of the defendant shall be considered as a discharge of the persons bound for such defendant as special bail. 25 G. 3, c. 2, s. 5.

What surrender of the defendant shall discharge the bail.

**5.** Nothing contained in this Act shall be construed or taken in any manner to affect the right of the special bail to take and surrender the defendant in discharge of themselves. 5 G. 4, c. 2, s. 2.

Bail may surrender him.

**6.** In every case where a debtor may be imprisoned under a writ of *capias ad respondendum*, the said debtor, upon making affidavit that he is not worth *ten pounds sterling*, shall be entitled to obtain from his creditor as well before as after judgment rendered against him, upon his petition to any judge of the Superior Court *in term or in vacation*, an alimentary allowance of the sum of *seventy cents* weekly for his maintenance so long as he is detained in prison at the suit of such creditor, which said allowance may in times of scarcity be increased by any one of the said judges or by the said court by a further sum of *thirty cents* per week. 41 G. 3, c. 7, s. 8,—25 G. 3, c. 2, s. 38.

Allowance to needy debtors imprisoned on *capias ad respondendum*.

And whereas it is desirable to soften the rigor of the laws affecting the relation between Debtor and Creditor, as far as a due regard to the interests of commerce will permit, therefore,—

EXEMPTIONS FROM ARREST FOR DEBT—DISCHARGE—INSOL-  
VENCY—BAIL.

Arrest for debt—  
certain persons  
exempt from.

7. No priest or minister of any religious denomination whatsoever,—no person of the age of seventy years or upwards,—and no female,—shall be arrested or held to bail by reason of any debt, or by reason of any other cause of civil action or suit whatsoever :

Amount for  
which arrest  
may be made,  
limited.

2. No person shall be arrested or held to bail or detained in custody upon any cause of civil action which has arisen in any foreign country, or in any civil suit where the cause of action does not amount to forty dollars of lawful money of this Province ;

*Capias ad sa-  
tisfaciendum*  
abolished.

3. No Writ of *capias ad satisfaciendum*, or other execution against the person, shall issue or be allowed. 12 V. c. 42, s. 1.

After arrest the  
defendant may  
be discharged  
if arrested im-  
properly.

8. The Court or any Judge of the Court whence any Process has issued to arrest any person, either in Term or in vacation, may order such person to be discharged out of custody, if it is made to appear, on summary petition and satisfactory proof, either that the defendant is a priest or a minister of any religious denomination, or is of the age of seventy years or upwards, or is a female, or that the cause of action arose in a foreign country, or does not amount to forty dollars of lawful money of this Province, or that there was not sufficient reason for the belief that the defendant was immediately about to leave the Province with fraudulent intent where that is the cause assigned for the arrest, or that the defendant had not secreted and was not about to secrete his property with such intent, where that is the cause assigned for such arrest. 12 V. c. 42, s. 2.

What affidavit  
shall be suffi-  
cient for the  
arrest of a trader  
defendant and  
for attachment  
of his goods.

9. If in an affidavit for obtaining a writ of *saisie-arrêt* before Judgment under section *forty-seven* of chapter 83 of these Consolidated Statutes, (27 G. 3, c. 4, s. 9,) or a writ of *capias ad respondendum*, under this Act,—in addition to the allegation that the defendant is personally indebted to the plaintiff in the sum required by this Act or by the said *chapter*, as the case may be,—it is alleged upon grounds specially stated in the affidavit, that the defendant is a trader, that he is notoriously insolvent, that he has refused to compromise or arrange with his creditors, or to make a *cession de biens* to them or for their benefit, and that he continues to carry on his trade,—such debtor shall then be held to be about to secrete his goods and chattels with intent to defraud his creditors generally, or the Plaintiff in particular, and a writ of *saisie-arrêt* before judgment for attaching his estate, debts and effects, may issue under the said *chapter*, and a writ of *capias ad respondendum* for arresting such defendant, may also issue under this Act :

2. But if upon summary petition of such defendant, the grounds stated in the said affidavit appear to any Judge of the Superior Court sitting at the place where such writ of *capias ad respondendum* issued, to be insufficient, or if it is proved to the satisfaction of such Judge, that when the said affidavit was made, such defendant was not a trader, or was not notoriously insolvent, or had not refused to compromise or arrange with his creditors, or to make a *cession de biens* to them or for their benefit, or was not continuing to carry on his trade,—then the defendant shall be discharged from custody by the order of such Judge. 22 V. c. 5, s. 48.

But if the grounds stated in the affidavit be insufficient.

10. Any defendant, arrested after the passing of the Act (12 V. c. 42,) and confined in Gaol under and by virtue of any Writ of *capias ad respondendum*, shall, at any time before the rendering of final judgment, if such Writ was sued out before judgment; and at any time before the judgment declaring the arrest under such Writ valid, if such Writ was sued out after judgment, be released from such arrest and confinement, if he gives good and sufficient security to the satisfaction of the Court into which the process under which he has been arrested is returnable or returned, or of any Judge of such Court, or of the Prothonotary thereof, that he, the defendant, will surrender himself into the custody of the Sheriff whenever required so to do by any order of such Court or of any one Judge thereof, made as hereinafter is provided, or within one month after the service of such order upon him or upon his sureties, and that, in default of his so doing, he will pay the plaintiff his debt, interest and costs :

Defendant arrested on *capias ad respondendum* may be released on giving security to surrender himself when required.

2. The Court or Judge or Prothonotary before whom such security is given, shall cause the sureties to justify upon oath, if the plaintiff requires it ;—and on security being given by the defendant as aforesaid, the Prothonotary, Judge or Court, before whom such security is given, shall order the defendant to be released from arrest and confinement. 12 V. c. 42, s. 3, part, and 22 V. c. 5, s. 47.

Sureties to justify on oath.

11. In like manner any defendant arrested by virtue of any writ of *capias ad respondendum*, but who has given bail to the Sheriff as hereinafter is provided, may, on the return day of the Writ or at any time previously thereto, or within eight days thereafter, give good and sufficient security before the Court into which the Process under which he shall have been arrested is returnable or returned, or before any Judge or Prothonotary thereof, that he will surrender himself into the custody of the Sheriff whenever required so to do by any order of such Court, or of any Judge thereof made as hereinafter is provided, or within one month after the service of such order upon him or upon his sureties; and that in default of his so doing, he will pay the plaintiff his debt, interest and costs; and the sureties shall justify upon oath before such judge or prothonotary as

Like provision as to a defendant who has given bail to the Sheriff.

to their sufficiency, if the plaintiff requires it, and upon the security so offered being received and put in, the bail given to the Sheriff shall thereby be discharged. 12 V. c. 42, s. 3, and 22 V. c. 5, s. 47.

SURRENDER OF PROPERTY AND RELIEF OF INSOLVENT DEBTORS.

Defendant having given security upon judgment being given against him, to make a certain statement.

**12.** If Judgment for a sum of, or exceeding eighty dollars, exclusive of interest from the service of process and costs, is rendered against any defendant who has been arrested and put in security as hereinbefore is provided, then such defendant shall, within thirty days from the rendering of such Judgment, if the same remain then unsatisfied, make and file in the office of the Prothonotary or Clerk of the Court a statement, under oath, making known of what property, real or personal, he is possessed, and where the same is situate, to the intent that the plaintiff may proceed and take the said property in execution, if he sees fit, and also making known the names and addresses of all and every the creditors of such defendant, and the amount and nature (privileged, hypothecary or otherwise) of the claim or claims of every such creditor, and also a declaration that he is willing to abandon the property real and personal set forth in the said statement for the benefit of his creditors: 12 V. c. 42, s. 4, *part*

Consequences of default to make such statement or making a false statement.

2. If the defendant neglects to file such statement as aforesaid, or if at any time within two years after the filing of such statement, the plaintiff in the suit establishes, either by the examination of the defendant under oath or by other evidence,—that when the statement was so filed the defendant was proprietor of any chattels, effects, lands or tenements, of the value of eighty dollars, willfully omitted from the said statement,—or that at any time between the institution of the plaintiff's action and the making of such statement on the part of the defendant, or within thirty days next preceding the institution of such action, the defendant secreted any part of his property with the intent of defrauding his creditors,—or that the defendant has made any fraudulent mis-statement in respect of his creditors or their claims,—or if the defendant fails to appear for the purpose of being examined in relation to such statement, at any time appointed for such examination by the court or any Judge thereof,—then the Court, or any Judge thereof *in term or in vacation*, shall order the defendant to be imprisoned in the Common Gaol of the District for such period not exceeding one year as such Court or Judge thinks reasonable, in punishment of the misconduct of which he or they shall adjudge such defendant to have been guilty;

Liability of sureties if defendant does not surrender himself.

3. And if the defendant, so ordered to be imprisoned, does not surrender himself or be surrendered for that purpose according to the requirements of the order in that behalf, then the parties who have so become security that the defendant would

so surrender himself, shall forthwith be liable to pay to the said plaintiff the debt, interest and costs, in relation to which such security was given, and all subsequent costs. *ibid*, s. 4.

13. Any defendant arrested as aforesaid, and confined in Gaol, may, at any time either before or after judgment, make and file a statement of his property real and personal, and of his creditors, such as is mentioned in the next preceding section of this Act, and may make and file with such statement a declaration that he is willing to abandon the property real and personal set forth in the said statement, for the benefit of his creditors:

Defendant in gaol may make a like statement.

2. If the plaintiff, within four months from the service upon him or upon his Attorney of a copy of such statement and declaration, establishes either by the examination of the defendant under oath or by other evidence, that when the statement was so filed, the defendant was proprietor of any chattels, effects, lands or tenements of the value of eighty dollars, wilfully omitted from such statement,—or that at any time between the institution of the plaintiff's action and the making of such statement on the part of the defendant, or within thirty days next preceding the institution of such action, the defendant secreted any part of his property with the intent of defrauding his creditors,—or that the defendant has made any fraudulent mis-statement in respect of his creditors or their claims,—then the Court, or any Judge thereof, *in term or in vacation*, shall order the defendant to be imprisoned in the Common Gaol of the District for such period not exceeding one year, as such Court or Judge thinks reasonable, in punishment of the misconduct of which he or they shall adjudge the defendant to have been guilty;

Upon proof of fraud the defendant may be imprisoned.

3. But if no omission such as aforesaid in the statement so made and filed by the defendant, is established, and if it is not established that the defendant has secreted any part of his property within the period aforesaid, and with the intent aforesaid, then the said Court, or any Judge thereof *in term or in vacation*, at the expiration of the said period of four months, may order the defendant to be discharged from his imprisonment; *ibid*, s. 5.

But if no fraud be proved defendant to be discharged.

4. In any case where such omission or other misconduct has been formally alleged against the defendant before the expiration of the said term of four months, the Court or Judge, upon satisfactory cause shown, may extend the time during which proof relative to such complaint may be taken, for a period of not more than two months, and if, during such extension of time, such omission or other misconduct is established, the Court or Judge may order such defendant to be imprisoned in punishment thereof in the same manner as if the same had been established during the said term of four months. *ibid*, s. 5.

Period for proving fraud may be extended.

## APPOINTMENT OF A CURATOR,—HIS POWERS AND DUTIES.

Curator to be appointed to the property abandoned by the defendant.

**14.** When any defendant, arrested or imprisoned as aforesaid, has made and filed a statement of his property real and personal as aforesaid, and has declared himself willing to abandon the same for the benefit of his creditors, the Court or any Judge thereof, upon the application of the plaintiff, (if made within two months from the service of such statement and declaration upon the plaintiff or his Attorney, and after fifteen days' notice, in the form of the Schedule No. 1, subjoined to this Act, of the time and place of such application, previously given in the *Canada Gazette*,) may appoint, at the discretion of such Court or Judge, after hearing any parties claiming to be interested, a fit and proper person as Curator to the property so offered to be abandoned;—and of such appointment notice shall by such Curator forthwith be given (in the form of Schedule No. 2, subjoined to this Act) for the space of one month in the *Canada Gazette*, and also for any period which may be ordered by the Court or Judge, in any other newspaper or newspapers which they see fit to name.

Notice of appointment.

Opposition to the statement.

**15.** In case the Curator fails or delays to give such notice, then the same may be given either by the plaintiff or by the defendant;—and during the said period of four months, within which the plaintiff has it in his power to adduce evidence with respect to any omissions such as aforesaid, in the statement so made and filed by the defendant, or with respect to the defendant having secreted any part of his property within the period and with the intent aforesaid, or made any fraudulent misstatement in respects of his creditors or their claims, any other creditor of such defendant may appear in the cause in relation to which such notice has been given, and may adduce evidence and examine the defendant for the same purpose, in the same manner and with the same effect as the plaintiff in such cause under this Act can adduce such evidence or examine the defendant. 12 V. c. 42, s. 6, *part*.

Effect, if no fraud be proved.

**16.** Whenever a defendant has been arrested or imprisoned, and has declared his willingness to abandon all his property, real and personal, for the benefit of his creditors, and a Curator has thereupon been appointed to take charge of such property, and public notice has been given of the appointment of such Curator within fifteen days after the same has been made, and the defendant is not adjudged guilty of any misconduct in the premises rendering him liable to punishment as hereinbefore provided, he shall not thereafter be liable to be arrested or imprisoned or detained in prison at the suit of the plaintiff by whom he was arrested, or at the suit of any other person, for or by reason of any cause of action arising before the making and filing of such statement and declaration by such defendant:

2. And if such defendant is notwithstanding at any time afterwards, arrested for or by reason of any such cause of action, the Court or any Judge of the Court whence the Process issued for such arrest may upon a summary petition and satisfactory proof, order him to be discharged out of custody. 12 V. c. 42, s. 8.

If again arrested—defendant on petition may be discharged.

17. The powers of the Curator, shall extend not only to the property real and personal comprehended in the statement made and filed by the defendant, but also to any other property real or personal of the defendant, that ought to have been comprehended in such statement:

Powers of the curator.

2. The real estate comprehended or that ought to have been comprehended in such statement, shall be sold upon such Curator in the ordinary course of law; and the personal property comprehended or that ought to have been comprehended in such statement shall be collected and got in by such Curator, and by him be paid over or distributed, also in the ordinary course of law. *ibid*, s. 7.

How the property shall be disposed of.

18. In every case in which a judgment has been rendered against a defendant, for a sum amounting to or exceeding eighty dollars, exclusive of interest from the service of Process and costs, in any commercial case, between merchants or traders, or for a debt due to a merchant or trader for goods, wares and merchandize by him sold, and for the satisfaction of which judgment a Writ of *capias ad satisfaciendum* might have been sued out according to the laws in force in Lower Canada before the passing of the Act 12 V. c. 42, (thirtieth May, one thousand eight hundred and forty-nine,) such defendant shall, after the discussion of his apparent property real and personal in the ordinary course of law, within thirty days from personal service upon him of a certified copy of such judgment, together with a notice in writing (in the form of the Schedule No. 3, subjoined to this Act) demanding of him that he do make and file the statement hereinafter mentioned,—make and file in the office of the Prothonotary of the Court, a statement under oath, making known of what property, real or personal, he is possessed, and where the same is situate, to the intent that the plaintiff may proceed and take the said property in execution, if he sees fit, and also making known the names and addresses of all the creditors of such defendant, and the amount and nature (privileged, hypothecary or otherwise) of the claim of every such creditor: *ibid*, s. 8.

As to defendants against whom but for this Act a *Ca. Sa.* might have issued.

2. If the defendant neglects to file such statement, or if at any time within two years after the filing of such statement, the plaintiff in the suit establishes, either by the examination of the defendant under oath or by other evidence,—that when the statement was so filed the defendant was proprietor of any chattels, effects, lands or tenements, of the value of eighty dollars,

Punishment of defendant guilty of fraud, suppression, &c., in such statement.

dollars, wilfully omitted from the said statement,—or that at any time between the institution of the plaintiff's action and the making of such statement on the part of the defendant, or within thirty days next preceding the institution of such action, the defendant secreted any part of his property with the intent of defrauding his creditors,—or that the defendant has made any fraudulent mis-statement in respect of his creditors or their claims,—or if the defendant fails to appear for the purpose of being examined in relation to such statement, at any time appointed for such examination by the Court or any Judge thereof, then the said Court, or any Judge thereof *in term or in vacation*, shall order the defendant to be imprisoned in the Common Gaol of the District, for such period not exceeding one year, as such Court or Judge thinks reasonable, in punishment of the misconduct of which he or they may adjudge such defendant to have been guilty. *ibid*, s. 8; and 25 G. 3, c. 2, s. 38.

This Act to apply to persons imprisoned at the time of the passing of 12 V. c. 42.

**19:** All the provisions of this Act shall extend and apply to; and be held to extend and apply to, all persons who at the time of the passing of the Act 12 V. c. 42 or at any time thereafter, were or are in prison under any Writ of *Capias ad respondendum* or *Capias ad satisfaciendum*, as well to those who have surrendered in discharge of their bail, or who have been surrendered in discharge of their bail, as to others. 12 V. c. 42, s. 10.

This Act not to be construed as discharging any debt.

**20:** Nothing in this Act or by this Act required or permitted to be done, shall have the effect of discharging any debt or debts due by any person; proceeded against, or taking any proceedings under this Act; but all such debts shall continue in all respects unimpaired, excepting only that the debtor shall not be liable to be arrested or imprisoned in relation to such debts, if expressly exempted from such liability by the provisions of this Act. 12 V. c. 42, s. 11.

Act not to prevent the putting in of special bail.

**21:** Nothing in this Act shall prevent any person arrested under any Writ of *Capias ad respondendum*, from putting in special bail to the action, as permitted by the law of Lower Canada, excepting only that such special bail shall not be received unless put in on the return day or at any time before the return day, or within the eight days next after the return day :

Time for so doing may be extended.

But the Court may, upon special application and sufficient cause shewn, extend the time for putting in such special bail; and the Court may also upon special application and sufficient cause shewn, allow any defendant arrested, and who has given bail for his appearance at the return of the Writ, to put in security that he will surrender himself as provided by the tenth section of this Act (12 V. c. 42, s. 3,) even after the period in that behalf prescribed by the said section: *ibid*; s. 12.

FORM, &c., OF BAIL BONDS.

**22.** The bond to be taken by any sheriff for the appearance of any defendant arrested and holden to bail, shall be according to the form contained in the Schedule number four subjoined to this Act; and no Sheriff is or shall be held liable, towards any plaintiff at whose suit any defendant has been at any time arrested and admitted to bail by such Sheriff, if the bail taken by such Sheriff were, at the time they were taken as such bail, solvent or reputed so to be, to the amount of the sum for which the bond entered into by such bail was give. *ibid*, s. 13, *part*.

Form and effect of bail-bonds.

**23.** Nothing in this Act shall prevent any Sheriff from assigning any bail-bond by him to be taken under this Act, in the manner that bail-bonds heretofore taken by any Sheriff have been assignable. *ibid*, s. 14.

Bail-bonds to be assignable as heretofore.

ACT NOT TO EXEMPT PARTIES FROM IMPRISONMENT IN CASES OF MALVERSATION, &c.

**24.** Nothing in this Act contained shall extend to exempt from arrest or imprisonment, any person indebted as tutor, curator, sequestrator, depository, sheriff, coroner, bailiff or other officer having charge of public moneys, or being a *caution judiciaire*, or indebted for the purchase money of any lands or tenements, goods or chattels, sold and adjudged under the authority of justice by licitation, Sheriff's sale, *décret* or otherwise, or for the amount of any condemnation money for damages arising out of personal wrongs for which *contrainte par corps* may by law be awarded, nor shall any thing herein contained prevent the issuing of any writ of execution against the person, for contempt of the process of Court or other attachment (*contrainte par corps*) of like nature, against any defendant for resistance to the process of Court (*rebellion à justice*) or for any fraudulent evasion of any judgment or order of Court by preventing or obstructing the seizure of property in satisfaction thereof. *ibid*, s. 15,--18 V. c. 16.

Nothing herein to prevent *contrainte par corps* for malversation or contempt of Court.

SCHEDULE No. 1.

Province of Canada, }  
 District (or Circuit, }  
 as the case may }  
 be) of }

In the (here state the Court in which the action in question is pending.)

No. (here state the number of the action.)

A. B., Plaintiff;

vs.

C. D., Defendant.

Public Notice is hereby given, in pursuance of the provisions of Chapter eighty-seven of the Consolidated Statutes for Lower Canada,

Canada, intituled: "An Act," (here insert the title of this Act), that at the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon of \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_ next (or instant, as the case may be), or as soon after that hour as may be, at the Court House of \_\_\_\_\_ (or, as the case may be,) at the Chambers of the Judge, (sufficiently describing the same), the said A. B., Plaintiff in this cause, will apply, to (naming the Court, and indicating whether the application is to be made to such Court, or to a Judge thereof), for the appointment of a fit and proper person to be Curator to the property, real and personal, of the said C. D., Defendant in this cause, who has made and filed in the Office of the Prothonotary (or Clerk, as the case may be) of the said Court, a statement under oath of the same, and also of his Creditors and their claims, together with a declaration that he is willing to abandon his property for the benefit of his Creditors—the whole as by the said Act required.

And all persons, creditors of the said C. D., are hereby notified then and there to attend, to make to the said Court (or Judge, as the case may be) such representation or statement in the premises as they may see fit to make.

Given at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_  
A. B., Plaintiff.

#### SCHEDULE No. 2.

Province of Canada, }  
District (or Circuit, }  
as the case may }  
be) of }

In the (here state the Court in which the action is pending.)

No. (here state the number of the action.)

A. B., Plaintiff;  
vs.  
C. D., Defendant.  
and  
E. F., Curator to the property and effects  
of the said Defendant.

Public Notice is hereby given, in pursuance of the provisions of Chapter *eighty-seven* of the *Consolidated Statutes for Lower Canada*, intituled: "An Act," (here insert the title of this Act,) that on the the \_\_\_\_\_ day of \_\_\_\_\_ instant (or last past, as the case may be,) the said E. F., of (state here the address and calling of the Curator,) was, by order of (describe here the Court or Judge in question), appointed to be Curator to the property and effects, of every kind, real and personal, of the said C. D., Defendant in this cause, abandoned by the said  
C. D.,

C. D., for the benefit of his creditors—the whole as by the said Act provided.

And all persons, creditors or debtors of the said C. D., are hereby notified and required to govern themselves in the premises accordingly.

Given at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_  
 E. F., Curator.

(Or A. B., Plaintiff, or C. D., Defendant, as the case may be.)

SCHEDULE No. 3.

To C. D., of *(state here the address and calling of the party,)*  
 Defendant in the cause wherein the Judgment, an authentic copy whereof is hereunto prefixed, has been rendered.

Take Notice! that the undersigned, A. B., Plaintiff in the said cause, hereby demands of you, under and by virtue of the *eighteenth* section of Chapter *eighty-seven* of the *Consolidated Statutes for Lower Canada*, (*here insert the title of this Act*)--a copy of which section is hereunto subjoined for your further information in the premises--that, within thirty days from the personal service to be made upon you of the foregoing certified copy of the said Judgment, together with this Notice, you do make and file the statement in the said section prescribed, in the manner and under the penalties therein set forth.

Done at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

A. B., Plaintiff.

(*Here insert a copy of the said eighteenth section of this Act.*)

SCHEDULE No. 4.

*Form of Bail-bond.*

Know all men by these presents, that we, (*name here the Defendant and his bail,*) are held and firmly bound to (*name here the Sheriff,*) Sheriff of \_\_\_\_\_, in the Province of Canada, in the sum of (*state here the amount sworn to and endorsed on the Writ, with twenty-five per centum added for interest and costs,*) to be paid to the said Sheriff, or his certain attorney, executors, administrators or assigns; for which payment, to be well and faithfully made, we bind ourselves, and each of us by himself for the whole and every part thereof, and the heirs, executors, and administrators of us, and every of us, firmly by these presents, sealed with our seals, and dated this \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year of Our Sovereign Lady Victoria, by the Grace of God, of \_\_\_\_\_ the \_\_\_\_\_

the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, and in the year of Our Lord one thousand eight hundred and

Whereas the above bounden (*name here the Defendant*) has been by the said Sheriff arrested under and by virtue of a certain Writ sued out of (*name here the Court out of which such Writ has been sued,*) at the instance of (*name here the Plaintiff,*) and to the said Sheriff in due course of law delivered ;

The condition of this obligation is such that if the said (*name here the Defendant*) do on (*state here the return day of the Writ,*) or at any time previously thereto, or within eight days thereafter, give good and sufficient security to the satisfaction of (*name here the Court into which the Writ is returnable,*) or of any one of the Judges of the said Court, that he, the said (*name here the Defendant,*) will surrender himself into the custody of the said Sheriff whenever required so to do by any order of the said Court, or of any Judge thereof, made as by law provided, or in default thereof, will pay to the said (*name here the Plaintiff*) the debt for which he, the said (*name here the Defendant,*) has been arrested as aforesaid, with interest and costs ; or do on (*state here the return day of the Writ,*) or at any time previously thereto, or within eight days thereafter, put in special bail, as by law provided, to the action wherein the said Writ has been sued out as aforesaid, then this obligation shall be void and of no force, but otherwise shall stand in full force, vigor and effect.

Signed, sealed and delivered in presence of

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## C A P . L X X X V I I I .

## An Act concerning the protection and enforcement of corporate rights.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

## USURPATION OF CORPORATE OFFICES, &amp;C.

1. Whenever any person usurps, intrudes into or unlawfully holds or exercises any public office or any franchise within Lower Canada, or any office in any corporation or other public body or board, whether the same was created or exists under or by virtue of any statute or ordinance, or under the common law of Lower Canada, the Superior Court for the district in which such usurpation or unlawful detention has occurred, or any Judge of such court in vacation, upon a declaration or petition (*requête libellée*) presented by or in the name of any person interested in such public office or franchise, or in such corporation, public body or board, supported by affidavit to the satisfaction of the court or Judge, and complaining of such usurpation, intrusion or unlawful detention,—may order the issuing of a writ commanding the person complained of to be summoned to appear before the said court, or Judge, to answer such declaration or petition (*requête libellée*;) upon such day as the said court or judge thinks proper to fix :

Proceedings against persons usurping any public or corporate office.

2. In all such cases the writ or summons shall be served on the person so complained of, by leaving a copy thereof and of the said declaration or petition (*requête libellée*;) either with himself in person or at his domicile, in the manner practised in ordinary actions, and three full days at least shall intervene between the service of such writ and the return of the same, if such service be made within five leagues from the court house or other building where the party is so summoned to appear,—and when the distance is greater than five leagues, not less than three days and an additional day for each five leagues between the place where such service is made and such court house or other building, shall intervene between such service and return. 12 V. c. 41, s. 1,—13, 14 V. c. 36, s. 1,—and 20 V. c. 44, s. 37.

Service of process and delay between service and return.

2. In case the person so complained of, defendant in such cause, appears on the day so fixed, he shall plead specially to such declaration or petition (*requête libellée*;) stating the authority under which he assumes to hold or exercise such office or franchise, within four days from the day on which he so appears, and the plaintiff shall be allowed three full days to answer or reply to such plea. 12 V. c. 41, s. 2.

Delay for pleading and answering.

Delay for plaintiff to adduce his evidence.

**3.** Within three days from the filing of such answer or replication, the plaintiff shall proceed to adduce evidence in support of the allegations contained in his declaration or petition (*requête libellée*,) which evidence or such part thereof as consists of oral testimony, shall be taken down in writing either before the said court, or in the presence of any one of the judges thereof (whether the proceedings be had in term time or in vacation,) in the manner in which evidence is taken in ordinary cases at the *enquête* sittings of the Superior Court, and when the plaintiff has declared his evidence (*enquête*) closed, the defendant shall, after a delay of two days, if such delay be by him required, proceed to adduce such evidence as he has to offer, and which is admissible in support of his plea. 12 V. c. 41, s. 3.

And for defendant.

Evidence in rebuttal and inscription for hearing.

**4.** So soon as the defendant has declared his *enquête* closed, the plaintiff may, if allowed by the court or judge, adduce evidence in rebuttal, or if he do not adduce any such evidence in rebuttal, either the plaintiff or the defendant may inscribe the cause for hearing on any day he thinks proper to fix; of which inscription the opposite party shall have notice one full day at least previous to the day so fixed for such hearing, and the court or judge shall, after such hearing, proceed with the least possible delay to render judgment in the premises:

But defendant may confess his usurpation.

**2.** But nothing herein before contained shall be so construed as to prevent the defendant from acknowledging the usurpation complained of by a confession to be taken in the presence of the court or judge, or either of the parties from demurring specially to the declaration or to the plea or to the answer of his adversary, or from demanding a decision upon any objections as to any deficiency, insufficiency or informality, which he is advised to urge against the same or against any of the proceedings in such case, or to prevent the court or judge from enlarging the time to plead or to adduce evidence in any such case, whenever the court or judge deems it advisable so to do for the more sure attainment of justice. 12 V. c. 41, s. 4.

Delay for pleading, &c., may be extended.

**5.** Whenever the defendant does not appear upon the day fixed for the return of the writ or summons, after having been duly called, a default shall be entered against him, and the plaintiff may, on the following day, proceed to prove the allegation contained in his declaration or petition, (*requête libellée*,) in the manner hereinbefore provided, and may inscribe the case without further delay for judgment by default. 12 V. c. 41, s. 5.

Default on failure of defendant to appear.

Plaintiff may, in his petition, state the name of the person entitled to the office.

**6.** In addition to the matters required to be set forth against the party who has so usurped, intruded into, or unlawfully detained any such office or franchise, the plaintiff may also set forth in any such declaration or petition, (*requête libellée*,) the name of the person rightfully entitled to such office or franchise, with such averments as are required to show his right thereto, and

and in every such case judgment shall be rendered upon the claim of the defendant, and also upon the right of the party so averred to be entitled to such office or franchise, or only upon the claim of the defendant, as justice requires. 12 V. c. 41, s. 6.

7. Whenever any defendant is found to be guilty of usurping or intruding into or unlawfully holding or exercising any office, franchise or privilege, judgment shall be rendered that such defendant be ousted and altogether excluded from such office, franchise or privilege, and also that the plaintiff or party complaining of such usurpation recover his costs against such defendant :

Judgment.

2. The Court or Judge rendering such judgment may, in its or his discretion, condemn such defendant to pay a fine not exceeding four hundred dollars, which fine, when collected, shall be paid over to the Receiver General of this Province ;

Defendant may be condemned to pay a fine.

3. And whenever an action or complaint for any such alleged usurpation, intrusion or detention as aforesaid, is dismissed, the defendant shall recover costs against the plaintiff or party so complaining. 12 V. c. 41, s. 9.

Costs, if action be dismissed.

8. Whenever judgment is rendered in any such case, upon the right of the person averred to be entitled to such office or franchise, and the same is in favor of such person, he shall be entitled, after taking the oath of office, and executing any official bond required by law, to take upon himself the execution of such office, or the exercise of such franchise ; and he shall immediately thereafter demand of the defendant in such case, all the keys, books, papers and insignia in the custody or within the power of such defendant, belonging to the office or franchise from which he has been ousted :

Upon judgment being rendered the person entitled to take upon himself the execution of the office.

2. If such defendant refuses or neglects to deliver over any such keys, books, papers and insignia pursuant to such demand, or in any other way or manner wilfully obstructs the person so adjudged to be entitled to such office or franchise, with a view to prevent such person from taking upon him the execution of such office, or the exercise of such franchise, he shall be deemed guilty of a misdemeanor ; and whenever such refusal or neglect occurs, the Court may order the Sheriff of the district to take possession of such keys, books, papers and insignia, and to deliver up the same to the party adjudged to be entitled to such office or franchise. *ibid*, s. 7.

In case of obstruction by defendant, sheriff to enforce the judgment.

ACTING AS A CORPORATION WITHOUT AUTHORITY OR EXCEEDING CORPORATE POWERS, &C.

9. Whenever any association or number of persons act within Lower Canada as a corporation, without having been legally incorporated, or without being recognized as such corporation

Proceedings in the case of any association acting as a corpo-

by

ration without  
any right to do  
so.

by the Common Law of Lower Canada,—and whenever any Corporation, Public Body or Board offends against any of the provisions of the Act or Acts creating, altering, renewing, or re-organizing it, or violates the provisions of any law in such manner as to forfeit its charter by mis-user,—and whenever any such Corporation, Public Body or Board has done or omitted any Act or Acts, the doing or omitting of which amounts to a surrender of its corporate rights, privileges and franchises,—and whenever any such Corporation, Public Body or Board exercises any franchise or privilege not conferred on it by law, it shall be the duty of Her Majesty's Attorney General for Lower Canada, whenever he has good reason to believe that the same can be established by proof, in every case of public interest, and also in every such case in which satisfactory security is given to indemnify the government against all costs and expenses to be incurred by such proceeding,—to apply for and on behalf of Her Majesty to the Superior Court sitting in the district in which the principal office or place of business of such persons so unlawfully associated together, or of such Corporation, Public Body or Board is situate, or to any Judge of such Court in vacation, by an information, declaration or petition, (*requête libellée*.) supported by affidavit to the satisfaction of such Court or Judge, complaining of such contravention of the law, and praying for such order or judgment thereon as may be authorized by law: *ibid*, s. 8.

Writ to issue.

2. Thereupon such Court or Judge may order the issue of a Writ commanding the persons or Corporation, Public Body or Board so complained of, to be summoned to appear before the Court or Judge, to answer such declaration or petition, (*requête libellée*.) upon such day as the Court or Judge thinks proper to fix,—and the like proceedings shall be had upon such declaration or petition, (*requête libellée*.) and Writ of Summons, as to service, appearance, entering default, pleading, proof and all other matters, as are hereinbefore provided for the determination of cases in which any person has usurped, intruded into or unlawfully detained any public office or franchise ;

Proceedings  
thereupon.

Service of pro  
cess.

3. The service of any such Writ of Summons and of any such declaration or petition, (*requête libellée*.) may be made by serving the same on such persons so unlawfully associated together, or on such Corporation, Public Body or Board, by leaving true copies of such Writ, and of such declaration or petition (*requête libellée*.) either with the Mayor, Chairman or other Chief Officer, or with the Secretary or Treasurer of such Association, Corporation, Public Body or Board, or in the case of a pretended corporation with some one of the persons assuming to hold such office, or with any person of reasonable age, at the principal office or place of business of such (or of such pretended) Association, Corporation, Public Body or Board, and the Court or Judge shall make and pronounce such orders and judgments in all such cases as to law and justice may appertain. *ibid*, s. 8.

Judgment.

**10.** Whenever it is found, that any Corporation, Public Body or Board has, by any mis-user, or surrender; forfeited its corporate rights, privileges and franchises, judgment shall be rendered that such Corporation be ousted and altogether excluded from such corporate rights, and that the Corporation, Public Body or Board be dissolved; and the Court or Judge rendering such judgment shall thereupon appoint a Curator to the property of such Corporation, Public Body or Board, whose duty it shall be, after having given security to the satisfaction of the Court or Judge for the due discharge thereof, to take possession of the said property, to cause an inventory thereof to be made in due form of law in the presence of one or more of the Members of the Corporation, Public Body or Board, and after having made such Inventory, to dispose, to the best advantage, of all the personal property which he has so possessed himself of, and after realizing the proceeds thereof, to cause the same to be distributed amongst the creditors of such Corporation, Public Body or Board, by the Superior Court sitting in the District in which the principal office or place of business of such Corporation, Public Body or Board was at the time of the rendering of such Judgment :

Proceedings in case any corporation shall be found to have forfeited its corporate rights.

Due notice shall be given to such creditors by at least three advertisements in at least two such public newspapers as the said Court may direct, of which advertisements the first shall be published at least two months previous to the day fixed and therein mentioned as the day on which the Curator will apply to the Court for the purpose of effecting such distribution ;

Notice to creditors.

If there be any debts remaining due by such Corporation, Public Body or Board, the like proceedings shall be had for the discussion of the immoveable property belonging to such Corporation, Public Body or Board, and for the distribution of the proceeds thereof amongst its creditors, or for dividing the same amongst the parties entitled thereto, as may by law be had and adopted for the discussion, distribution or division of a vacant estate, or of the estate of an absentee to which a Curator has, been appointed ;

Discussion of the immoveable property.

2. If there are no debts due by such Corporation, Public Body or Board, or if such debts are unknown to or beyond the control of the Curator; then the Curator shall proceed to the sale of the immoveable property held by him in his said capacity, to the best and highest bidder, after having given due notice of such sale and of the time and place thereof, by three advertisements in English and French in the Canada Gazette, the first of which shall be published at least four, and not more than five months before such sale ;

Sale of immoveable property.

3. All sales of immoveable property made by any such Curator, after such notice duly given, shall have the same effect to all intents and purposes as sales made by Sheriffs or by *décret forcé* ;

To have effect of *décret forcé*.

Costs.

4. Whenever judgment is rendered in any such case against any Corporation, Public Body or Board, or against any persons claiming to be a Corporation, the costs awarded by such judgment may be collected by execution, directed either against the property and effects of such Corporation, Public Body or Board, or of such persons claiming to be a Corporation, or against the private property of the Directors or other Officers of any such Corporation, Public Body or Board, or of the persons claiming to be a Corporation. 12 V. c. 41, s. 10.

MANDAMUS TO A CORPORATION, &c., TO COMPEL IT TO FULFIL CERTAIN DUTIES.

Proceedings when any corporation refuses to make any election required by law or to do any thing it ought by law to do, &c.

11. Whenever any Corporation, Public Body or Board refuses or neglects to make any election, which by law it is required to make, or to receive to their functions such of its members as have been legally chosen or elected, or restore to their functions such of its members as have been removed without sufficient cause; and, whenever any person holding any office in any Corporation, Public Body or Board, or any public body whatsoever,—or any Court of Inferior Jurisdiction,—omits, neglects or refuses to perform any act or duty belonging to such office, or to such Court, or which the person holding such office, is by law bound to perform;—and, whenever any heir or representative of any Public Officer omits, neglects or refuses to do any act which, by law, he is or may be bound or required to do as such heir or representative of such Public Officer;—and in all cases in which a Writ of *Mandamus* will lie and may be legally issued in England,—Any person interested in such Corporation, Public Body or Board, or in the performance of any such act or duty, may apply to the Superior Court sitting in the District in which such Public Officer, heir or representative of a Public Officer, or Inferior Court is, or to a Judge of the Court in vacation, for a Writ of *Mandamus* requiring the defendant, (whether such Defendant be a natural person or a Corporation, Public Body or Board,) to perform the act or duty which such Defendant has so neglected or refused to perform, or show cause to the contrary, on a day to be fixed for that purpose by the Court or Judge. 12 V. c. 41, s. 11, and 20 V. c. 44, s. 37.

How writ of *mandamus* shall be applied for.

12. Every application for a Writ of *Mandamus* shall be made by a declaration or petition (*requête libellée*) supported by affidavit to the satisfaction of the Court or Judge, setting forth the facts of the case, whereupon the Court or Judge may issue such Writ of *Mandamus*, and the Defendant (whether he be a natural person, a Corporation or an Inferior Court,) shall not be allowed to shew cause to the Writ of *Mandamus*, otherwise than by answering or pleading to the declaration or petition, (*requête libellée*) and shall not be required to make any return of or upon the Writ of *Mandamus*, but the same shall be returned by the Bailiff or other officer who served it upon the defendant, with a certificate under his oath of the time and place of service:

2. And the like proceedings shall be had on all applications for Writs of *Mandamus*, relative to service, appearance, entering of default, pleading, proof and all other matters, for the determination thereof, as are hereinbefore provided for the determination of cases in which any person has usurped, intruded into or unlawfully detained any public office or franchise, or in which any Corporation, Public Body or Board, has forfeited its Charter. 12 V. c. 41, s. 12.

Service of process and proceedings to judgment.

13. In case the defendant answers or pleads to the declaration or petition (*requête libellée*), in such manner as to justify his conduct, the action shall be dismissed, and the plaintiff shall be sentenced to pay costs; but if the answer is considered insufficient, either in law or in fact, or if the defendant fails to appear, and the plaintiff makes due proof of the facts alleged by him, and the same is deemed sufficient, then the Court or the Judge shall issue a Peremptory Mandate, ordering the defendant to do that which has been so demanded of him, and if the defendant being a natural person do not obey such Peremptory Mandate a warrant of commitment shall issue, under which he shall be imprisoned in the common gaol of the district, there to remain until he has rendered obedience to and fulfilled the requirements of the Peremptory Mandate:

If defendant answers and justifies his conduct, the action to be dismissed.

If otherwise.

2. If the defendant, being a Corporation, Public Body or Board, refuse to obey such Peremptory Mandate, the Court or Judge may sentence such Corporation, Public Body or Board to pay a penalty not exceeding two thousand dollars, which penalty may be levied in the ordinary course of Law, out of the property, real and personal, of the Corporation. 12 V. c. 41, s. 13.

In case of refusal to obey the mandate.

FAILURE TO ELECT NOT TO OPERATE DISSOLUTION OF A CORPORATION.—OF THE MANDAMUS FOR ELECTION, &C.

14. In case it happens that in any Corporation, Public Body or Board, no election is made of the Mayor, Aldermen, Councillors, Assessors, Trustees, Directors or other Officers of such Corporation, Public Body or Board, of if any such office is vacant in consequence of such election not having taken place upon the day or within the time appointed by charter, law or usage for that purpose,—or if such election being made, the same is void, or is afterwards declared void by a competent Tribunal, the Corporation, Public Body or Board shall not thereby be dissolved or disabled from electing such Mayor, Aldermen, Councillors, Assessors, Trustees, Directors or other Officers for the future, but shall be adjudged, deemed and taken to be, and to have been, subsisting, and capable of electing such Officer to all intents and purposes:

Default to elect officers not to operate dissolution.

2. In every such case the Superior Court sitting in the District in which the principal office or place of business of such Corporation, Public Body or Board is, or for a Judge of the said Court

Powers of Superior Court in such case.

Court

Court in vacation, may issue a Writ of *Mandamus* requiring the proper Officer, or in his absence such person as the Court or Judge appoints to proceed to the election of such Mayor, Aldermen, Councillors, Assessors, Trustees, Directors or other Officers, upon a day and hour, and at a place to be prescribed in such Writ of *Mandamus*, and to do every act to be done in order to such election, or to signify to the Court or Judge good cause to the contrary; *ibid*, s. 14.

Application for *mandamus* and proceedings thereupon.

3. Such Writ of *Mandamus* shall be applied for, and the like proceedings had thereon, and for the determination thereof, as in the other cases provided for by this Act; and on the day and time appointed by such Writ of *Mandamus*, (if the same be obeyed without cause being shown against it, or by the Peremptory Mandate, if any such mandate has issued) for proceeding to such election, public notice in writing, both in the French and English languages shall, by the person appointed by the Court or Judge, be affixed at the door of at least one church in the City, Town, Village, Borough, Parish or Township in which the principal office or place of business of the Corporation is, or if there be no church, at one of the most public places therein, for the space of at least ten days before the day so prescribed; *ibid*, s. 14.

How election shall be made in such case.

4. In every such case, any other act necessary to be done in order to such election shall be done at the time appointed in the Writ of *Mandamus* or in the Peremptory Mandate, and in such manner and form as the same ought to have been made upon the day, or within the time prescribed by the Charter, Act or Acts of Incorporation, or usage of such Corporation, Public Body or Board; and the Mayor, Aldermen, Councillors, Assessors, Trustees, Directors or other Officers, so elected, shall have the same privileges, precedence, powers and authority in all respects, as if such Mayor, Aldermen, Councillors, Assessors, Trustees, Directors or other Officers had been elected on the day or within the time prescribed for such election by the Charter, Act or Acts of Incorporation, or usage of such Corporation, Public Body or Board;

But a certain number of persons entitled to vote must be present.

5. But no such election, nor any act done in order thereunto, shall be valid unless as great a number of persons entitled to be present at and vote therein, are present at the assembly holden for such purpose and concur therein, as would have been necessary to be present and concur in such election or act, in case the same had been made or done upon the day, or within the time appointed for that purpose by the Charter, Act or Acts of Incorporation or usage of such Corporation, Public Body or Board; saving only that the *presence* of the Officer, who, under the Charter, Act or Acts of Incorporation or usage, ought to preside at such election shall not be necessary;

6. Any Mayor, Alderman, Councillor, Assessor, Trustee, Director or other Officer of any Corporation in which the election of a successor to any such office has not taken place at the time appointed by Charter, law or usage for that purpose, shall hold over and continue to act as such officer until a successor of such officer has been duly elected under the authority of this Act. *ibid*, s. 14.

Persons holding office to retain it till the appointment of their successors.

COMPETENCY OF ELECTORS AS WITNESSES, AND AFFIDAVITS OF SERVICE BY BAILIFFS.

15. In no case in which the rights of any Municipal Corporation are involved shall any witness be inadmissible from the fact of his being an elector entitled to vote in such Municipal Corporation. 12 V. c. 41, s. 15.

Electors may be witnesses.

16. No special affidavit shall be required to establish the service of any writ, order, rule or judgment connected with any of the proceedings provided for by this Act, but the return of service made in due form<sup>a</sup> by the bailiff, under his oath of office, shall in all cases be considered as evidence of the facts therein stated, unless the same be controverted in due course of law. 12 V. c. 41, s. 16.

Special affidavit of service not required.

APPEALS.

17. An appeal shall lie to the Court of Queen's Bench sitting in appeal, from all final judgments rendered by the Superior Court after the thirtieth day of June, one thousand eight hundred and fifty-eight, in all cases provided for by this Act, except in cases of *certiorari*, and in cases or matters concerning City or Municipal Corporations, or any office or officer of any such Corporation; provided the writ of appeal in any such case be issued within forty days from the rendering of the judgment appealed from, but not otherwise. 12 V. c. 41 s. 20, and 22 V. c. 5, s. 61.

Appeals from judgments under this Act provided for except in cases of *certiorari*.

## CAP. LXXXIX.

An Act respecting Writs of Prohibition, *certiorari* and *scire facias*.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

## OF THE WRIT OF PROHIBITION.

Proceedings for obtaining and prosecuting writs of prohibition.

1. Writs of prohibition shall issue out of the Superior Court and shall be applied for in the same manner as Writs of Mandamus, and the like proceedings shall be had thereon as to service, appearance, entering of default, pleading, proof and all other matters for the determination thereof as on applications for writs of Mandamus, as provided by chapter 12 V. c. 41, s. 16.

## OF THE WRIT OF CERTIORARI.

Alias writs of *certiorari* not necessary in any case.

2. With respect to the writ of *certiorari*, it shall not in any case be requisite to issue any *alias* writ of *certiorari*, but all orders which the Court or any Judge thereof may find necessary subsequently to the issuing of the first writ shall be made by interlocutory or final judgment as in ordinary cases:

Proof of service of writ.

2. No special affidavit shall be required to establish the service of any writ, order, rule or judgment connected with any of the proceedings in cases of *certiorari*, but the return of service made in due form by the bailiff under his oath of office shall in all cases be considered as evidence of the facts therein stated, unless the same be controverted in due course of law; nor shall it be necessary for the party applying for any such writ to give security either for costs or otherwise. 12 V. c. 41, s. 16,---13, 14 V. c. 36, s. 2.

Inscription on roll *de droit*.

3. In all cases in which a Writ of *certiorari* has been issued, and a regular return thereof made, any party interested may inscribe the cause on the roll *de droit*, on giving notice thereof to the opposite party; and the hearing of the said cause on the merits shall be proceeded with as in ordinary causes. 16 V. c. 199, s. 2.

Costs.

4. The court to which any case is removed by writ of *certiorari* may in its discretion award costs to the party in whose favor judgment is given on such writ. 18 V. c. 97, s. 2

## OF THE WRIT OF SCIRE FACIAS.

For what purposes writs of *scire facias* may issue.

5. All Writs of *scire facias* shall issue out of the Superior Court, and the said Court may allow such Writs to issue upon the information or petition of Her Majesty's Attorney General

General or Solicitor General or other Officer duly authorized in that behalf, for the purpose of vacating or annulling any Letters Patent granted by the Crown in the following cases :

*Firstly.* Where it is alleged that such Letters were obtained by means of some fraudulent suggestion or concealment of a material fact, made by the person to whom the same were issued or made with his consent or knowledge ;

*Secondly.* Where it is alleged that such Letters Patent were issued through mistake, and in ignorance of some material fact ;

*Thirdly.* When the patentee or those lawfully claiming under him has done or omitted any act, in violation of the terms and conditions upon which such Letters Patent were granted, or has by any other means forfeited the interest acquired under the same ;

2. And all such informations or petitions shall be heard, tried and determined in the same manner as ordinary civil suits. 12 V. c. 41, s. 19.

Information,  
&c., to be tried  
as an ordinary  
suit.

## C A P . X C .

An Act respecting the proof of certain official and other documents executed out of Lower Canada and their effect in evidence.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

## OFFICIAL DOCUMENTS.

Duly certified copies of judicial proceedings to be *primâ facie* evidence.

1. An exemplification of any judgment, decree or other judicial proceeding of any Court in any of Her Majesty's dominions, or in any foreign country, under the seal of the Court in which such judgment or other judicial proceeding was recovered, made or taken, or under the signature of the Prothonotary, Clerk or Custodier of the record of such judgment, decree or other judicial proceeding, shall be received whenever offered in any Court of Justice in Lower Canada, as *primâ facie* evidence of such judgment, decree or proceeding, unless proof to the contrary be made. 16 V. c. 198, s. 1.

Exemplifications of wills, &c., to be received as *primâ facie* evidence.

2. An exemplification of any Will executed in Her Majesty's dominions, or in any foreign country, under the seal of any Court wherein the original Will is of record, or under the signature of the Judge, Surrogate or Clerk of such Court, or of the custodier of such Will, shall be taken and received, whenever offered in any Court in Lower Canada, as *primâ facie* evidence of the execution of such Will ;—and the Probate of any such will, under the seal of any Court of competent jurisdiction, shall be received as *primâ facie* evidence of the contents thereof, and also of the death of the testator, unless proof to the contrary be made. 16 V. c. 198, s. 2.

Certificates of marriages, &c., out of L. C., to be received as *primâ facie* evidence.

3. A certificate of the marriage of any person married or of the baptism of any person baptised or of the burial of any person interred, beyond the limits of Lower Canada, under the hand of the Clergyman, Priest or Minister, who officiated at such Marriage, Baptism or Burial, or of the public officer before whom such marriage was contracted, or an extract from any register kept for the registration of any such Marriages, Baptisms or Burials, certified by the Clergyman, Priest, Minister or Public Officer, being the legal custodier thereof, whenever offered in any Court of Justice in Lower Canada, shall be taken and received as *primâ facie* evidence of the contents thereof. 16 V. c. 198, s. 3.

Seal or signature to such document need not be proved.

4. It shall not be necessary to prove any Seal or the signature or authority of any officer affixed to any Exemplification, Probate, Certificate or Extract which by the foregoing sections is made *primâ facie* evidence of the facts therein stated, but the production

production of any such Document purporting to be sealed with such seal and signed by such officer; shall be *prima facie* evidence of such seal and signature, and of the authority of the officer purporting to have affixed such seal to such document or to have signed the same. 16 V. c. 198, s. 4.

5. It shall be competent to any party interested in any such Will, upon the production of an Exemplification of the same, and of the Probate thereof, if there be any, to the Superior Court for Lower Canada, or any of the Judges thereof, to require and have the same recorded in the Office of the Prothonotary of the said Court in any one of the Districts of Lower Canada; and when so recorded, a copy thereof certified by the Prothonotary of the said Court, shall have the same force and effect as such Exemplification. 16 V. c. 198, s. 5.

Exemplification and probate may be recorded in Lower Canada.

6. The Seal of any Foreign State, and the Certificate of the Secretary or any one of the Secretaries of any such State, or of the Executive Government thereof, whenever offered in any Court of Justice in Lower Canada, to establish the existence and competency of any Court, Corporate Body, Clergyman, Priest or Minister, Office or Officer, its or his identity in relation to any public document, or any other matter, shall be deemed authentic without proof thereof, and shall be taken and received as *prima facie* evidence of the fact intended to be established thereby, whether such State be a separate sovereignty, or be one of the United States of America, or of any other federation or union of several states. 16 V. c. 198, s. 6.

Seals and certificates of foreign states, &c., to be *prima facie* evidence.

7. It shall be competent to any party to a suit or proceeding to deny the truth of any of the said Exemplifications, Probates, Certificates or Extracts, by doing so in writing before the close of the *enquête* of the party producing the same, in which case it shall be incumbent upon such party to prove the contents of such exemplification, probate, certificate or extract in the manner now required by law :

Any party may deny the truth of such exemplifications, &c.

2. But in the event of such exemplification, probate, certificate or extract being duly proved by a commission or otherwise to be correct and true, the costs of such proof, to be taxed by the Judge, may, in the discretion of the Court or Judge before whom such suit or proceeding is had, be ordered to be paid by the party who denied the truth thereof as aforesaid, whatever may be the final judgment in the cause ;

As to costs in such case.

3. And whenever the truth of any such exemplification, probate, certificate or extract is denied as aforesaid, security for the costs attending the execution of a commission to prove the same, shall be given to the satisfaction of the Court or Judge by the party denying the truth of the same, and within the time and for such amount as the said Court or Judge shall direct. 16 V. c. 198, s. 7.

Security for the costs of proof arising out of such denial.

## POWERS OF ATTORNEY.

Notarial copies of powers of Attorney attested before foreign public officers and deposited with any Notary to be *prima facie* evidence of the original and of its due execution.

8. A Notarial copy of any power of Attorney, purporting to be executed out of Lower Canada, in the presence of one or more witnesses, and to be authenticated by or before any Mayor or other Magistrate, Judge of any Court of Record, British Consul or other Public Officer of the Country where it bears date, the original whereof is deposited for any purpose with any Notary Public in Lower Canada, and such copy being certified in the ordinary form by the Notary having the custody of the original, shall be taken and received by and before all Courts and elsewhere in Lower Canada, as *prima facie* evidence of the original and of the due execution thereof;—and such power of Attorney shall be held and taken to be authentic and duly proved in the manner aforesaid, unless the authenticity thereof is specially put in issue as hereinafter mentioned. 22 V. (1858) c. 7, s. 1.

The authenticity of the original may be denied, and how.

9. It shall be competent to any interested party to deny the authenticity of the original of any such copy, by filing with the plea denying such authenticity, an affidavit to the effect that he has reason to doubt, and does not believe, that the same was executed or attested by the person or persons nor in the manner it purports to be, and by entering security, to the satisfaction of a Judge, for all costs attending the execution of any commission to be issued to prove such power of Attorney :

How the original shall be proved.

2. It shall then be incumbent on the party wishing to use the copy, to prove the original thereof in due form of law, to which end the Notary having the custody of such original shall, on the order of any Judge, deposit the same in Court in the cause wherein it is put in issue, first detaching the same from any original minute whereto it has been annexed, and taking, at the expense of the party, a true and exact copy thereof collated in due form of law, which shall for the time being remain of record with him in lieu of the original ;

Original to be annexed to the commission issued to prove it.

3. It shall be the duty of all Judges and Courts to grant such order, on petition, and the original may thereupon be annexed to any Commission to be issued for the proof thereof. 22 V. (1858) c. 7, s. 2.

As to costs of such proof.

10. If such power of Attorney is duly proved, all costs incurred on the proceedings for proving it shall be taxed against and payable by the party denying the authenticity of the same, whatever may be the final judgment in the cause. 22 V. (1858) c. 7, s. 3.

Copy of power of Attorney executed abroad before a Mayor, &c.,

11. In case where any Power of Attorney, purporting to be executed out of Lower Canada, in the presence of one or more witnesses, and to be authenticated by or before any Mayor or other Magistrate, Judge of any Court of Record, British Consul

or other Public Officer of the country where it bears date, has been produced by any witness who declines to part with such original, the Prothonotary or Clerk of the Court in which such case is pending, shall forthwith make a true and exact copy of such Power of Attorney, at the cost and charges of the party or parties requiring the same, and certify and deposit the same in the cause :

produced in evidence, to be made by Prothonotary.

2. Such copy, so certified and deposited, shall be taken and received by and before all Courts and elsewhere in Lower Canada, as *prima facie* evidence of the original and of the due execution thereof; and such Power of Attorney shall be held and taken to be authentic and duly proved in the manner aforesaid, unless the authenticity thereof is specially put in issue as hereinafter mentioned. 22 V. (1859) c. 50, s. 1.

Such copy to be *prima facie* evidence.

12. It shall be competent for any interested party to deny the authenticity of the original of any such copy by filing an affidavit before the closing of the evidence or *enquête* of the party or parties producing such copy, or in whose interest it shall or may be filed, to the effect that he has reason to doubt and does not believe that the same was executed or attested by the person or persons, nor in the manner it purports to be, and by entering security to the satisfaction of a Judge, for all costs attending the execution of any commission to be issued to prove such Power of Attorney :

Authenticity of original may be denied on affidavit.

2. It shall then be incumbent on the party wishing to use the copy to prove the original thereof in due form of law, to which end the party having the custody of such original shall be bound, on the order of any Judge, to deposit the same in Court, in the cause wherein it is put in issue, receiving in return from the Prothonotary or Clerk thereof, at the expense of the party by whom its authenticity is denied, a copy thereof certified as aforesaid;

It must then be proved, and how.

3. It shall be the duty of all Judges and Courts to grant such order on petition; and the original may thereupon be annexed to any Commission to be issued for the proof thereof. *ibid*, s. 2.

Order to deposit original to be granted on petition.

13. If such power of Attorney is duly proved, all costs incurred on the proceedings for proving it shall be taxed against and payable by the party denying the authenticity of the same, whatever may be the final judgment in the cause; and in any case, when the cause is finally decided by a judgment in the last resort or from which there is no appeal, or when the delay to appeal has expired, it shall be the duty of the Prothonotary or Clerk to return the original Power of Attorney to the party who deposited the same or his legal representative on demand, taking a receipt for the same. *ibid*, s. 3.

Costs of proving,—against whom to be taxed.

Application of  
certain sections  
of this Act.

**14.** The *eighth*, *ninth* and *tenth* Sections of this Act, shall apply to all cases pending when the Act 22 V. c. 7, came into force (30th May, 1858,) and to all Notarial copies of Powers of Attorney of the description in the said Sections mentioned, filed in such cases; and unless the person wishing to deny the authenticity of any original Power of Attorney contemplated by the said Sections, in any such case, where the party pleaded before the said day, filed the affidavit and gave the security mentioned in the *ninth* section of this Act within one month from the said day, such original Power of Attorney shall be held and taken to be authentic and duly proved in the manner in the said sections mentioned. *ibid*, s. 4, *effete*.

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C A P. X C I.

An Act respecting the right of action by and against Foreign Executors, Administrators and Corporations.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

**1.** All Executors of Wills, and all Administrators, or other legal representatives of the estate of any person dying in or out of Lower Canada, but seized of real or personal effects or rights of action there, and all other persons who either by the law of Upper Canada or by the Law of any Country or State whatever where the deceased died or made his will, are legally seized of the estate of the deceased or represent him in law, shall be recognized, and the legal capacity of any such Executor, Administrator or Representative shall be of equal validity and effect, by and before all Judges and Justices, and by and before all Courts in Lower Canada, and to all other legal intents, as in the Country or place where he or they reside or were named and appointed, or where the will of the deceased was, made notwithstanding that such Executor or Administrator or Representative, resides out of Lower Canada. 22 V. (1858) c. 6, s. 1.

Foreign Executors, Administrators, &c., enabled to sue and be sued in Lower Canada.

**2.** All Joint Stock or other Companies or bodies politic and corporate, who have a legal capacity in the jurisdiction wherein they were respectively erected or recognized, and all persons on whom by any properly constituted authority or law, (whether of the heretofore Province of Upper Canada, or of the Imperial Parliament of Great Britain and Ireland, or of the United States of America, or of any of them, or of any other foreign state, colony or dominion,) the right or power of suing or being sued has been conferred, shall have the like capacity in Lower Canada, to bring and defend all actions, suits, complaints, bills and proceedings whatsoever,---and shall, by and before all Courts, Judges and Judicial authorities whatever in Lower Canada be held in law to be capable of suing and being sued, in the same name, manner and way as they could or might respectively be within the jurisdiction wherein such executors or administrators or persons, body politic and corporate, Joint Stock Company or Association of persons were respectively created, erected or recognized. 22 V. (1858) c. 6, s. 2.

Foreign Corporations, &c., may also sue and be sued in Lower Canada.

**3.** In whatever part or place in Lower Canada any such executor or administrator or person, company or body politic or corporate, joint stock company or other body or association of persons recognized by any foreign law as aforesaid, has an office for the transaction of or carries on business, such executor or administrator, company, body politic or corporate, joint stock company or other body or association, may be sued and impleaded

What shall be a sufficient service of process in cases under this Act.

impleaded in Lower Canada, and service of any process at any such office, or on any agent at the place or within the district or part of Lower Canada where the action is brought, of any such Company, body politic or corporate, joint stock company or other body, shall be a good and valid service to compel the appearance of and make any such executor, or administrator, body politic or corporate, joint stock company or association of persons, amenable to the laws of Lower Canada before any Court or Judge, and to give such Court or Judge jurisdiction over such defendants. 22 V. (1858) c. 6, s. 3.

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## C A P. X C I I .

## An Act respecting the Office of Sheriff.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

## SECURITY TO BE GIVEN BY SHERIFFS.

1. No person shall execute any of the duties of the office of Sheriff or Coroner, in civil matters, until he has entered into a bond to Her Majesty, Her Heirs and Successors for the due execution thereof, to the amount and in the manner herein-after enacted and required. 6 W. 4, c. 15, s. 1.

Person holding office of Sheriff to give security.

2. The security required by this Act shall be given in the following sums, that is to say, by the Sheriff of the district of Quebec, in a sum of sixteen thousand dollars,—by the Sheriff of the district of Montreal, in a sum of twenty-four thousand dollars,—by the Sheriff of the district of Three-Rivers, in a sum of eight thousand dollars,—by the Sheriff of the district of Gaspé, in a sum of six thousand dollars,—and by the Sheriff of the district of Saint Francis, in a sum of four thousand dollars,—by the Coroner of the district of Quebec, in the sum of one thousand four hundred dollars,—by the Coroner of the district of Montreal, in a sum of one thousand four hundred dollars,—by the Coroner of the district of Three-Rivers, in a sum of four hundred dollars,—by the Coroner of the district of Gaspé, in a sum of two hundred dollars,—and by the Coroner of the district of Saint Francis, in a sum of two hundred dollars :

Amount of such security.

2. The amount of the security to be given by the sheriffs and coroners, in the districts of Kamouraska and Ottawa, shall be fixed by the Governor, under chapter twelve of the Consolidated Statutes of Canada,—as shall also the amount of such security to be given by sheriffs and coroners in the New Districts ; but the amount of such security in the New Districts shall not be greater than in those of Kamouraska and Ottawa ;

Amounts in certain cases to be fixed by the Governor.

3. Every such bond or security shall be to Our Sovereign Lady the Queen, Her Heirs and Successors, and the condition shall be, that the Sheriff or Coroner, giving such security, shall well and truly demean himself in the execution of all and every the duties of his office in civil matters, and shall duly pay over all moneys to be levied or received by him as Sheriff or Coroner, (as the case may be) to all and every the persons lawfully entitled to receive the same ; and such bond or security shall avail to Her Majesty, and to all persons whomsoever aggrieved by any breach of the condition aforesaid, or any part thereof. 6 W. 4, c. 15, s. 2.

The condition of such security.

Bond to be made in duplicate.

How received, recorded and deposited.

3. Every bond, act of *cautionnement* or suretyship, executed under this Act shall be made double, and shall be taken and received by one of the judges of the Superior Court, or by the Secretary of the Province; and one duplicate thereof shall be transmitted to and recorded in the office of the Prothonotary of the Superior Court, in the district for which such Sheriff or Coroner is appointed, and shall remain among the records thereof; and such Sheriff or Coroner shall cause the other duplicate to be enregistered with the Registrar of the Province, and then deposit the same in the office of the Minister of Finance; and every person shall be entitled to have communication and copy of any such Act, either at such Prothonotary's office, or at the office of the Minister of Finance, upon payment of twenty cents, for every communication, and one dollar, for every copy. 6 W. 4, c. 15, s. 3, and 4, 5 V. c. 91, s. 3.

Before the bond is executed, notice thereof must be given to the Attorney or Solicitor General.

4. Before the taking or receiving of the bond, suretyship or *cautionnement* required by this Act, notice in writing shall be duly given to Her Majesty's Attorney General for Lower Canada, or in his absence to the solicitor general, three days at least before the time of giving such bond or suretyship, and one additional day for every ten leagues distance between the place of residence of the Attorney or Solicitor General, as the case may be, and the place where such bond or suretyship is intended to be given, specifying the day, hour and particular place of giving such bond or suretyship, and the names, additions, and abode of the persons intending to become sureties; and no such bond or suretyship shall be taken or received until after due proof, upon oath, has been made of the giving of such notice in writing; which proof of notice shall remain of record in the office of the *Secretary of the Province*, and communication thereof shall at all times be given *gratis* to any person applying for the same:

Proof of such notice required.

Sureties to justify.

2. Such security shall not be held valid until the sureties have justified their sufficiency to the amount in which they are respectively liable. 6 W. 4, c. 15, s. 4.

New sureties to be obtained in the event of the death, insolvency, &c., of the first ones.

5. If any person, who has become surety for any Sheriff or Coroner, afterwards dies or becomes insolvent, *en deconfiture*, or departs from Lower Canada with the intent of establishing his domicile elsewhere, the Sheriff or Coroner for whom such person had become surety shall, within the delay prescribed by chapter *twelve* of the Consolidated Statutes of Canada, provide a new surety in the manner and for the amount hereinbefore required; and the act in duplicate of such new suretyship shall be transmitted, enregistered and deposited as herein before required. 6 W. 4, c. 15, s. 5,--4, 5 V. c. 91, ss. 1. 13.

Penalty on persons performing the duties of Sheriff or Co-

6. Every person who presumes to perform any duty belonging to the office of Sheriff or Coroner, in civil matters, without having first given security, as required by this Act and

and by chapter *twelve* of the Consolidated Statutes of Canada, or who, having given such security, refuses or neglects to renew the same in any of the cases requiring such renewal, and continues to act as Sheriff or Coroner, in civil matters, after such refusal or neglect, shall be dismissed from the said office of Sheriff or Coroner, and shall forfeit and pay for the said offence a sum of two thousand dollars, to be recovered, with costs of suit, in the Superior Court for Lower Canada, by action of debt, bill, plaint or information; one moiety of which penalty shall go to Her Majesty, and the other moiety to the person suing for the same. within six months after the offence has been committed. *ibid*, s. 6. *ibid*, ss. 5. 6.

roner without having given security.

7: When any Sheriff or Coroner dies, is removed from, or resign his office, and within the space of eighteen months after such death, removal or resignation, no misbehaviour appears to have been committed by such Sheriff or Coroner in the execution of his office, then at the end of the said eighteen months, the bond or suretyship so entered into by his sureties, shall become void and of no effect as to such sureties, to all intents and purposes whatsoever; but such Sheriff or Coroner, his heirs, executors, administrators or curators, respectively, shall not be exonerated, if misbehaviour be afterwards discovered and established:

Cases in which the sureties will be exonerated.

2. Except that the sureties of every such former Sheriff or Coroner shall remain bound and liable by virtue of, and to the amount mentioned in the act of suretyship, for all moneys levied by such former Sheriff or Coroner, until the expiration of one entire year after the date of the judgment by which such former Sheriff or Coroner, his heirs or legal representatives, are ordered to paid over the said moneys to the person or persons entitled to receive the same. 6 W. 4, c. 15, s. 7.

Sureties to remain bound for moneys levied under judgments.

8. Every Sheriff or Coroner in Lower Canada and his sureties shall moreover be subject to all the provisions of the said chapter twelve of the Consolidated Statutes of Canada in so far as such provisions apply to them and are not inconsistent with this Act, and such provisions shall (in so far as aforesaid) be deemed additional to those of this Act. 4, 5 V. c. 91, s. 13.

Sheriffs, &c., to be subject to provisions of Con. Stat. of Can., cap. 12.

#### SHERIFF'S RESPONSIBILITY FOR HIS DEPUTIES.

9: Every Sheriff or Coroner shall be responsible to all persons for the acts of his deputies, *bailiffs*, or other his servants acting under him, where such deputies, bailiffs or other servants, are of the appointment of the Sheriff:

Sheriffs, &c., to be responsible for the acts of his deputies.

2. And to this end, every Sheriff shall have the appointment of all bailiffs, (*huissiers*) to be employed by him in the several districts of Lower Canada, and each Sheriff may appoint a deputy sheriff, with all the powers and authorities which by his

Bailiffs, &c., to be appointed by the Sheriffs.

Of the deputy Sheriff.

his commission are vested in such Sheriff, to act as such deputy sheriff, and assist the said Sheriff in the performance of the duties of his office; and whose acts and returns, as such deputy sheriff, shall be taken and received in all Her Majesty's courts of law in Lower Canada, and be as legal and valid to all intents and effects, as the acts and returns of the Sheriff himself; and for all the acts of such deputy sheriff, the Sheriff so appointing him shall be and he is hereby declared to be in like manner responsible. 6 W. 4, c. 5, s. 8, & 13, 14 V. c. 37, s. 7.

#### SHERIFF'S LIABILITIES, POWERS AND DUTIES.

Duties of Sheriff as regards executions, and moneys levied thereunder.

**10.** In the service and execution of writs of summons, of execution and other civil process, the custody and safe keeping of goods and chattels under seizure, and the receipt, safe keeping and payment of all moneys by them levied under any writ of execution, the several Sheriffs and Coroners in Lower Canada shall be liable to the same extent and in the same cases, as any *huissier*, *gardien* or *receveur de consignations* would have been liable under the laws of Lower Canada, previous to the year of Our Lord, one thousand seven hundred and fifty-nine : .

His liability devolved on a guardian in certain cases.

2. But when any defendant offers a good and sufficient guardian to the Sheriff or Coroner seizing the goods and chattels of such defendant, under any writ of *feri facias*, *arrêt simple*, or *revendication*, such Sheriff or Coroner shall accept of such guardian, and shall not be answerable for the acts of such guardian, provided he can establish that such guardian, when accepted by him, was solvent, or reputed so to be, to the amount of the value of the articles over which he was appointed guardian. 6 W. 4, c. 15, s. 9, and 12 V. c. 38, s. 63.

Sheriff to register deeds of sales made by him.

**11.** The Sheriff and the Coroner of each district in Lower Canada shall, at all times, have and keep duplicate books or registers for the enrolling and recording of all deeds or acts of sale made by him of any lands and tenements, by virtue of his office :

How the registers shall be authenticated.

2. Such books or registers shall be authenticated on the first page thereof, by an attestation of the Prothonotary of the Superior Court of the same district, specifying the number of the pages of such books or registers, the purposes for which they are intended, and the day and year of making such attestation, which shall be signed at full length by the Prothonotary making the same, also on every subsequent page by the number thereof written in words at full length, and subscribed with the initial letters of the usual signature of such Prothonotary ;

Deeds to be enrolled therein, and an index of them kept.

3. The Sheriff and Coroner of each district shall, respectively, from day to day, enroll and enter in each of the said books or registers, without any blank or interval, all the deeds or acts  
of

of sale made by him of any lands and tenements, by virtue of his office, together with an alphabetical index to the same, until the said books or registers are filled, and shall immediately afterwards deposit one duplicate thereof in the office of the Prothonotary of the Superior Court in the district for which he is Sheriff or Coroner, there to remain of record in the archives of the district, and shall keep the other duplicate ;

4. All copies from such books or registers, certified by the Sheriff or Coroner, Prothonotary or Clerk having the custody thereof, shall be considered as authentic in all courts of justice in Lower Canada ; and every Prothonotary, Sheriff or Coroner, having the custody of any such books, register or registers, shall be entitled to receive, for each copy thereof, not exceeding two hundred words, a sum of one dollar, and if such copy exceeds two hundred words, then at the rate of ten cents for every additional hundred words, and no more. 6 W. 4, c. 15, s. 10.

Certified copies from such registers to be deemed authentic.

12. Every Sheriff in Lower Canada shall, on the first judicial day in every term of the Superior Court in the district for which he is Sheriff, exhibit an accurate and detailed statement and account, upon oath, of all moneys in his hands by him received as Sheriff, when and from whom received, and of all orders and judgments directing any moneys to be paid by such Sheriff since his last account rendered, specifying to whom the said moneys are or were payable, of all moneys paid by him as Sheriff, within the said period, and to whom, and of all moneys remaining unpaid, though ordered and adjudged to be paid, and of the reasons why the same have not been paid :

Sheriffs to account annually on oath for moneys by them received.

2. The said statements and accounts shall be deposited and remain among the public records of the court, and shall be entered in a book or register, which shall be kept, for that purpose, by the Prothonotary of the Court. *ibid*, s. 18.

Deposit of such account.

13. The Sheriffs shall have the custody and keeping of all gaols within their respective districts, and may appoint the gaolers or keepers of such gaols, for whose acts, and the conduct of such gaolers, the Sheriff shall be liable. 6 W. 4, c. 15, s. 15.

Sheriffs to have charge of gaols and gaolers.

14. The several Sheriffs, having the custody of gaols in Lower Canada, shall, from time to time, make general rules and regulations, for the interior order and police of the gaols situate within their respective districts, and for regulating the conduct of gaolers and other officers and ministers of justice, in the keeping and governing of gaols, and also for the safe custody, due care, and sufficient protection of all prisoners for debt therein being ; and shall submit the same for revision and approval, to the Court of *Queen's Bench or Court having Superior Criminal Jurisdiction in the District*, if in term, or to any two or more of the judges of the said Court, in vacation ; and all gaolers and other officers and ministers of justice,

And to make rules for their government.

concerned

concerned in the keeping and government of gaols within the said districts, severally and respectively, shall observe the said rules and regulations. *ibid*, s. 16.

Sheriffs liable for escape of prisoners for debt in certain cases.

**15.** The several Sheriffs and Coroners in Lower Canada shall be liable only in damages and interests, for escapes of prisoners for debt happening through connivance or neglect, either from the custody of themselves or their deputies or bailiffs, or from any gaol of which any Sheriff shall have the custody and keeping. *ibid*, s. 17.

Persons who have acted as Sheriff, &c., to deliver all deeds of sale to the Sheriff, &c., for the time being.

**16.** Every person who has been, or has acted as Sheriff or Coroner for any district, and the heirs, executors, curators and other legal representatives of any such person, shall forthwith deliver and surrender unto the Sheriff of the same district, all deeds or acts of sale of lands and tenements, which have been made by such person as Sheriff or Coroner, or transmitted to him by his predecessor in office, and all writs, public books, registers and papers appertaining to the office of Sheriff or of Coroner, as the case may be, in matters of a civil nature, in his or their possession, custody or power,—judgments of distribution, receipts and vouchers for the payment of money and other legal acquittances and discharges and rules for the discharge of prisoners always excepted,—together with a list or inventory of such deeds or acts, writs, books, registers and other papers duly attested upon oath, by the person delivering the same,

Penalty on refusal.

2. And every person having been, or having acted as Sheriff or Coroner, and every heir, executor, curator, or other legal representative of such late Sheriff or Coroner, who refuses or wilfully neglects to deliver and surrender all such deeds or acts of sale, writs, books, registers, and other papers, with such list or inventory thereof, and is thereof lawfully convicted, shall forfeit and pay the sum of two thousand dollars, one moiety of which shall go to Her Majesty, Her Heirs and Successors, and the other moiety to the person suing for the same. *ibid*, s. 13.

Penalty for swearing falsely.

**17.** Every Sheriff exhibiting the statements and accounts required of him by this Act, who knowingly and wilfully swears falsely in any matter where an oath is by this Act required, shall be liable to suffer, upon conviction thereof, the pains and penalties by law imposed for wilful and corrupt perjury. *ibid*, s. 20.

Disposal of Crown's share of fines.

**18.** The Crown's share of the fines and penalties levied by virtue of this Act shall be reserved for the public uses of the province, and shall remain at the future disposal of the provincial parliament. *ibid*, s. 21.

## CAP. XCIII.

## An Act respecting the Salaries of certain Officers of Justice and the publication of the Decisions of the Courts.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. All Salaries, Fees, Emoluments and Pecuniary Profits whatsoever, which are now or may hereafter be attached to the following Offices, that is to say :

The fees, salaries, &c., of certain officers to form a Special Fund.

*First*.--To the offices of the Sheriffs of the civil districts of Montreal, Quebec, Three-Rivers, Saint Francis, Gaspé, Kamouraska, and Ottawa ;

*Second*.--To the offices of the Prothonotaries of the Superior Court in the said districts ;

*Third*.--To the offices of the Clerks of the Circuit Courts in the Circuits respectively called the Circuits of Quebec, Montreal, Three-Rivers, Sherbrooke, Kamouraska, Ottawa and Gaspé ;

*Fourth*.--To the offices of the Clerks of the Crown in the districts aforesaid ;

*Fifth*.--To the offices of the Clerks of the Peace in the districts aforesaid ;

*Sixth*.--To the office of the Clerk of the Court of Queen's Bench, called "The Clerk of Appeals" ;—

Under any authority whatsoever, shall form a Special Fund to be employed as hereinafter appointed, but they shall continue to be and shall be demanded and collected as heretofore by the Officers aforesaid respectively, in their respective districts or Circuits. 13, 14 V. c. 37, s. 3,—18 V. c. 98, s. 4.

2. All the Salaries, Fees, Emoluments and Pecuniary Profits whatsoever attached to the Offices above mentioned, shall form but one Fund, to be called *The Officers of Justice Fee Fund* ; and faithful and detailed accounts of such Salaries, Fees, Emoluments and Pecuniary Profits, and of the various fixed salaries payable out of the same, shall be rendered to the Minister of Finance, and the moneys arising therefrom shall from time to time be paid over by the Officers authorized to collect the same, in such form and in conformity with such instructions as may from time to time be prescribed by the Minister of Finance. 16 V. c. 196, s. 1.

To be called *The Officers of Justice Fee Fund*.

Certain salaries  
to be paid out  
of it.

**3.** Out of the amount collected in every year of such Salaries, Fees, Emoluments and Pecuniary Profits of what kind soever, attached to each of the aforesaid Offices, the Governor may from time to time assign to the several officers hereinafter mentioned, annual and fixed salaries not exceeding the amounts hereinafter limited with respect to the said officers respectively ; which salaries the Governor may modify from time to time in any case or cases, subject to the limitation aforesaid, that is to say :

IN THE COURT OF QUEEN'S BENCH.

Clerks of Ap-  
peals.

To the Clerk of the Court, called the Clerk of Appeals, a sum not exceeding two thousand dollars ; 20 V. c. 44, s. 20.

IN THE DISTRICT OF QUEBEC.

Officers in Dis-  
trict of Quebec.

To the Sheriff, a sum not exceeding two thousand four hundred dollars, yearly ;

To the Prothonotary of the Superior Court, a sum not exceeding three thousand dollars, yearly ;

To the Clerk of the Circuit Court, of the Quebec Circuit, a sum not exceeding one thousand six hundred dollars, yearly ;

To the Clerk of the Crown, a sum not exceeding one thousand two hundred dollars, yearly ;

To the Clerk of the Peace, a sum not exceeding two thousand dollars, yearly ;

IN THE DISTRICT OF MONTREAL.

In District of  
Montreal.

To the Sheriff, a sum not exceeding two thousand four hundred dollars, yearly ;

To the Prothonotary of the Superior Court, a sum not exceeding three thousand dollars, yearly ;

To the Clerk of the Circuit Court, of the Montreal Circuit, a sum not exceeding one thousand six hundred dollars, yearly ;

To the Clerk of the Crown, a sum not exceeding one thousand two hundred dollars, yearly ;

To the Clerk of the Peace, a sum not exceeding two thousand dollars, yearly ;

IN THE DISTRICT OF THREE-RIVERS.

District of  
Three-Rivers.

To the Sheriff, a sum not exceeding two thousand dollars, yearly ;

To the Prothonotary of the Superior Court, a sum not exceeding one thousand six hundred dollars, yearly ;

To the Clerk of the Circuit Court of the Three-Rivers Circuit, a sum not exceeding six hundred dollars, yearly ;

To the Clerk of the Crown, a sum not exceeding dollars, yearly ;

To the Clerk of the Peace, a sum not exceeding one thousand two hundred dollars, yearly ;

IN THE DISTRICT OF ST. FRANCIS.

To the Sheriff a sum not exceeding one thousand two hundred dollars, yearly ; District of St. Francis.

To the Prothonotary of the Superior Court, a sum not exceeding one thousand four hundred dollars, yearly ;

To the Clerk of the Circuit Court, of the Sherbrooke Circuit, a sum not exceeding six hundred dollars, yearly ;

To the Clerk of the Crown, a sum not exceeding two hundred dollars, yearly ;

To the Clerk of the Peace, a sum not exceeding six hundred dollars, yearly ;

IN THE DISTRICT OF KAMOURASKA.

To the Sheriff, a sum not exceeding one thousand dollars ; District of Kamouraska.

To the Prothonotary or Clerk of the Superior Court, a sum not exceeding eight hundred dollars ;

To the Clerk of the Circuit Court, for the Circuit called "The Kamouraska Circuit," a sum not exceeding four hundred dollars ;

To the Clerk of the Crown, a sum not exceeding two hundred dollars ;

To the Clerk of the Peace, a sum not exceeding six hundred dollars ;

IN THE DISTRICT OF OTTAWA.

To the Sheriff, a sum not exceeding one thousand dollars ; District of Ottawa.

To the Prothonotary or Clerk of the Superior Court, a sum not exceeding five hundred dollars ;

To the Clerk of the Circuit Court, for the Circuit called "The Ottawa Circuit," a sum not exceeding four hundred dollars ;

To the Clerk of the Crown, a sum not exceeding two hundred dollars ;

To the Clerk of Peace, a sum not exceeding six hundred dollars ;

IN THE DISTRICT OF GASPÉ.

District of Gaspé.

To the Sheriff, a sum not exceeding one thousand dollars ;

To the Prothonotary or Clerk of the Superior Court, a sum not exceeding five hundred dollars ;

To each of the Clerks of the Circuit Courts in the Circuits called respectively "The Percé Circuit" and "New Carlisle Circuit," a sum not exceeding two hundred dollars ;

To the Clerk of the Crown, a sum not exceeding one hundred dollars ;

To the Clerk of the Peace, a sum not exceeding two hundred dollars ;

In case the offices are held by two or more, a further sum allowed.

Except, that whenever any one of the Offices hereinafter mentioned is held by two or more persons conjointly, the Governor may add to the salary which he is hereinbefore empowered to grant for such Office, a further sum not exceeding those hereinafter limited, that is to say :

IN THE DISTRICT OF QUEBEC.

In District of Quebec.

To the office of Prothonotary or Clerk of the Superior Court, a sum not exceeding twelve hundred dollars, yearly ;

To the office of Clerk of the Court of the Quebec Circuit, a sum not exceeding four hundred dollars, yearly ;

To the office of Clerk of the Peace, a sum not exceeding eight hundred dollars, yearly ;

IN THE DISTRICT OF MONTREAL.

In District of Montreal.

To the office of Prothonotary or Clerk of the Superior Court, a sum not exceeding twelve hundred dollars, yearly ;

To the office of Clerk of the Circuit Court of the Montreal Circuit, a sum not exceeding four hundred dollars, yearly ;

To the office of Clerk of the Peace, a sum not exceeding eight hundred dollars, yearly. 13, 14 V. c. 37, s. 4,—18 V. c. 98, s. 5 and 20 V. c. 44, s. 20.

2. Each of which said sums shall only form part of the salary attached to the office to which it is so granted so long as such office so continues to be held by more than one person as aforesaid ; and the Governor may apportion such increase of salary among the persons conjointly holding and filling such office, in such manner as he deems expedient, having a due regard to the length of service of each of the persons in the performance of the duties of such office, or of a similar office in any other court of any other district. *ibid*, s. 18.

But such additional remuneration only allowed while such offices are held by two or more persons. &c.

4. Whenever any two or more of the offices hereinbefore mentioned, are at any time held and filled by the same person, then the Governor may reduce and fix at such sum as he deems expedient, the united salaries of the said offices, and in such case, the sum so established shall form the whole of the salary which such person shall be entitled to receive by reason of the said offices so held and filled by him ; and the remainder of the salaries assigned to the said offices, respectively, shall then form part of the fund hereinbefore mentioned. 13, 14 V. c. 37, s. 6.

In case any two or more offices are held by the same person.

5. The words " Salaries, Fees, Emoluments and Pecuniary Profits," in the foregoing sections, shall include for the purposes of this Act, the commission or remuneration of two and a half per cent or any other commission or remuneration which, under the laws now or then in force, the Sheriffs are authorized to charge upon and retain out of moneys levied by execution or otherwise, and also all other sums of money which the public officers aforesaid receive or may be entitled to receive for their use and benefit by virtue of their respective offices and under any authority whatsoever. 13, 14 V. c. 37, s. 5.

Words " salaries, fees, &c.," to include the Sheriff's commission.

6. The Criers, (including the tipstaffs) attached to the Court of Queen's Bench and to the Superior Court, in each of the districts above mentioned, and to the Circuit Court in the circuits above mentioned, or persons acting in that capacity in the said courts respectively shall not be entitled to demand and receive for their own use and benefit, the salaries, fees, emoluments and pecuniary profits, allowed to or for the services of such Criers respectively ; and the said salaries, fees, emoluments and pecuniary profits shall form part of the fund above mentioned, and shall not be demanded and collected by the said Criers, but by the Prothonotaries or Clerks of the said Courts, respectively :

Criers to cease to receive fees.

Such fees to be collected by Prothonotaries.

2. The said Prothonotaries or Clerks shall account therefor to the Minister of Finance and pay over the amount thereof to the Receiver General, in like manner and at the same time as they are required to account for and pay over the fees, emoluments and pecuniary profits attached to their own offices respectively. *ibid*, s. 8.

Who are to account therefor to the Minister of Finance.

Criers to receive fixed salaries.

7. Out of the amount annually collected of the said fees, emoluments and pecuniary profits so allowed for the said Criers (including the tipstiffs,) the Governor may assign an annual and fixed Salary to each of the said Criers, and from time to time modify the same as he may deem expedient, which salary shall in no case exceed the sum of one thousand dollars: *ibid*, s. 9, and 8 V. c. 98, s. 6.

Which may be increased or diminished.

2. But the governor may from time to time diminish or increase the salaries of the High Constables, Criers, Assistant Criers, Tipstiffs, Gaolers, Turnkeys and court house keepers attached to any of the said courts; provided no such salary shall in any case exceed the sum of one thousand dollars, yearly. 18 V. c. 98, s. 6.

Appointment of Deputies and their powers.

8. Each of the Public Officers, mentioned in the *first* section of this Act, who is not otherwise by law obliged to have and appoint a Deputy, shall be obliged to have and appoint one to assist him in discharging the duties of his office, and shall appoint such Deputy by an Instrument under his hand and seal; and such Deputy may perform the duties of a Public Officer who has so appointed him as his Deputy, and shall continue to perform the said duties in the event of the decease, dismissal, suspension or resignation of the said Officer, until a person has been appointed to succeed such Officer; and the Instrument appointing such Deputy shall be entered at full length in the Register of the Court:

Deputies may be removed and others appointed.

2. Any such Officer may at any time remove his Deputy and appoint another in his stead; and the said Officers may, if they think proper, respectively appoint in the manner and with the formalities prescribed in relation to the appointment of their first Deputy (and with like power of removal) other Deputies to assist them in that capacity, in the performance of any particular portion whatsoever of the duties of their office, such portion being specially and clearly described in the Instrument appointing any such Deputy; and every such Deputy is hereby authorized to perform the duties so specially assigned to him in like manner as the Public Officer who appointed him;

Principals responsible for their Deputies.

3. The said Public Officers shall be and continue to be responsible to all intents and purposes, for the conduct of each of their Deputies respectively. 13, 14 V. c. 37, s. 7.

Each officer to have a sufficient number of clerks.

9. Each of the said Public Officers, shall have a sufficient number of Clerks for the due performance of the duties of his office; to each of whom, as well as to the Deputies of such Officer, a reasonable remuneration may be granted, subject to the previous approval of the Governor; and for this purpose, each such officer shall furnish every year to the Provincial Secretary, and oftener if thereunto required, a list of the Deputies and

and Clerks employed by him ; and as regards their number and remuneration, he shall conform to such instructions as may from time to time be transmitted to him in that behalf by the Provincial Secretary ; the amount of which remuneration shall be paid by such Officer and by him entered under the head of expenses in the accounts rendered by him to the Minister of Finance. 13, 14 V. c. 37, s. 10.

**10.** The said Public Officers shall respectively be entitled for their own use and benefit to a commission of ten per cent on the balance of the sums collected by them under this Act after deducting therefrom their fixed salary, the remuneration of their Deputies and Clerks, and the salary of the said criers which said commission shall be paid to them by quarterly payments. 13, 14 V. c. 37, s. 11.

Officers' Commission on sums collected.

**11.** The amount of such salaries, fees, emoluments and pecuniary profits of what kind soever attached to the aforesaid Offices, and forming the Fund so as aforesaid created, collected from the tenth day of September, one thousand eight hundred and fifty, to the thirty-first day of December, one thousand eight hundred and fifty-two, and the amount of the said fund for any subsequent period, shall be appropriated to the payment of the fixed salaries assigned to the Officers above named, their Deputies and Clerks, and to the payment of such other sums as are chargeable on the said Fund, and the said salaries shall be paid by quarterly payments :

Officers to receive their salaries out of the General Fund.

2. The surplus (if any there be at any time) of the said Fund, after paying the salaries and other charges payable out of the same, shall form part of the Consolidated Revenue of the Province ; and in case the said Fund at any time falls short of the amount of the said salaries and other charges on such Fund, for the same period, the deficiency shall be paid out of the Consolidated Revenue Fund of the Province. 16 V. c. 196, s. 2.

Surplus to form part of Consolidated Revenue Fund.

**12.** Out of any surplus of the said fund which may remain at the close of any quarter, after payment of the salaries assigned to all the said Officers, and before such balance is paid over to the Consolidated Revenue Fund, the Governor may pay such additional sum as he deems just to any officers employed in the administration of Justice in any of (the old) Judicial Districts in Lower Canada, whose services have not in the opinion of the Governor been sufficiently remunerated during such quarter :

Additional salaries may also be paid out of such surplus.

2. Provided that in no case shall any such additional sum be paid to any officer who has received as a salary, or by fees, a sum of two hundred dollars, or more, for his services during such quarter, and the additional payment or payments made to any such officer in the course of any one year, together with the

Such additional salary limited.

the salary or fees received by him during the same year, shall not exceed the sum of eight hundred dollars. 16 V. c. 196, s. 4.

FEE FUNDS ESTABLISHED FOR THE OFFICERS OF JUSTICE, IN THE NEW DISTRICTS.

Fees, &c., of the judicial officers in the New District to be funded.

**13.** The fees and emoluments of office of the several officers of the Superior Court, or of the Circuit Court at the *chef lieu*, including the Criers, Assistant Criers, and Tipstiffs, Sheriffs, Coroners, Clerks of the Crown and of the Peace, in the New Districts, shall be collected by such Officers respectively, and accounted for and paid over to the Receiver General, after deducting any contingencies authorized by the Governor in Council, in like manner and subject to the like provisions as the fees and emoluments of similar Officers in other Districts :

Such fees to be funded separately for each District.

2. Except always, that the fees of the Criers, Assistant Criers and Tipstiffs shall be received, collected, accounted for and paid over to the Receiver General, by the Prothonotaries or Clerks of the said Courts respectively ; but the said fees and emoluments collected in each such District shall form a fund apart, to be called *The District of* \_\_\_\_\_, *Officers of Justice Fee Fund*, and shall be distributed among the said Officers of Justice in the District in the form of yearly salaries, or otherwise, in such proportions as the Governor in Council may from time to time direct. 20 V. c. 44, s. 96.

GOVERNOR MAY MAKE TARIFFS,—COURTS TO RETAIN POWER TO MAKE THEM FOR ATTORNEYS.

Governor may make or amend tariffs for officers of Superior and Circuit Courts.

**14.** And whereas it is expedient to render the said Officers of Justice Fee Funds as nearly as practicable adequate to the payment of the salaries of all the officers connected with the administration of Justice in Lower Canada, mentioned in the *first* and *thirteenth* sections of this Act, and which are to be provided for under this Act,—Therefore, the Governor in Council may make any Tariff, or repeal, alter or amend any existing Tariff of Fees to be paid to the Prothonotaries of the Superior Court and to the Clerks of the Circuits in Lower Canada, and shall have and exercise all the powers formerly vested in the Judges of the Superior Court as to such Tariff by the Act 12 V. c. 38 ; but any such Tariff now in force shall remain in force until so repealed, altered or amended by the Governor in Council. 18 V. c. 98, s. 8, and see 20 V. c. 44, s. 143.

Governor may also make tariffs for certain other officers as well in the New as in the Old Districts.

**15.** The power vested in the Governor in Council by the next preceding section of this Act, to make, alter or repeal any Tariff of Fees for certain Officers of the Superior Court and Circuit Court, shall extend to the making, and the altering or repealing of any Tariff of Fees (whether established by Act of Parliament or otherwise) for the Clerk of Appeals, Sheriffs, Clerks of the Crown and of the Peace, Criers, Assistant Criers,

Criers, and Tipstiffs, and all other officers of Justice whose Fees are to form part of the special funds established under this Act, and also for all Clerks of the Circuit Courts for the Circuits in the civil *Districts* of Quebec, Montreal, Three-Rivers, St. Francis, Ottawa, Kamouraska, and Gaspé;—and such power of the Governor in Council to make, alter or repeal, from time to time, any Tariff of Fees for any such officers respectively shall extend to the making, altering or repealing, from time to time, of any Tariff of Fees for officers of Justice holding like Offices in the *New Districts*, and more particularly as well for the officers of Justice whose Fees, (under 20 V. c. 44, s. 96,) are to be paid into the hands of the Receiver General, as for the Clerks, Criers, Assistant Criers and Tipstiffs of the Circuit Courts, or Circuits, established under 20 V. c. 44; but any such Tariff of Fees for the officers above mentioned now in force, shall continue in force until repealed or altered by the Governor in Council, and shall apply to the like officers as well in the *New* as in the said *Old* Districts, as bounded for civil purposes. 20 V. c. 44, s. 143.

**16.** None of the foregoing provisions shall extend or be construed to extend to deprive the above mentioned Courts of Justice or the Judges thereof, of the power now possessed by them, or to relieve them from the obligation imposed on them by the now existing laws of Lower Canada, to make and establish, from time to time, Tariffs of Fees for the Counsel, Advocates and Attorneys practising therein, and from time to time, as need shall be, to revoke or amend such Tariffs. 13, 14 V. c. 37, s. 17,—18 V. c. 98, s. 8, and 20 V. c. 44, s. 143.

But Judges to continue to make tariffs of fees for Attorneys, &c.

COMMISSION ON MONEYS COLLECTED UNDER THE ACT  
(12 V. c. 112.)

**17.** The Governor in Council shall have full power and authority to grant and allow to the Prothonotary, Clerk, Registrar, Sheriff or Officer authorized to collect and receive the duty or tax imposed by the Act passed in the twelfth year of Her Majesty's Reign, and intituled: *An Act to make provision for the erection or repair of Court Houses and Gaol at certain places in Lower Canada*, or imposed or hereafter to be imposed by any order or orders in Council under the authority of the said Act, upon the proceedings, matters and things in and by the said Act declared to be liable to such duty or tax, such sum for collecting and receiving the said duty or tax as to the Governor in Council seems just and reasonable, provided such allowance do not exceed the rate of two and a half per centum on the amount of such duty or tax so collected and received. 14, 15 V. c. 17, s. 3.

Allowance to Prothonotaries for collecting, &c., tax under 12 V. c. 112.

FUND FOR THE PUBLICATION OF THE DECISIONS OF THE  
TRIBUNALS.

**18.** From and out of the said Fund collected in any of the *Districts of Montreal, Québec, Three-Rivers and St. Francis* paid

Expense of publishing de-

isions of the  
Courts provid-  
ed for.

paid into the hands of the Receiver General, a reasonable sum may from time to time be taken and applied (according to regulations to be from time to time made by the Governor) to defray the expense of compiling and publishing the decisions of the Tribunals of Lower Canada, and to the payment of a fit Salary to such person or persons as the Governor may from time to time entrust with the said compilation and publication, which persons shall conform to such instructions as may from time to time be given to them by order of the Governor. 13, 14 V. c. 37, s. 13.

Application of  
balance of fund.

19. The amount of each of the *said portions* of the said Fund, or the balance of each portion remaining after the deduction (if any) of the sum necessary to meet the expenses authorized by the next foregoing section, may be employed in such manner as may be directed from time to time by the Governor, in repairing the Court Houses, or for other purposes connected with the administration of Justice, in the Districts wherein such portion has been collected. *ibid*, s. 14.

Judges, Advoca-  
tes and cer-  
tain officers to  
contribute an-  
nually to the  
expense of  
publication.

20. In aid of the compilation and publication of the said decisions, each of the persons hereinafter designated and residing in any of the Districts of Montréal, Quebec, Three-Rivers and St. Francis, shall pay in each year, between the first of October and the thirty-first of December, to the Prothonary or Clerk of the Superior Court in the District in which he resides the sum of five dollars, to wit:

*First.*—The Judges and Prothonotaries or Clerks of the Court of Queen's Bench, the Superior Court, and the Circuit Court;

*Second.*—The Advocates and Attorneys;

*Third.*—The Sheriffs;

*Fourth.*—The Clerks of the Peace;

Amount.

And whenever the office of Sheriff, or of Prothonotary or Clerk is held by more than one person, each such person individually shall pay the said sum of five dollars;

In default of  
payment Pro-  
thonotary to  
sue.

2. In default of payment within the time above directed, the Prothonotary or Clerk to whom such payment ought to be made, shall, in his said quality, have the right and shall be bound to sue by personal action in the Circuit Court, for the recovery of the said sum of five dollars, each of the persons above mentioned who has neglected to pay the said sum in manner aforesaid; and when judgment is rendered in favor of the said prothonotary or clerk, it shall be rendered with costs; and such judgment shall be executed in the same manner as any other judgment of the Circuit Court;

3. And when any such judgment has been rendered against any advocate and attorney, then in default of payment by him of the amount of the principal sum and costs of the action, within two months after judgment rendered, he shall after the said two months have expired, cease to enjoy the right of practising the said profession of advocate and attorney in any of the courts of law in Lower Canada, until he has satisfied the whole amount of the judgment. *ibid*, s. 15.

If judgment be given against an Advocate.

21. The said sum of five dollars shall form part of the fund created by this Act, but shall be solely applied to the purpose mentioned in the *eighteenth* section; and the provisions of this Act relating to the responsibility of the said prothonotaries or clerks, to the payment over by them of the amount received by them, and to their commission of ten per cent. shall apply to this portion of the said fund as well as to the other portions thereof. *ibid*, s. 16.

Said sum to form part of the Special Fund.

22. The accounts to be rendered to the Minister of Finance, under this Act, by any public officer therein mentioned shall be by such officer sworn to as true and faithful, on oath to be taken before one of the judges of any of the courts aforesaid. *ibid*, s. 19.

Accounts rendered under this Act to be sworn to.

23. The Minister of Finance shall keep separate and distinct accounts for each of the district above mentioned, of the portion of the Special Fund created by this Act collected in such district. *ibid*, s. 12.

Separate accounts for each District.

## C A P. X C I V.

## An Act respecting Commissioners' Courts for the summary trial of Small Causes.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

OF THE ESTABLISHMENT OF THESE COURTS, AND OF THEIR JURISDICTION AND POWERS IN GENERAL—OF THE APPOINTMENT, POWERS AND DUTIES OF THE COMMISSIONERS.

Commissioners' Courts established on petition.

**1.** Whenever a petition praying for the establishment of a Commissioners' Court, for the purposes hereinafter mentioned, has been presented by at least one hundred proprietors of lands or tenements in any parish, township or extra-parochial place in Lower Canada, forming an absolute majority of the Municipal electors therein, to the Governor of this Province, he may appoint one or more persons resident in such parish, township or extra-parochial place, to be Commissioner or Commissioners in and for the same, and to hold the Commissioners' Court therein, for the purposes of this Act :

Petitioners must form an absolute majority of the municipal electors of the parish, &c.

**2.** But no appointment of a Commissioner or Commissioners shall be made upon such petition, unless it be certified thereupon to the Governor, by three of the principal inhabitants of such parish, township or extra-parochial place, and who shall be respectively Justices of the Peace or officers of militia holding higher rank than that of Ensign, that the persons whose names thereunto subscribed are really inhabitants of such parish, township or extra-parochial place, and proprietors of lands and tenements therein, and do really form an absolute majority of the Municipal electors thereof ;

Certain persons not to be Commissioners.

**3.** No bailiff, sergeant of militia, tavern-keeper or person keeping a house of public entertainment, shall be appointed, or shall act as a Commissioner. 7 V. c. 19, s. 1,—16 V. c. 14,—and see sections 48 and 49 of this Act.

This Act to extend to the Magdalen Islands and certain other places.

**2.** In like manner, all the provisions of this Act shall, in so far as the same are applicable to and practicable therein, respectively, extend to the Magdalen Islands, and to localities similarly situated, on the river Saguenay and on the rivers Madawaska and St. Jean, on the petition of at least one hundred inhabitant householders *tenant feu et lieu* therein, the petition being always certified as by the first section of this Act it is provided and required, all other requirements of this Act, with respect to the appointment of a Commissioner or Commissioners being also observed. 9 V. c. 15, ss. 1, 3, 5 ?

No Commissioners' Court to be held in certain places.

**3.** No Commissioners' Court shall be held in the cities of Quebec or Montreal, or in the city and parish of Three-Rivers. 12 V. c. 38, s. 81.

4. No more than one Court shall be held in any parish, township, or extra-parochial place in Lower Canada, although two or more Commissioners have been appointed for the same. Only one Court to be held in any parish, &c. 7 V. c. 19, s. 8.

5. Every Commissioner, before proceeding to exercise his functions as such, shall take and subscribe an oath before some Justice of the Peace, well and duly, to the best of his judgment and capacity, to perform the duty of Commissioner, of which oath such Justice of the Peace shall give a copy and certificate to the Commissioner having taken it, who shall cause the same to be annexed to the register of the Court in which he sits: Oath to be taken by Commissioners.

2. The Clerk of any such Court shall in like manner, before entering upon the duties of his office, make oath before a Commissioner entitled to sit therein, faithfully and impartially to execute, to the best of his ability, the duties of his office according to the provisions of this Act; and such oath shall be entered on the register aforesaid. Clerk to take an oath. 7 V. c. 19, s. 37.

6. No Commissioner shall be entitled to, or receive any recompense or remuneration whatever, for any thing by him done under this Act. No remuneration to Commissioners. 7 V. c. 19, s. 36.

7. Each Commissioners' Court shall have power to hear, try and determine in a summary way, according to the rights of the parties, and to equity, and good conscience, and to the best of the knowledge and judgment of the Commissioner or Commissioners by whom it is held, all suits and actions (with the exceptions hereinafter made) purely personal or relating solely to moveable property, wherein the sum or the value of the thing demanded does not exceed twenty-five dollars, and the defendant is resident within the parish, township or extra-parochial place in and for which the Commissioner or Commissioners are appointed, or when he is not so resident in the cases mentioned in sections *nineteen* and *twenty*. Jurisdiction of Commissioners' Courts. 7 V. c. 19, s. 3.

8. The jurisdiction of the Commissioners' Courts shall not extend to actions for slander, or for assault or battery, nor to such as relate to paternity, or to the civil estate of persons in general, or for seduction, or lying-in expenses, or for any fine or penalty-whatever. Not to extend to certain actions. 7 V. c. 19, s. 4.

9. The Commissioners shall have such and the like powers and authority to preserve order in the said Courts during the holding thereof, and by the like ways and means, as by law may be used in like cases and for the like purposes by any Courts of Law in this Province, or by the Judges thereof, respectively, during the sittings thereof. Preserving of order. 7 V. c. 19, s. 25.

OF THE PLACES AND DAYS OF THE SITTINGS OF THE COURTS—  
BY WHOM THEY SHALL BE HELD—AND OF THE RECUSA-  
TION OF THE COMMISSIONERS.

When and  
where the  
Courts shall be  
held.

**10.** The Commissioners' Courts shall be held on the first Monday of every month, not being a holiday, and if it be a holiday, then on the following day, and on any other days to which they may then find it necessary to adjourn for hearing witnesses and for determining suits; and such Courts, respectively, shall be held publicly in some suitable room or place provided for that purpose by the clerks thereof, under the direction of the Commissioners; and the expense of hiring and warming such room or place, and all other expenses necessary for the convenient holding of the said Courts shall be paid by such clerks, respectively, out of the fees hereinafter assigned to them:

Not to be held  
in taverns.

**2.** No such Court shall at any time be held in any tavern or place of public entertainment, nor in any building thereunto appertaining. 7 V. c. 19, s. 9.

By whom the  
Court is to be  
held.

**11.** The Court may be held by any one of the Commissioners appointed for the same parish, township or extra-parochial place, but all the Commissioners appointed for the same place may be present and assist at such Court; and the place where the Court is held in each parish, township or extra-parochial place, shall be near the church, or at the most public place, and shall be fixed by the Commissioner, or by the majority of the Commissioners where there are more than two Commissioners in the same place, and when there are two Commissioners and no more, then by the Commissioner whose name is the first on the list:

Place at which  
the Court is to  
be held to be  
mentioned in  
summons.

**2.** In every summons or order of *subpœna* to be issued under this Act, the place where the Court is to be held shall be mentioned. 7 V. c. 19, s. 8.

Recusation of  
Commissioners.

**12.** If in any suit all the Commissioners are recused by either party (and any recusation and the grounds thereof shall be reduced to writing), and the Court is thereby rendered incompetent to proceed with the case, the suit shall immediately be transmitted to the nearest Commissioners' Court in the same district, and if the recusation be there adjudged valid, such Court shall proceed to hear and determine the cause:

In case the re-  
cusation be ad-  
judged un-  
founded.

**2.** If the recusation be adjudged frivolous or unfounded, the parties shall be sent before the Court in which the Commissioners have been recused, in order that such Court may proceed as if the recusation had not been made; and in such case the Court before whom the cause has been originally brought may, without any reference to the merits thereof, tax the costs of such frivolous or unfounded recusation against the party by whom it was made. 7 V. c. 19, s. 12.

OF THE APPOINTMENT, QUALIFICATION, SECURITY, DUTIES AND REMOVAL OF CLERKS—OF THE APPOINTMENT OF DEPUTIES—AND OF REGISTERS AND PAPERS.

**13.** A Clerk shall be appointed for each Commissioners' Court, and the appointment shall be vested in the Commissioner, or in the majority of the Commissioners where there are more than two Commissioners, and where there are two Commissioners and no more, the appointment of such Clerk shall be vested in the Commissioner whose name is first upon the list : Appointment of clerk.

2. Any Clerk appointed under this Act shall be removable by the Commissioner, or by the Commissioners, or by a majority of them, and another Clerk may be appointed in his stead ; Clerk how removable.

3. The Clerk may, with the permission of the Commissioners or of a majority of them, appoint a Deputy, for whose acts he shall be responsible, and whom he may remove at pleasure. May appoint a Deputy.  
7 V. c. 19, s. 27.

**14.** No more than one Clerk shall be employed or act as Clerk of the Commissioners' Court in any one parish, township, or extra-parochial place, although two or more Commissioners have been appointed in such place. Only one Clerk in each parish, &c. 7 V. c. 10, s. 28.

**15.** No person shall be appointed Clerk of any Commissioners' Court, who has not for his own use and benefit, and in his actual possession, a freehold estate, either in fief, *en roture*, or in free and common socage, in absolute property, or by *emphythéose*, originally created for a term of at least twenty-one years, or by *usufruit* for his life, in lands, tenements, or other immoveable property, lying and being within the limits of the county in which he is to act, of the yearly value of forty-eight dollars, over and above what will satisfy and discharge all incumbrances affecting the same, and over and above all rents and charges payable out of the same ; unless such person gives good and sufficient security, before one of the Commissioners entitled to sit in the Court, for the due performance of his duties, to the amount of two hundred dollars, in which case he may act as a Clerk in the same manner as if he were qualified by property in the manner hereinbefore mentioned : His property qualification.

2. No person who has not reached the legal age of majority, nor any bailiff, sergeant of militia, or person keeping a house of public entertainment or tavern-keeper, or vending spirituous or fermented liquors to be drunk in his house, or on his premises, shall be appointed as Clerk ;—and no Justice of the Peace, nor any person being the father, son, brother, brother-in-law, son-in-law, or nephew, or the clerk or agent of any one of the Commissioners, in his private concerns, shall be or act as Clerk of the Court in which such Commissioner is entitled to sit. Certain persons disqualified. 7 V. c. 19, s. 29.

Registers of  
suits.

**16.** For each Commissioners' Court, there shall be kept by the Clerk a register of all suits instituted before such Court, and of all proceedings had and all judgments rendered therein, and of every matter and thing concerning the same, which register shall contain a succinct statement of the names, additions and residences of the parties, the nature of the demand, and the defence set up, and shall specify what papers (if any) were produced as evidence in the cause, and the date of such papers, and when any notarial instrument is so produced, shall state the names of the Notaries before whom such instrument was executed :

Copies of en-  
tries therein:

2. The Clerk shall give a copy of such entries to any person demanding the same ; and for every such copy, there shall be allowed to the Clerk, at the rate of ten cents for every hundred words : under a penalty of forty dollars, on any Clerk who refuses or neglects to give a copy thereof, to be recovered by the party to whom such copy was refused. 7 V. c. 19, s. 30.

Registers to  
continue to be  
such notwith-  
standing any  
change of Com-  
missioners.

**17.** The register of the Commissioners' Court for any Parish, Township, or extra-Parochial place, shall continue to be the register of the Commissioners' Court for the same place, notwithstanding any change in the persons for the time being Commissioners or Clerk :

Delivery of re-  
gister by per-  
son ceasing to  
act as Clerk.

2. The Clerk of any Commissioners' Court who ceases to perform the duties of his office, (or in case of death, his heirs or legal representatives) shall, under the penalty last mentioned, forthwith deliver the register and papers in his or their possession to the Commissioner or Commissioners, or to the person appointed to be Clerk of the said Court. 7 V. c. 19, s. 31.

#### OF ATTORNEYS.

Who only may  
act as Attor-  
neys in the  
Court.

**18.** No Bailiff or Sergeant of Militia shall act as Attorney before any Commissioners' Court, nor shall any other than an Attorney or Barrister, duly commissioned to practise the Law in Lower Canada, so act without a power of Attorney in writing, except in presence of the party and at his request :

Parties not  
Barristers, &c.,  
may act as At-  
torneys *gratis*  
only.

2. Any person not duly commissioned to practise the Law, who acts or practises before any Commissioners' Court as Attorney of the parties, plaintiff or defendant, shall be bound to do so *gratis*, without demanding or receiving any fee or remuneration whatsoever ; and any person acting as Attorney of any party, before the Commissioners, or any of them, without being duly commissioned to practise the Law as aforesaid, who directly or indirectly receives in consideration of such services, any fee, emolument, or remuneration whatsoever, shall be held to have obtained the same under false pretences with intent to defraud the party from whom he received it, and shall be liable to punishment accordingly, and shall for ever after be incapable of acting as Attorney before any Commissioners' Court ;

2. No Clerk of any such Court shall act as Attorney or *Porteur de pièces* in any case whatsoever. No Bailiff or other person who has served or executed any summons or process in any suit, shall be a competent witness to such suit on behalf of the party by whom such summons or process has been sued out, except only with regard to the service or execution of the same. 7 V. c. 19, s. 32. Clerk of Court disqualified.

**OF ACTIONS—OF THE PLACE AT WHICH THEY SHALL BE BROUGHT, AND OF THE RIGHT OF MINORS ABOVE FOURTEEN YEARS OF AGE TO SUE FOR WAGES.**

19. Whenever no Commissioner has been appointed for and is resident in the Parish, Township or extra-Parochial place in which the defendant resides, or if all the Commissioners are absent or sick, or unable to act, so that the Court cannot be held, then such defendant may be sued before the Commissioners' Court nearest to the place in which the defendant resides and in the same district, provided the distance do not exceed ten leagues; and in every case the suit may be brought before the Commissioners' Court nearest to the residence of the defendant, although such Court be not within the same Parish, Township, or extra-Parochial place, provided it be within ten leagues, and in the same district. 7 V. c. 19, s. 7. Defendant may in certain cases be sued before the nearest Court though not in the parish in which he resides.

20. Whoever has contracted a debt in any parish or township in which a Commissioners' Court is established, may be sued in such Court and the judgment may be carried into execution, provided that the debtor do not reside in a parish or township being at a greater distance than five leagues from such parish or township in which the debt has been contracted; but the debtor so sued shall not be obliged to pay any greater amount of costs for services performed by Bailiffs or Sergeants of Militia than he would be obliged to pay if he were sued in the parish or township in which he resides, and the difference in the amount of such costs in such case shall be paid by the creditor bringing the action. 20 V. c. 38, s. 1. Suit may be brought where debt was contracted subject, to certain conditions.

21. Any person under the age of twenty-one years, but above the age of fourteen years, may prosecute a suit in any Commissioners' Court, for any sum of money not exceeding twenty-five dollars, due to him for wages, in the same manner as if he were of full age. 7 V. c. 19, s. 5. Persons under 21 but over 14 years may sue for wages.

**OF WRITS OF SUMMONS, SAISIE-GAGERIE, SAISIE REVENDICATION AND SAISIE-ARRET BEFORE AND AFTER JUDGMENT—OF THE AFFIDAVITS TO OBTAIN CERTAIN WRITS, AND OF THE COSTS OF SAISIE-ARRET BEFORE JUDGMENT.**

22. In any case cognizable in a Commissioners' Court, any one of the Commissioners, upon request or application to him made, may grant and cause to be issued a summons in the form Summons, how issued.

Delay between service and return.

of that one of the Schedules annexed to this Act which suits the case, and which shall not be returnable within less than three days from the day of service, in cases where the defendant resides within two leagues from the place at which he is summoned to appear, allowing one day more between the service and return of every such summons for every five leagues distance over and above the said two leagues. 7 V. c. 19, s. 11.

Court may issue warrants in the nature of certain writs.

**23.** Any Commissioners' Court, in cases cognizable by such Court, may issue warrants of *saisie gagerie*, and *saisie revendication* (the necessary affidavit being first made before a Commissioner of such Court) and of *saisie arrêt* after judgment, in all cases where writs of like nature are allowed to issue out of other Courts by law; and such warrants shall respectively be in the forms prescribed in the Schedules to this Act annexed. 7 V. c. 19, s. 22.

In what cases attachment before judgment may issue.

**24.** Process of attachment, *arrêt simple* or *saisie arrêt*, prior to trial and judgment, may issue from the Commissioners' Courts in Lower Canada, in all cases within their jurisdiction, and for a sum not less than five dollars, upon the affidavit of the plaintiff or his agent to the effect that the debtor is secreting or about to secrete his estate, debts and effects, or is about to abscond, such affidavit to be conformable to the laws in force in Lower Canada, with reference to cases exceeding forty dollars. 18 V. c. 107, s. 1.

Clerk of the Court may receive the required affidavit.

**25.** The Clerk of any Commissioners' Court, or any person authorized by law to act as such Clerk, may receive the necessary affidavits and issue such writs of attachment, *arrêt simple* or *saisie arrêt*, in the same manner as by law the Clerks of the Circuit Court may do in cases under forty dollars:

Commissioner may also receive it.

2. Provided, however, that nothing herein contained shall prevent any Commissioner of small causes from receiving such affidavit upon which to issue such writs of attachment as aforesaid; and any such Commissioners may administer the necessary oaths and receive the said affidavits, and grant a *fiat* or order for any such writs returnable into the said Commissioners' Court, to be therein heard, tried and determined according to law and the course and practice of the said Court. 18 V. c. 107, s. 2.

Costs in such cases.

**26.** The costs of the said writs of attachment, *arrêt simple* or *saisie arrêt*, before trial and judgment, and proceedings in the Commissioners' Courts, shall be the same as in cases of seizure on writs of execution issuing from the said Courts. 18 V. c. 107, s. 3.

Return day to be appointed in such warrants.

**27.** In every warrant of execution, *saisie arrêt*, *saisie revendication*, and *saisie gagerie*, the day on which it is to be returned

returned shall be named, and it shall be returned, with the proceedings thereon duly certified, on the day so named, which shall not be less than fifteen nor more than forty days from the date of such warrant. 7 V. c. 19, s. 23.

OF THE SERVICE AND EXECUTION OF WRITS AND ORDERS.

**28.** No summons, order or other process issued under this Act, shall be served or executed, except by a bailiff or sergeant of militia, nor by any bailiff or sergeant of militia not residing in the parish, township, or extra-parochial place wherein the defendant or witness respectively reside, unless he renounces all claim to any greater sum for travelling expenses than that to which a person resident therein would be entitled,—except where there is no bailiff nor sergeant of militia residing in the parish, township, or extra-parochial place wherein any such process is to be served, qualified or willing to make a return in writing, in which case such process may be served or executed by a bailiff or sergeant of militia residing out of such place, and he shall be allowed his travelling expenses from the residence of the bailiff or sergeant of militia residing nearest to the place where the service is to be made,—or the Commissioner may in such case specially address such process to any other person by name, resident in the parish, township, or place where the service is to be made, who shall make oath to the due service and execution thereof:

Who may serve process of a Commissioners' Court.

2. No warrant of execution or process authorizing the seizure of any property whatever shall be addressed to any person other than a bailiff. 7 V. c. 19, s. 33.

Executions, &c., only to be addressed to a bailiff.

OF EVOCATION AND INSCRIPTION DE FAUX.

**29.** In all cases where a defendant or other party may evoke a suit out of the Circuit Court into the Superior Court, and may appeal from thence to the Court of Queen's Bench, and to Her Majesty in Her Privy Council, such defendant or other party, being a suitor before a Commissioners' Court, shall have the same right of evocation and appeal, and may evoke the suit to the Superior Court in the district. 7 V. c. 19, s. 13, *part.*

Evocation and appeal allowed in certain cases.

**30.** When any notarial instrument or authentic copy of the same, or any writing under private signature, produced in evidence in any suit before any Commissioners' Court, is alleged to be forged or falsified, such allegation shall operate as an evocation of the suit to the Superior Court in the district. 7 V. c. 19, s. 14.

Allegation of forgery to operate as an evocation.

**31.** Whenever any such evocation as is herein last mentioned occurs, and security has been given as hereinafter provided, the Commissioner or one of the Commissioners before whom

Transmission of documents alleged to be forged.

whom such document was alleged to be forged or falsified; or the Clerk of the Court shall, within fifteen days next thereafter, certify and transmit to the Prothonotary of the Superior Court, the document impugned, all the documents produced in the cause, and a certified copy of the entries in the register respecting the same :

Security to be given.

2. No Commissioner or Clerk shall so transmit any such document, unless sufficient security for the payment of the costs of the *inscription en faux* has been given before him by the party making such inscription. 7 V. c. 19, s. 15.

Superior Court to try the case and the *inscription en faux*.

32. Upon such evocation the Superior Court shall hear, try and determine the matter of the *inscription en faux*, and the whole matter in issue between the parties, as if the cause had been originally instituted in the said Court, and may award such costs against the party making such inscription, if he fail to substantiate the charge thereby made, as might in like case be awarded on an *inscription en faux*, in any case before such Court. 7 V. c. 19, s. 16.

OF THE DELAY FOR PROOF AND HEARING—OF ARBITRATION—  
SUMMONING OF WITNESSES, AND OF THE PENALTY AGAINST  
ABSENT WITNESSES—AND OF PROOF—AND COSTS.

Except in certain cases a day subsequent to the return day to be appointed for hearing the cause.

33. Except as hereinafter excepted, the witnesses in any suit shall not be summoned to attend on the day of the return of the summons to the defendant; but in all cases of default or plea to the action on the part of the defendant, a subsequent day shall be named for receiving evidence :

Exceptions.

2. But if the defendant makes default when the service on him has been personal, the plaintiff may then proceed immediately to prove his case by witnesses if necessary; and in such cases, as well as in all cases of default wherein sufficient written evidence is to be adduced on the day of the return, or where the defendant confesses judgment, or both parties agree that the case be heard and determined forthwith, the Court may hear the case and give judgment, *instante*. 7 V. c. 19, s. 19.

Cases in which it may be heard *instante*.

Any matter may, by consent, be referred to arbitrators.

34. In any suit brought before any Commissioners' Court, the matter or matters in contestation in the suit, may, by consent of the parties, be referred, or the Court in its discretion may order the same to be referred to the judgment and decision of three Arbitrators, one to be named by the Court, and one by each of the parties, and to be sworn before a Commissioner, or before any Justice of the Peace; and such Arbitrators may hear the parties and witnesses, and the report and award of any two of them shall be final, and judgment shall be entered thereon, to be executed as in ordinary cases. 7 V. c. 19, s. 17.

**35.** Any Commissioner entitled to sit in the Court before which any suit or action has been instituted, may, on the application of either party, issue orders of *subpœna* in the form prescribed in the Schedule to this Act, to compel the appearance of witnesses before the Court, under a penalty not exceeding four dollars, nor less than one dollar, for each default to attend, as by such order of *subpœna* commanded; and any such Commissioner may administer to such witnesses, or to any party to the suit who may be lawfully examined therein, an oath or affirmation in the usual manner. 7 V. c. 19, s. 18.

Commissioners may issue subpœnas.

**36.** In matters cognizable in the said Commissioners' Courts, proof by oral testimony shall be receivable and sufficient in all cases wherein *by law it would be* receivable and sufficient if the sum or the value of the thing in dispute were less than one hundred livres, *ancien cours*. 7 V. c. 19, s. 6.

Oral testimony admissible in certain cases.

**37.** Any Commissioners' Court may grant a stay of execution, and order that the amount for which judgment has been given be paid in two or three instalments, at intervals of not more than one month each; Provided, that if any one of the said instalments is not paid at the time appointed, execution may at once issue for so much as then remains due:

Stay of execution in certain cases.

2. When any poor defendant, before judgment, offers sufficient security to the satisfaction of the Court, for the amount of the debt and costs, the Court may order that the amount of the judgment be paid by weekly instalments, the last of which shall not be made more than six months after the date of the judgment. 7 V. c. 19, s. 20.

Amount of judgment may be ordered to be paid by instalments.

**38.** When the sum or the value of the thing for which judgment is rendered in any Commissioners' Court does not exceed two dollars, the costs and expenses (exclusive of travelling expenses and of arbitration) to be adjudged against the defendant, may be reduced and restrained by order of the Court to the principal sum or the value of the thing for which judgment is given, in case it appears just to the Court to make such order. 7 V. c. 19, s. 35.

Costs when the judgment is for not more than two dollars.

**39.** In all cases where any suit or action, against any person residing within the jurisdiction of any Commissioners' Court, for any cause or matter cognizable before such Court, is brought before any Circuit Court, or before the Superior Court, the plaintiff shall not be entitled to recover any greater amount of costs than if such suit or action had been brought before the Court established by this Act; but this limitation of costs shall not apply to any action, suit or prosecution, after evocation from such Court. 7 V. c. 19, s. 13,—12 V. c. 38, s. 47.

As to suits brought in the higher Courts which might have been brought in the Commissioners' Courts.

## TARIFF FOR CLERKS, BAILIFFS AND SERGEANTS.

Fees allowed to  
the Clerk.

**40.** The Clerk of any Commissioners' Court may demand and receive—

For every summons made and delivered by him to any suitor, by order of the Court or of any Commissioner entitled to sit therein, thirty cents ;

For every copy of a summons, ten cents ;

For every subpoena, fifteen cents ;

For every copy of a subpoena, ten cents ;

For every judgment and copy thereof, twenty-five cents.;

For every warrant of execution or seizure, twenty-five cents ;

For every copy thereof, ten cents ;

For entering every opposition allowed by a Commissioner, ten cents ;

Fees to bailiffs,  
&c., for service  
of process.

**2.** And the bailiff or sergeant of militia may demand and receive for every service of process and certificate thereof, the sum of twenty cents, and at the rate of six cents and two-thirds of a cent per mile for the distance he has gone to perform such service, the distance in returning not entitling him to any allowance ; But the bailiff or sergeant of militia by whom any service shall be made as aforesaid, upon one and the same defendant, shall not be entitled to travelling expenses for more than one journey though he has more than one summons or process to serve ;

Proviso.

Penalty for  
compounding  
for a less sum  
and afterwards  
exacting a  
greater as mil-  
age.

**3.** If any plaintiff who, having given more than one summons or process to one bailiff or sergeant of militia to be by him served, compounds with him for a less sum than that to which he would be entitled, or if any bailiff or sergeant of militia consents to any such composition, and such plaintiff, or such bailiff or sergeant of militia afterwards receives from any person, under colour of receiving the costs on the service of such summons or process, a greater sum than that so compounded for, he shall be deemed to have obtained the same under false pretences with intent to defraud the party from whom he received it, and shall be liable to punishment accordingly. 7 V. c. 19, s. 34.

## OF THE SAISIE-EXECUTION AND SALE.

Execution to  
issue if the  
judgment is not  
satisfied.

**41.** If any party refuses or neglects to pay and satisfy any judgment rendered in a Commissioners' Court for a sum of money within eight days after it is obtained, together with such costs as are adjudged thereon, any one of the Commissioners entitled to sit in the Court may, by a warrant of execution under his hand and seal, and in the form of the Schedule annexed to this Act ; cause the same to be levied by the seizure, and after public notice thereof given according to law, by the sale of the goods and chattels of the party so refusing or neglecting

as

as aforesaid, which are found within the district, together with the costs and charges attending such execution, which shall not in any case exceed the sum of one dollar and fifty cents.

**42.** When the seizure only of the goods has taken place, the said costs and charges shall not exceed the sum of seventy-five cents; travelling expenses and expenses of feeding any cattle seized, excepted in all cases. *7 V. c. 19, s. 21.* Costs of seizure limited.

**OF OPPOSITIONS, INTERVENTIONS AND SAISIE-ARRÊTS AFTER JUDGMENT, AND OF THE PROCEEDINGS THEREON.**

**43** All oppositions allowed by a Commissioner, interventions, and *saisie arrêts* after judgment, shall be heard and decided summarily before the Commissioners' Courts, in the same manner as the causes in which they arise, or to which they relate. *7 V. c. 19, s. 24.* Oppositions, interventions, &c., how decided.

**OF THE POWERS OF THE COMMISSIONERS' COURTS IN CASES OF RESISTANCE TO THEIR ORDERS, WRITS, SEIZURES AND SALES.**

**44.** In all cases where any resistance is offered to the execution of any summons, warrant of execution, or any other process, issued out of any Commissioners' Court, under the authority of this Act, the Court may enforce the due execution of the same, by the means provided by the laws of Lower Canada for enforcing the execution of the process of other Courts in like cases. *7 V. c. 19, s. 26.* Resistance to process.

**OF THE PENALTY AGAINST COMMISSIONERS AND CLERKS FOR MALVERSATION.**

**45.** Any Commissioner or any Clerk, who, in the execution of the trust reposed in him, misdemeanors himself, or delivers to any Bailiff or Sergeant of Militia or other person, any process to be by him or them distributed, sold or otherwise illegally disposed of, shall, for each such offence, incur a penalty of forty dollars, and shall be thenceforth disabled from acting as Commissioner or Clerk as aforesaid. *7 V. c. 19, s. 38.* Penalty on Commissioners or Clerks guilty of misconduct.

**46.** All pecuniary penalties hereby imposed or incurred for offences committed against this Act, may be sued for and recovered before any Court having civil jurisdiction to the amount of the fine or penalty, in the district in which the offence was committed; and one moiety of such penalties shall go to the person suing for the same, and the other moiety shall be paid into the hands of the Receiver General, and form part of the Consolidated Revenue Fund of this Province. *7 V. c. 19, s. 39.* Recovery of penalties.

## RIGHT OF EVERY COMMISSIONER TO A COPY OF THIS ACT.

Each Commissioner to receive a copy of this Act.

**47.** Each Commissioner appointed under this Act, shall be entitled to receive a printed copy thereof, in the French and English languages, to be transmitted to him, in the manner by law provided for the distribution of the printed Acts of the Legislature. 7 V. c. 19, s. 41.

## OF THE MODE OF OBTAINING THE DISCONTINUANCE OR ESTABLISHMENT OF A COMMISSIONERS' COURT.

Court may be discontinued on petition of an absolute majority of the municipal electors of the place.

**48.** On a petition, signed by an absolute majority of the inhabitants of a Parish, Seignior or Township in Lower Canada, in which there is, then a Court for the trial of Small Causes, who are entitled to vote at the election of Municipal Councillors, which petition shall have annexed to it a certificate of at least three persons residing in such Parish, Seignior or Township, (and who must be respectively either Justices of the Peace or Officers of Militia holding rank higher than an Ensign,) certifying that the persons signing the petition do really form an absolute majority of the Municipal Electors residing in such Parish, Seignior or Township, the said petition praying that the Commissioners' Court in the said parish, seignior or township may be suspended or discontinued, the Governor in Council may suspend or discontinue it :

In what cases only such Court may be established.

**2.** And no Commissioners' Court shall be established or re-established, unless on a petition signed by an absolute majority of the Municipal Electors of a parish, seignior or township in Lower Canada, and certified as aforesaid. 16 V. c. 14.

Signatures of petitioners to be established on oath.

**49.** Before any petition under this Act, either for the discontinuance or for the re-establishment of a Commissioners' Court in any parish, seignior or township, is certified by any Justice of the Peace or Officer of Militia, as being signed by an absolute majority of the Municipal Electors residing in such parish, seignior or township, each signature shall be attested on oath, before some Justice of the Peace residing in the county in which such parish, seignior or township lies, by some Municipal Elector of such parish, seignior or township known to such Justice of the Peace, in the following form, or words to the like effect :

Form of oath.

“ I, M. N. swear that A. B., C. D. and E. F. (*inserting the names of the party or parties whose signature or signatures are to be attested*) signed the above written petition in my presence ; that I am personally acquainted with him (*or them*) and know that he is (*or each of them is*) a Municipal Elector of the Parish (Seignior or Township) of *(if any of the signers make their marks instead of signing their names, add,)* and that the said petition was read over distinctly and explained

“ explained to those of the said signers who have made their  
 “ marks thereto instead of signing their names.”

(Signature), M. N.

“ Sworn before me, one of Her Majesty’s Justices of the  
 “ Peace for the County of by M. N., (*trade, profession*  
 “ *or quality*) who is personally known to me as a Municipal  
 “ Elector of the Parish (Seigniorv or Township) of  
 “ and as a person worthy of credit, at this  
 “ day of , one thousand eight hundred and .”

O. K.,  
 J. P.

16 V. c. 202.

OF THE TRANSMISSION OF THE EXECUTION OF JUDGMENTS  
 RENDERED BY COMMISSIONERS WHICH HAVE CEASED OR  
 MAY HEREAFTER CEASE TO EXIST.

50. The judgments of the several Commissioners’ Courts in Lower Canada, and which have ceased to exist whether before or after the coming into force of these Consolidated Statutes, shall be executed as if the said judgments had been rendered by the Circuit Court, or by the nearest Commissioners’ Court then existing in the same District ;—and the Clerks of such Commissioners’ Courts shall forthwith deposit the Records of the said ceasing Courts in the Commissioners’ Court in existence nearest to the place where such Courts have ceased to exist, or if there be no such Commissioners’ Court, then in the Circuit Court of the same District ; and the Clerks of the said Courts at the places where the Records are deposited respectively, shall accordingly issue Writs of Execution by virtue of the said judgments, and ulterior proceedings shall be had upon the said judgments, as if the same had been rendered by the Circuit Court, or by such other Commissioners’ Court in the same District, by virtue of the laws then in force. 14, 15 V. c. 90, s. 2.

How judgments of Commissioners’ Courts which have ceased to exist shall be executed.

SCHEDULE No. 1.

FORM OF SUMMONS.

Province of Canada, }  
 District of }

In the Commissioner’s Court for the Parish (Township, or extra-Parochial Place, as the case may be) of

To A. B. of (A. B.’s residence), in the said District, Carpenter, (or as the case may be,)—Greeting :

You are hereby commanded to pay to C. D. of (C. D.’s residence,) Grocer, (or as the case may be,) the sum of  
 dollars,

dollars, which he demands of you as being due to him for  
*(state briefly the cause of action,)* and remaining unpaid, with  
 his costs; or to appear before this Court, at the            house  
 of            in the said Parish *(or as the case may be,)* of  
 at            o'clock in the            noon, of            the            day of  
                  next, *(or instant,)* to answer the demand of the said  
 C. D., otherwise judgment may be given against you by default.

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

E. F., Commissioner.

[L. S.]

### SCHEDULE No. 2.

#### FORM OF SUBPENA.

Province of Canada, }  
 District of            }

In the Commissioners' Court for the Township *(or as the case  
 may be,)* of

To

Greeting:

You are hereby commanded, that laying aside all business  
 and excuses, you (and each of you) be and appear in your  
 proper person before this Court, at            house of            in  
 the said Parish *(or as the case may be,)* of            on the  
 day of            at            o'clock in the            noon, then  
 and there to testify whatever you or either of you may know in  
 a cause between            , Plaintiff, and  
 Defendant, pending before this Court. *(If the Witness be re-  
 quired to bring with him any paper or thing, mention it.)* And  
 this you or either of you shall by no means omit, under the  
 penalties of the law.

Given under my hand and seal, this            day of            18

E. F., Commissioner.

[L. S.]

SCHEDULE No. 3.

FORM OF A WARRANT OF EXECUTION TO LEVY A SUM OF MONEY.

Province of Canada, }  
 District of }

In the Commissioner's Court for the Parish (or, as the case may be,) of

To any Bailiff in the said District of Greeting :

Whereas A. B. of (A. B's residence, and profession, trade or calling) did on the day of before this Court, recover Judgment against C. D. of (C. D's residence, and profession, trade or calling,) for the sum of for his debt, and for his costs, of which execution remains to be done: you are therefore hereby commanded to levy, of the goods and chattels and effects of the said C. D.,—except his beasts of the plough, his implements of husbandry, and the tools of his trade, unless the other goods and chattels shall prove insufficient, and excepting always the bed and bedding, and the necessary wearing apparel of himself and his family, and also one cow, three sheep, one hog, a single stove, and one cord of firewood, to be selected by him out of any larger number he may have,—(if the seizure be in satisfaction of a debt contracted for any cow, sheep, hog, stove, or firewood, it will be seizable, and must be left out of the list of articles exempt from seizure,) the aforesaid sum and costs, together with for the costs of this execution, returning to the said C. D. the overplus, if any there be, after having satisfied the aforesaid sums; and you are further commanded to make return of this Warrant, with your doings thereon before this Court, at the house of in the said Parish (or as the case may e) of on or before the day of next, (or instant).

Given under my Hand and Seal, this day of in the year of our Lord 18

E. F., Commissioner.

[L. S.]

## SCHEDULE No. 4.

FORM OF A WARRANT OF SIMPLE *saisie en main tierce*.

Province of Canada, }  
 District of }

In the Commissioner's Court for the Parish (or, as the case may be,) of

To any Bailiff of the said District of Greeting :

At the instance of A. B. of (A. B.'s residence and profession, trade or calling,) you are hereby commanded for assuring the payment of the sum of dollars due him by C. D., of (C. D.'s residence and profession, trade or calling,) under Judgment of this Court, (state briefly the subject and date of the judgment,) to seize and attach in the hands of E. F., of (E. F.'s residence and profession, trade or calling,) all sums and things generally whatsoever, which he owes or shall owe on any account whatsoever, or shall have in his hands belonging to the said C. D., strictly prohibiting him from parting with the same, on pain of paying the same twice, and of being personally liable for the sum so due to the said A. B. as aforesaid.

And you are further commanded to summon the said C. D. and E. F. to appear before this Court, at the house of in the said Parish, (or as the case may be) of , on the day of next, (or instant,) at o'clock in the noon, the said C. D. to show cause why this attachment (*saisie arrêt*) should not be declared good and valid, and the said E. F. to make his declaration under this warrant; notifying them that otherwise order may be made in the matter by default; and have you then and there this warrant, with your doings thereon.

Given under my Hand and Seal, this day of 18 .

G. H., Commissioner.

[L.S.]

## SCHEDULE No. 5.

FORM OF A WARRANT OF *saisie gagerie*.

Province of Canada, }  
 District of }

In the Commissioner's Court for the Parish (or, as the case may be,) of

To any Bailiff of the said District of Greeting :

At the instance of A. B. of (A. B.'s residence and profession, trade or calling,) you are hereby commanded to

to distrain by *saisie-gagerie* all the goods and chattels belonging to C. D. of (C. D.'s residence and profession, trade or calling,) and being in the house by him occupied (or the produce and effects in the barns and other buildings occupied by the said C. D.) for the surety and payment of the sum of \_\_\_\_\_ due by the said C. D. to the said A. B. for the rent of the said premises, held by him of the said A. B.

And you are further commanded to summon the said C. D. to appear before this Court, at the \_\_\_\_\_ house of \_\_\_\_\_, in the said township (or as the case may be) of \_\_\_\_\_ at \_\_\_\_\_ of the clock in the \_\_\_\_\_ noon, on the \_\_\_\_\_ day of \_\_\_\_\_ instant, (or next,) to answer the demand of the said A. B., and to show cause why the said *Saisie Gagerie* should not be declared good and valid; notifying the said C. D. that if he fail so to appear, either in person or by his Attorney, judgment may be given against him by default;—and have you then and there this warrant with your doings thereon

Given under my Hand and Seal, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of Our Lord 18 \_\_\_\_\_

E. F., Commissioner.

[L. S.]

### SCHEDULE No. 6.

#### FORM OF A WARRANT OF *saisie revendication*.

Province of Canada, }  
District of \_\_\_\_\_ }

In the Commissioners' Court for the Township (or as the case may be) of \_\_\_\_\_

To any Bailiff in the said District of \_\_\_\_\_ Greeting:

At the instance of A. B., of \_\_\_\_\_ (A. B.'s residence and profession, trade or calling,) you are hereby commanded to seize a certain cart painted red, (or as the case may be) to be further described and pointed out to you by the said A. B., and which he claims as being his property, unjustly detained from him by C. D., of \_\_\_\_\_ (C. D.'s residence and profession, trade or calling,) and safely to keep the said cart, so as to have the same forthcoming to abide the judgment to be given in the case.

And you are further commanded to summon the said C. D., to appear before this Court, at the \_\_\_\_\_ house of \_\_\_\_\_ in the said Township (or as the case may be) of \_\_\_\_\_ at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, on the \_\_\_\_\_ day of \_\_\_\_\_ instant, (or next,) to answer the demand of the \_\_\_\_\_ the

the said A. B., and to show cause why the said seizure should not be declared good and valid, and the said cart to be the property of the said A. B.; notifying the said C. D that if he fail so to appear, either in person or by his Attorney, judgment may be given against him by default; and have you then and there this warrant, with your doings thereon.

Given under my Hand and Seal, this       day of  
in the year of Our Lord 18

E. F., Commissioner.

[L. S.]

CAP. XCV.

An Act respecting the Writ of *Habeas Corpus*, Bail and other provisions of law for securing the liberty of the Subject.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

IN CRIMINAL MATTERS.

*Who may obtain the Writ and how.*

1. All persons committed or detained in any prison within Lower Canada, for any criminal or supposed criminal offence, shall of right be entitled to demand, and obtain from the Court of Queen's Bench or from the Superior Court or the *Circuit Court* in Lower Canada, or any one of the Judges of either the said Courts, the writ of *habeas corpus*, with all the benefit and relief resulting therefrom, at all such times, and in as full, ample, perfect and beneficial a manner, and to all intents, uses, ends and purposes, as Her Majesty's subjects within the realm of England, committed or detained in any prison within that realm, are there entitled to that writ, and the benefit arising therefrom, by the common and statute laws thereof. 24 G. 3, c. 1, s. 1,—1 G. 4, c. 8,—7 V. c. 17, s. 15,—12 V. c. 37, s. 41,—12 V. c. 33, s. 98,—12 V. c. 40, s. 3,—20 V. c. 44, ss. 13, 35.

All persons committed to prison for criminal offences entitled to a writ of *habeas corpus*.

2. And for the prevention of delays which may be used by sheriffs, gaolers, and other officers and persons to whose custody any of Her Majesty's subjects are committed or detained, for criminal or supposed criminal matters, in making returns of writs of *habeas corpus* to them directed,—whenever any person brings any writ of *habeas corpus*, directed to any sheriff, gaoler, minister, or other person whatsoever, for any person in his custody, and the said writ is served upon the said officer, or left at the gaol or prison with any of the under officers, under keepers, or deputy of the said officers or keepers, then the said officer or officers, his or their under officers, under keepers, deputies or others persons, shall, within three days after the service thereof as aforesaid (unless the commitment was for treason or felony plainly and specially expressed in the warrant of commitment)—upon payment or tender of the charges of bringing the said prisoner, to be ascertained by the Judge who awards the writ, and endorsed upon it, not exceeding sixty cents per league, and upon security given, by his own bond, to pay the charges of bringing back the prisoner, if he is remanded by the court or judge before whom he is brought, and that he will not make any escape by the way,—make return of such writ, and bring, or cause to be brought, the body of the party so committed or detained unto or before one of the judges of the said court whence the writ issues, or before any

For preventing delays to returns of such writs.

Mileage.

Return to be made and in what manner.

any

any other judge before whom the writ is made returnable, according to the command thereof, and shall then likewise certify the true causes of the detainer or imprisonment,--unless the commitment of the party be in any place beyond the distance of ten leagues from the place or places where such court or judge is or resides,--and if beyond the distance of ten leagues, and not above thirty leagues, then within the space of ten days,--and if beyond the distance of thirty leagues, and not above sixty leagues, then within the space of twenty days,--and if beyond the distance of sixty leagues, and not above one hundred leagues, then within the space of forty days,--and if beyond the distance of one hundred leagues, then within the space of three months, if from the first day of March to the twentieth of September, otherwise in the space of eight months, after such delivery and service of the writ as aforesaid, and not longer :

Body of prisoner not to be produced unless payment of charges of so doing be made.

2. But if such payment or tender is not made by the person bringing the writ to the sheriff, gaoler, minister, or other person as aforesaid, such sheriff, gaoler, minister, or other person, shall return the writ with the true causes of the imprisonment or detainer, without bringing or causing to be brought the body of the person committed or detained as thereby commanded, and shall certify on the back thereof, that a default of such payment or tender is the cause why the body of the person is not brought therewith ; which shall be deemed a sufficient return. 24 G. 3, c. 1, s. 2.

How writs shall be marked and signed.

3. And that no sheriff, gaoler, or other officer, may pretend ignorance of the import of any such writ :--all such writs shall be marked in this manner,--*By virtue of chapter of the Consolidated Statutes for Lower Canada,*--and shall be signed by the person who awards the same. 24 G. 3, c. 1, s. 3,--*part.*

Writ to be granted on view of copy of warrant, or on affidavit that such copy has been denied.

4. And if any person is committed or detained as aforesaid, for any crime (unless for felony or treason plainly expressed in the warrant of commitment) in the vacation time, and out of term or sessions, such person (not being convicted or in execution by legal process) or any one on his behalf, may complain to one of the Judges of the Court of Queen's Bench or Superior Court, who upon view of the copy of the warrant or warrants of commitment and detainer, or otherwise upon oath made, that such copy was denied to be given by the person in whose custody the prisoner is detained, shall, upon request made in writing by such person, or any one on his behalf, attested and subscribed by two witnesses present at the delivery of the same, award and grant a writ of *habeas corpus* under the seal of the court of which such judge is a member, directed to the officer or person, in whose custody the party so committed or detained is returnable *immediate* before the said Judge ;

2. And upon service of the writ as aforesaid, the officer or his under officer or deputy, in whose custody the party is so committed or detained, shall, within the times respectively before limited, bring such prisoner before the Judge, before whom the said writ is made returnable, and in case of his absence, before any other Judge of the same court, with the return of such writ and the true causes of the commitment and detainer ;

Person in custody to be brought before the Judge.

3. And thereupon, within two days after the party shall be brought before him, the judge, before whom the prisoner is brought as aforesaid, shall discharge the said prisoner from his imprisonment, taking his recognizance, with one or more surety or sureties, in any sum which shall not be excessive, according to his discretion, having regard to the quality of the prisoner and nature of the offence, for his appearance in the Court of Queen's Bench, at the next term, or general gaol delivery, in and for the district where the commitment was, or where the offence was committed, or in such other court where the offence is properly cognizable, as the case requires, and then shall certify the said writ with the return thereof, and the said recognizance into the court where such appearance is to be made,—unless it appears, unto the said judge, that the party so committed is detained upon a legal process, order or warrant out of some court that hath jurisdiction of criminal matters, or by some warrant signed and sealed with the hand and seal, either of one of the judges of the said Court of Queen's Bench or of the Superior Court, or of some justice of the peace, for such matters or offences for which, by the law, the prisoner is not bailable. 24 G. 3, c. 1, s. 3.

Judge to discharge prisoner and take his recognizance.

Exception.

5. If any person has wifully neglected, by the space of two whole terms of the Court of Queen's Bench, for the district where such detention or imprisonment is, after his imprisonment, to pray a writ of *habeas corpus* for his enlargement, such person shall not have a writ of *habeas corpus* to be granted in vacation time, in pursuance of this Act. *ibid*, s. 4.

In certain cases no writ to be granted in vacation.

PENALTIES AGAINST PERSONS DISOBEYING THE WRIT, OR REFUSING COPIES OF COMMITMENT, &C.

6. If any officer, his under officer, under keeper or deputy, or other person, neglects or refuses to make the return aforesaid, or to bring the body of any prisoner according to the command of the writ, within the respective times aforesaid, or, upon demand made by the prisoner or any person in his behalf, refuses to deliver, or within the space of six hours after demand, does not deliver to the person so demanding, a true copy of the warrant or warrants of commitment and detainer of such prisoner (which he is hereby required to deliver accordingly)—such head gaoler or keeper or the person or persons in whose custody the prisoner is detained, shall, for the first offence,

Penalty on officers refusing to make a return or produce the body or to give a copy of the commitment.

forfeit to the prisoner or party grieved, the sum of one hundred pounds sterling, and for the second offence, the sum of two hundred pounds sterling, and shall be incapable to hold or execute his said office :

How the penalties may be recovered.

2. The said penalties may be recovered by the prisoner or party grieved, his executors or administrators, against such offender, his executors or administrators, by any action of debt, suit, bill, plaint or information in the Superior Court of Lower Canada, or any other court of record, having original jurisdiction within Lower Canada, wherein no privilege, protection, injunction or stay of prosecution by *non vult ulterius prosequi*, or otherwise, shall be admitted or allowed, or any imparlance or continuance for a longer period than three months ; and any recovery or judgment at the suit of any party grieved shall be a sufficient conviction for the first offence, and any after recovery or judgment at the suit of a party grieved, for any offence after the first judgment, shall be a sufficient conviction to bring the officers or person within the said penalty for the second offence. 24 G. 3, c. 1, s. 5.

#### OF ADMISSION TO BAIL.

Persons committed for treason or felony and requesting a trial in the first week of the sessions or terms shall, if not indicted in the ensuing term, be released on bail.

7. If any person is committed for high treason or felony, plainly and specially expressed in the warrant of commitment, and upon his prayer or petition in open court, in the first week of the sessions or term of the Court of Queen's Bench, oyer and terminer, or of general gaol delivery for the district, to be brought to his trial, is not indicted some time in the next sessions or term of the Court of Queen's Bench, oyer and terminer or general gaol delivery, after such commitment, any one of the Judges of the said Court, or the Judge or Judges holding the said Court, shall, upon motion made in open court the last day of the sessions or term of the Court of Queen's Bench, oyer and terminer or general gaol delivery, either by the prisoner or any one in his behalf, set at liberty the prisoner upon bail ;— unless it appears to such Judge or Judges upon oath made, that the witnesses for the Crown could not be produced the same sessions or term or general gaol delivery :

2. And if any person committed as aforesaid, upon his prayer in open court the first week of the sessions or term of the Court of Queen's Bench, oyer and terminer and general gaol delivery, held in and for the district where such person may be committed, to be brought to his trial, is not indicted and tried the second sessions or term of the court of Queen's Bench, oyer and terminer and general gaol delivery after his commitment, or upon his trial is acquitted, he shall be discharged from his imprisonment. 24 G. 3, c. 1, s. 8.

Recital.

8. And because many times, persons charged with felony, or as accessories thereunto, are committed upon suspicion only, whereupon

whereupon they are bailable or not, according as the circumstances making out that suspicion are more or less weighty, which are best known to the justices of the peace who may have committed such persons and have the examinations before them, or to other justices of the peace in the district where such prisoners are committed :--therefore, where any person appears to be committed by any judge, or justice of the peace, and charged as accessory before the fact to any felony, or upon suspicion thereof, or with suspicion of felony, which felony is plainly and specially expressed in the warrant of commitment, such person shall not be removed or bailed by virtue of this Act in any other manner than by the common law of England he may be. 24 G. 3, c. 1, s. 17,--4, 5 V. c. 27, s. 2.

Persons charged as accessories before the fact to felony not bailable otherwise than by law.

9. And to the intent that no person may avoid his trial at the sessions or term of the Court of Queen's Bench, oyer and terminer or general gaol delivery, by procuring his removal before the sessions or term of the said court in and for the district where he is committed, at such time that he cannot be brought back to receive his trial there :--After the sessions or term of the Court of Queen's Bench, oyer and terminer or general gaol delivery, proclaimed or advertised for the district where the prisoner is detained, no person shall be removed from the common gaol of the district upon any *habeas corpus* granted in pursuance of this Act, but upon any such *habeas corpus*, shall be brought before the Judge or Judges holding the said court, in open court, who shall thereupon do what to justice appertains :

Recitat.

To prevent collusive evasion of trial.

2. But after the sessions are ended, any person detained in any common gaol may have his writ of *habeas corpus* according to the direction and intention of this Act. 24 G. 3, c. 1, ss. 15, 16.

Proviso.

10. Nothing in this Act shall extend to discharge out of prison, any person charged in debt or other action, or with process in any civil cause, but after he is discharged from his imprisonment for such criminal offence, he shall be kept in custody according to the law for such other suit. 24 G. 3, c. 1, s. 9.

But nothing herein to affect civil proceedings.

EFFECT OF LIBERATION ON HABEAS CORPUS.

11. And for preventing unjust vexation by reiterated commitments for the same offence,--no person, delivered or set at large upon *habeas corpus*, shall, at any time thereafter, be again imprisoned or committed for the same offence by any authority whatsoever, other than the legal process and order of the court wherein he is bound by recognizance to appear, or other court having jurisdiction of the cause :

Effect of release on *habeas corpus*.

2. And if any person, knowingly, contrary to this Act, re-commits, or imprisons, or knowingly procures or causes to be recommitted

Penalty for re-committing any

one so released for the same offence.

recommitted or imprisoned, for the same offence or pretended offence, any person delivered or set at large as aforesaid, or knowingly aids or assists therein, then he shall forfeit to the prisoner or party grieved, the sum of two thousand dollars, lawful money of Great Britain, to be recovered as aforesaid; any colourable pretence or variation in the warrant or warrants of commitment notwithstanding. *ibid*, s. 7.

Under what circumstances only a prisoner may be removed from one prison to another.

**12.** If any subject of Her Majesty is committed to any prison or in custody of any officer or officers whomsoever, for any criminal or supposed criminal matter, such person shall not be removed from the said prison and custody into the custody of any other officer or officers,—unless it be by *habeas corpus* or some other legal writ,—or where the prisoner is delivered to the constable, bailiff, or other inferior officer to carry such prisoner to some common gaol,—or where any person is sent by order of any judge of a court of criminal jurisdiction, or justice of the peace to any common work-house or house of correction,—or where the prisoner is removed from some one prison or place to another within the same district, in order to his trial or discharge in due course of law,—or in case of sudden fire or infection, or other necessity :

Penalty on persons contravening this section.

2. And if any person, after such commitment aforesaid, makes out and signs or countersigns any warrant or warrants for such removal aforesaid, contrary to this Act, as well he that makes or signs or countersigns such warrant as any officer who obeys or executes the same, shall suffer and incur the pains and forfeitures in this Act before mentioned, both for the first and second offence respectively, to be recovered by the party grieved in manner aforesaid. *ibid*, s. 6.

The Governor in certain cases may authorize the transfer of prisoners from one gaol to another.

**13.** But if the sheriff of any district deems any gaol therein unsafe for the custody of prisoners, or over crowded; he shall report the fact to the Governor, who may authorize the removal of the prisoners in such gaol, or any of them, to any other gaol in Lower Canada, there to be kept until discharged in due course of law, or until they are again brought back to the gaol from which they were so removed, either for trial at the proper court, or to be again kept in such gaol when it has been made safe or is not over crowded :

How such authorization shall be conveyed—effect thereof.

2. And a letter from the Provincial Secretary, authorizing the removal or the bringing back of any such prisoners, shall be sufficient, and by virtue thereof, and of this Act, the sheriff may remove or bring back such prisoners, as the case requires, and he or his deputies shall, while so doing, have the same powers with regard to them in the district to which they are conveyed, and in any district through which he passes with them, as he would have in his own district; and the sheriff and gaoler of the district, to the gaol in which they are conveyed, and their deputies, shall have the same powers with respect to

to them from the time of their delivery to such sheriff or gaoler, as they would have if such prisoners had been originally committed to the gaol in such last mentioned district. 20 V. c. 44, s. 137.

**14.** If the commitment of any person, who has committed any crime or offence, be in a district other than that in which the offence is to be tried, the Judges of the Court of Queen's Bench or of the Superior Court, or any one of them, upon application of Her Majesty's attorney or solicitor general, and in default of such application, upon the application of such offender, shall issue a writ of *habeas corpus*, commanding the keeper of the gaol in which such offender is so imprisoned, to have the body of such offender before them or any one of them, at a convenient time and place to be specified in such writ, together with the true cause of his commitment and detainer :

If commitment be in a district other than that in which the offence is to be tried.

2. And if it then appears that such offender is detained upon such commitment as aforesaid, for any crime or offence committed in another district, the Judges of each of the said courts, or any one of them, before whom such writ of *habeas corpus* is made returnable, shall take course for the immediate removal of such offender to the common gaol of the district in which the trial of such offender for such crime or offence is to be had, by warrant under his or their hands and seals, directed to the keeper of the gaol and to the Sheriff of the district in which such offender is so imprisoned, and to the keeper of the gaol of the district in which the trial of such offender is to be had, authorizing the deliverance of the body of such offender from the gaol of the district in which such offender is so imprisoned, and commanding the sheriff of such district to remove the body of such offender forthwith, with all care and diligence, to the gaol of the district in which the trial of such offender is to be had, and commanding the keeper of the gaol of the district in which the trial of such offender is to be had, to receive such offender into his custody in the gaol of the said district, there to remain till he be thence delivered in due course of law, which warrants the said sheriff and the keepers of such gaol as aforesaid, shall execute. 35 G. 3, c. 1, s. 5,—20 V. c. 44, s. 30.

Judges, by *habeas corpus*, to obtain removal of prisoner to the gaol of the district in which the trial is to be had.

**PRISONERS NOT TO BE SENT OUT OF LOWER CANADA EXCEPT IN CERTAIN CASES.**

**15.** And for preventing illegal imprisonments in prisons without Lower Canada, or beyond the seas :—

1. No subject of Her Majesty, being an inhabitant or resident of Lower Canada, shall be sent prisoner into any province, or in any state or place without Lower Canada, or into any parts, garrisons, islands or places beyond the seas, within or without the dominions of Her Majesty, and every such imprisonment or transportation is hereby declared illegal ;

Inhabitants of L. C. not to be sent prisoners elsewhere.

In such case prisoner may maintain an action of false imprisonment.

2. And any such subject so imprisoned may, for every such imprisonment, maintain, by virtue of this Act, an action or actions of false imprisonment against the person by whom he has been so committed, detained, imprisoned, sent prisoner or transported, contrary to this Act, and against any person framing, contriving, writing, sealing or countersigning any warrant or writing for such commitment, detainer, imprisonment or transportation, or advising, aiding or assisting in the same, or any of them ;

Plaintiff in such case to have treble costs, besides damages.

3. And the plaintiff in every such action shall have judgment to recover his treble costs besides damages, which damages so to be given shall not be less than two thousand dollars, lawful money of Great Britain, in which action no delay, stay or stop of proceeding by rule, order or command, nor any injunction, protection or privilege whatsoever, nor any more than one imparlance or continuance (according to the practice of the court) shall be allowed, excepting such rule of the court wherein the action depends, made in open court, as is thought in justice necessary, for special cause to be expressed in said rule ; 24 G. 3, c. 1. s. 11.

This Act not to extend to persons carried away by their own agreement.

4. But nothing in this Act shall extend to give such benefit to any person who, by contract in writing, agrees with any merchant or owner of any plantation or other person whatsoever, to be carried to any province or to parts beyond the seas, and receives earnest upon such agreement, although that afterwards such person renounces such contract. 24 G. 3, c. 1. s. 12.

OF THE REMOVAL OF AN OFFENDER TO ANOTHER PART OF HER MAJESTY'S DOMINIONS OR TO UPPER CANADA, WHERE HE SHALL HAVE COMMITTED A CRIMINAL OFFENCE—TO UNDERGO HIS TRIAL.

Persons charged with a capital offence, out of Lower Canada, to be sent for trial to the place where the offence was committed.

16. And if any person, at any time resident within Lower Canada, has committed any capital offence in Great Britain, Ireland or any province, island or plantation of Her Majesty, where he ought to be tried for such offence, such person may be sent to such place, there to receive such trial, in such manner as the same might have been done by the common laws of England before the making of this Act ; any thing herein contained to the contrary notwithstanding. 24 G. 3, c. 1, s. 14.

Persons against whom warrants have issued in New Brunswick may be apprehended in Lower Canada.

17. And whereas it may happen that felons and other malefactors, having committed crimes in the province of New Brunswick, may escape into Lower Canada, and their offences thereby remain unpunished, for want of a provision by law for apprehending such offenders in this Province, and transmitting them to the place in which their offences were committed :— therefore,--if any person, against whom a warrant is issued by any other judge of the Court of Queen's Bench, or any justice

justice of the peace, acting in the Province of New Brunswick, for any crime or offence against the laws of the said Province, escapes, comes into, resides or is in any part of Lower Canada, any justice of the peace of the district, or place, where such person escapes, comes into, resides or is, may endorse his name on the said warrant, (due proof being first made of the hand-writing of the magistrate issuing the same,) which warrant so endorsed shall be a sufficient authority to the person bringing such warrant, and to all persons to whom such warrant was originally directed, and also to all constables of the district, or place where such warrant is so endorsed, to execute the same by apprehending the person against whom such warrant is granted, and to convey him to the said Province of New Brunswick, and before one of the justices of the peace acting in the said Province, to be there dealt with according to law. 36 G. 3, c. 12.

PENALTY ON JUDGES REFUSING THE WRIT OF HABEAS CORPUS IN VACATION.

18. Any prisoner may, as provided by the *first* section of this Act, move and obtain his writ of *habeas corpus* out of the Court of Queen's Bench or the Superior or Circuit Court, *in vacation as well as in term*,—and if any Judge of the said Court of Queen's Bench or Superior Court, in the vacation time, and upon view of the copy or copies of the said warrant or warrants of commitment or detainer, or upon oath made that such copy or copies were denied as aforesaid, denies any *habeas corpus* by this Act required to be granted (being moved for as aforesaid,) every such Judge shall severally forfeit to the prisoner or party grieved the sum of five hundred pounds sterling, to be recovered in manner aforesaid. 24 G. 3, c. 1, s. 10.—12 V. c. 37, s. 41,—12 V. c. 38, s. 98.

Penalty on Judge refusing *habeas corpus*.

ACTIONS FOR OFFENCES AGAINST THIS ACT.

19. No person shall be sued, impleaded, molested or troubled, for any offence against this Act, unless the party offending be sued or impleaded for the same within two years, at the most, after the offence committed, in case the party grieved is not then in prison, and if he is in prison, then within the space of two years after the decease of the person imprisoned, or his delivery out of prison whichever first happens :

Limitation of actions for offences against this Act.

2. And if any information, suit or action, is brought or exhibited against any person for any offence committed against this Act, such defendant may plead the general issue, that he is not guilty, or that he owes nothing, or may plead specially, according as may be the course and practice of the Court where such suit may be ; and in case it be upon the said plea of not guilty, or that he owes nothing, then he may give such special matter in evidence, which, if it had been pleaded more specially, would

Defendant in such suit may plead the general issue.

would have been good and sufficient matter of law to discharge the said defendant against the said information, suit or action; and the said matter so given in evidence under either of the said general pleas, shall be then and there as available to him to all intents and purposes, as if he had sufficiently pleaded, set forth or alleged the same matters in bar or discharge of such information, suit or action;

But this section not to affect any Act fixing the period for bringing suits against public officers.

3. But nothing in this section shall prevent the effect of any Act fixing a shorter period as that within which any suit or proceeding must be brought against any justice of the peace or other public officer, for any act done in the discharge of his public duty. 24 G. 3, c. 241, ss. 18, 19.—See 14, 15 V. c. 54, ss. 1, 8, 9,—12 V. c. 10, s. 5, par. 20.

#### HABEAS CORPUS AD SUBJICIENDUM IN CIVIL MATTERS.

Writ of habeas corpus ad subjiciendum may be awarded in vacation.

20. When any person is confined or restrained of his liberty, otherwise than for some criminal or supposed criminal matter, any one of the Judges of the Court of Queen's Bench or of the Superior Court in Lower Canada, shall, upon complaint made to him by or on the behalf of the person so confined or restrained,—if it appears by affidavit (or affirmation in cases where by law an affirmation is allowed,) that there is a probable and reasonable ground for such complaint,—award, in vacation time, a writ of *habeas corpus ad subjiciendum*; under the seal of such court whereof he is one of the judges; to be directed to the person in whose custody or power the party so confined or restrained is, returnable *immediatè*, before the judge awarding the same, or before any other judge of the court under the seal of which the said writ is issued. 52 G. 3, c. 8, s. 1,—1 G. 4, c. 8,—7 V. c. 17, ss. 14, 15,—12 V. c. 37, s. 41,—12 V. c. 38, s. 98,—12 V. c. 40, s. 3, and 20 V. c. 44, ss. 13, 35.

Disobedience to such writ to be deemed a contempt of Court.

21. If the person to whom any such writ of *habeas corpus* is directed,—upon service of such writ, either by the actual delivery thereof to him, or by leaving the same at the place where the party is confined or restrained, with any servant or agent of the person so confining or restraining,—wilfully neglects or refuses to make a return or pay obedience thereto, he shall be deemed guilty of a contempt of the court under the seal whereof such writ issues, and the judge, before whom such writ is returnable, upon proof made of such service, may award, in vacation, process of contempt under the seal of such court, against the person guilty of such contempt, returnable before himself in the vacation time; who shall proceed thereon as to law and justice shall appertain:

In certain cases the writ may be made returnable at a day certain in the

2. But if such writ of *habeas corpus* is awarded so late in the vacation by any judge that, in his opinion, obedience thereto cannot be conveniently paid during such vacation, the same shall, at his discretion, be made returnable in the court under the

the seal whereof the writ issues, at a day certain in the next term, and the said court shall proceed thereupon, and award process of contempt in case of disobedience thereto; in like manner as if such writ of *habeas corpus* had been originally awarded by such court; and if such writ of *habeas corpus* is awarded by the said Court of Queen's Bench or by the Superior or Circuit Court, in term but so late that in the judgment of the court awarding such writ, obedience thereto cannot be conveniently paid during such term, the same shall, at the discretion of the court so awarding such writ, be made returnable at a day certain in the then next vacation, before any judge of the court so awarding such writ; who shall proceed thereupon in such manner as by *the three following sections* of this Act is directed concerning writs of *habeas corpus* issuing in and made returnable during vacation. 52 G. 3, c. 8, s. 2.

next term or vacation.

JUDGMENT AND OTHER PROCEEDINGS.

22. In all cases provided for by the two next preceding sections, although the return to any writ of *habeas corpus* be good and sufficient in law, the judge, before whom such writ is returnable, shall, as soon as conveniently may be, proceed to examine into the truth of the facts set forth in such return, and into the cause of such confinement or restraint, by affidavit, (or by affirmation, in cases where an affirmation is allowed by law,) and shall do therein as to justice shall appertain:

Judge to examine as to the truth of the facts set forth in the return.

2. And if such writ is returned before any one of the said judges, and it appears doubtful to him, on such examination, whether the material facts set forth in the said return, or any of them, be true or not, in such case such judge may let to bail the person confined or restrained, upon his entering into recognizance with one or more sureties, or in case of infancy or coverture, upon security by recognizance in a reasonable sum, to appear in the court under the seal whereof such writ has issued, upon a day certain in the term then next following, and so from day to day, as such court shall require, and to abide such order as such court shall make in and concerning the premises;

And if there be doubt as to truth of the facts, the Judge may let the party confined to bail.

3. And such judge shall transmit into the court under the seal whereof such writ issued, the said writ of *habeas corpus* and return, together with the recognizance, affidavits and affirmations; and such court thereupon shall proceed, order and determine touching the discharging or bailing or remanding such person so confined or restrained as to justice appertains either in a summary way by affidavit or affirmation, or by directing one or more issues for the trial of the facts set forth in such return or any of them, whereupon such proceedings shall be had as in cases of issues directed by Her Majesty's Court of Queen's Bench in England. 52 G. 3, c. 8, s. 3.

Judge then to transmit to the Court whence it issued.

Like proceedings to be had in all the Courts for controverting the truth of the return.

**23.** The like proceeding shall be had in the aforesaid Court of Queen's Bench and Superior and *Circuit Court*, and in each of them, for controverting the truth of the return to all writs of *habeas corpus* awarded for or on behalf of any person confined or restrained of his or her liberty, otherwise than for some criminal or supposed criminal matter, by affidavit, affirmation or otherwise, although such writ shall be awarded by the court or be returnable therein. *ibid*, s. 4.

Court, &c., may make order for charge of bringing up the party concerned.

**24.** The court or judge proceeding on any writ of *habeas corpus ad subjiciendum* awarded in cases of confinement not for criminal or supposed criminal matter, may make such order in regard to the payment of the charges and expenses of bringing up the party so confined or restrained, and for carrying him or her back to his or her place of confinement or restraint, in case of remanding, as to such court, or judge, upon examination thereof, seems meet, and may, for non payment thereof award process of contempt, whereupon such proceedings shall be had as in other cases of contempt for non payment of costs. 52 G. 3, c. 8, s. 5.

Last five sections not to apply to persons charged in debt.

**25.** Nothing in the *five* next preceding sections contained shall extend to discharge out of prison any person charged in debt or other action, or with process in any civil suit. *ibid*, s. 6.

But said sections to apply to writs issued under the Act 31st Charles II.

**26.** The several provisions made by the last mentioned sections of this Act, touching the making writs of *habeas corpus* issuing in time of vacation returnable in the aforesaid several Court of Queen's Bench, Superior and *Circuit Courts* in Lower Canada, or for making such writs awarded in term time returnable in vacation, as the case may respectively happen, and also for awarding process of contempt in time of vacation against the person or persons neglecting or refusing to make return of such writs or to pay obedience thereto, shall extend to all writs of *habeas corpus* awarded in pursuance of the Act passed in the thirty-first year of King Charles the Second, intituled: *An Act for the better securing the liberty of the subject and for prevention of imprisonment beyond seas*, and of the *foregoing sections of this act respecting the obtaining of writs of Habeas Corpus in criminal matters*, in as ample and beneficial a manner as if such writs and the said cases arising thereon, had been hereinbefore specially named and provided for. *ibid*, s. 7.

Or under certain sections of this Act.

#### INTERPRETATION.

Interpretation.

**27.** The word Judge, in this Act, includes the Chief Justice;—the word officer or the designation of any person by his name of office includes any number of persons holding or exercising such office;—and the Interpretation Act shall be so applied in construing this Act as best to secure the liberty of the subject.

C A P . X C V I .

An Act respecting Courts of Oyer and Terminer.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

**1.** Nothing contained in any of the Acts relating to the Administration of Justice in Lower Canada, shall be construed to prevent the issue of any general or special commission of oyer and terminer or of general gaol delivery for such district, city or place in Lower Canada as may be deemed necessary, at any time other than that of the sittings of the Court of Queen's Bench in the exercise of its functions as a court of criminal jurisdiction, in the same district, city or place,—nor to derogate from, abridge or affect any right or prerogative of the Crown not expressly mentioned in the said Acts. 12 V. c. 37, s. 42,—34 G. 3, c. 6, ss. 4, 43.

Nothing to prevent the issue of special commissions of oyer and terminer, &c.

**2.** No defendant against whom any indictment for any misdemeanor is found, before any court of oyer and terminer held within Lower Canada, shall traverse any such indictment; but in every such case of indictment for misdemeanor, the defendant shall plead to the indictment, and be tried at and during the same session of such court of oyer and terminer in which such indictment is found, unless good and sufficient cause be shewn by such defendant for putting off any such trial. 2 V. (3) c. 23.

Indictments for misdemeanor not to be traversed.

**3.** The courts of oyer and terminer and general gaol delivery shall transmit to the Governor with all convenient speed, under the signatures of the judges before whom any trial has been had, copies of the indictment, information or charge, and of the plea and other proceedings in every such cause, in which the penalty or forfeiture exceeds the sum of *twenty-five pounds sterling* money of Great Britain, and also the scope and substance of the points ruled in evidence, and of their charge to the jury and copy of the verdict, and of every material transaction in the cause, together with such observations as they may think proper to make in every such cause and trial. 34 G. 3, c. 6, s. 6. See 4, 5 V. c. 24, ss. 19, 32, and 6 V. c. 5, s. 4.

Reports of trials &c., to be transmitted to the Governor by the judges in certain cases.

**4.** In every case where any commission of oyer and terminer and general gaol delivery issues, the execution of every sentence or judgment of such court, which extends to any penalty, fine or forfeiture exceeding the sum of *twenty-five pounds, sterling* money of Great Britain, shall be suspended until the approbation of the Governor is signified thereon, by warrant under his hand and seal. 34 G. 3, c. 6, s. 5.

Suspension of execution of judgment.

## CAP. XCVII.

An Act respecting the Courts of General or Quarter Sessions of the Peace, and Special Sessions of the Peace.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

OF THE JURISDICTION AND GENERALLY OF THE POWERS OF THE COURT—ITS TERMS AND SITTINGS, AND OF THE JUDGES TO HOLD IT.—TRAVERSES.

In what places the Courts shall be held.

1. In each of the *Criminal* districts of Quebec and Montreal there shall be held a Court of General Sessions of the Peace for such district, which courts may hear and determine all matters relating to the preservation of the peace, and whatsoever is then by them cognizable according to the Laws of England then in force in Lower Canada :

The said Sessions shall be held—

For the Criminal district of Quebec, in the city of Quebec ;

For the Criminal district of Montreal, in the city of Montreal.

May be held under Proclamation in others of the Old Districts.

2. The Governor may by Proclamation direct that a Court of Quarter Sessions of the Peace be held, for the same purposes and with the same powers—

For the Criminal district of Three-Rivers, in the city of Three-Rivers ;

For the Criminal district of Gaspé, in the county of Gaspé, at Percé and at Gaspé Basin ;

For the Criminal district of St. Francis, in the town of Sherbrooke ;

For the Criminal district of Kamouraska, at Kamouraska ; and

For the Criminal district of Ottawa, at Aylmer. 34 G. 3, c. 6, s. 34,—3 G. 4, c. 7, s. 13,—7 V. c. 17, s. 29,—8 V. c. 18, s. 2,—12 V. c. 38, s. 12,—13, 14 V. c. 35, s. 2,—16 V. c. 201, ss. 1, 2,—20 V. c. 44, s. 139.

And in the New Districts.

2. The Governor may by Proclamation direct that Courts of Quarter Sessions be held in *all or in any one or more of the New Districts when established as Criminal Districts, respectively*, at the places where the Superior Court is held therein, and such Courts shall be so held accordingly and have the same powers in and with respect to the districts in which they are respectively held, as similar Courts then have in and with respect

to

to the districts in which they are respectively held but no such Court shall be held at any place where no Term of the Superior Court is held.

2. The holding of Courts of Quarter Sessions may be discontinued at any time by Proclamation in any New District, or in any of the Old Districts except those of Quebec and Montreal, whenever it appears to the Governor that the Criminal Terms of the Court of Queen's Bench in such district (or in Gaspé the Superior Court) suffice for the despatch of the criminal business therein;—and the holding of the said Courts of Quarter Sessions may at any time be again re-established by a like Proclamation, if, in the opinion of the Governor, the despatch of the criminal business of the district renders it necessary. 20 V. c. 44, s. 97.

May be discontinued again in any District except Montreal and Quebec.

3. The Governor may by Proclamation from time to time fix the periods at and during which the Courts of Quarter Sessions shall be holden in all or any of the districts, and may alter the same in the like manner; but the said Courts shall be holden in the criminal districts of Quebec and Montreal at the periods fixed by Act or proclamation when these Consolidated Statutes come into force, until so altered;—and no such Court shall be holden in any of the New Districts until the periods for holding it are so fixed by Proclamation. 20 V. c. 44, s. 139.

Times of holding to be fixed by Proclamation.

4. Any Court of General Sessions of the Peace in Lower Canada may be holden by any two or more Justices of the Peace for the district in and for which it is established. 13, 14 V. c. 35, s. 1.

By what Justices to be holden.

5. Each of the Judges of the Superior Court may, except in the cities of Quebec and Montreal, hold any Court of Quarter Sessions; and whenever any such Judge holds such Court, he shall hold it alone, without the assistance of any Justice of the Peace, and he shall hold any such Court holden in the district in which he resides or which is assigned to him, whenever there would otherwise be a failure of justice for want of a quorum of Justices of the Peace to hold such Court:

Judges of Superior Court may hold term alone, &c.

2. The Recorder or the Inspector and Superintendent of Police, at either of the cities of Quebec and Montreal, may preside as Chairman at any Court of Quarter Sessions in the city in which he is such Recorder or Inspector and Superintendent of Police, or may hold such Court alone, without the assistance of any Justice of the Peace, and it shall be the duty of the Inspector and Superintendent of Police so to preside as Chairman, or hold the Court, as the case may be;

Recorder or Superintendent of Police may preside.

3. Provided that if there be, at any sitting of such Court, any case of appeal from any decision of the Recorder, then the Inspector

Provision in cases of appeal

from Recorder  
or Superintendent.

Inspector and Superintendent of Police shall hold or preside at the Court, and if there be any such appeal from any decision of the Inspector and Superintendent of Police, then the Recorder shall hold or preside at the Court. 20 V. c. 44, s. 138.

Salary to  
Chairman in  
Three-Rivers  
or St. Francis  
when the Court  
is held there.

6. The Governor may, whenever any proclamation is issued, authorising the holding of Courts of Quarter Sessions in either of the districts of Three-Rivers and Saint Francis, appoint a fit and proper person to hold the Court of General or Quarter Sessions of the Peace in such district, and assign to each person so appointed a salary not exceeding the rate of three hundred dollars per annum :

Qualification  
of Chairman.

2. Each person so appointed shall be a Barrister of at least five years standing, and each such person shall be a Justice of the Peace for the district for which he is appointed without its being necessary that he possess any property qualification whatever. 13, 14 V. c. 35, s. 9.

Powers of  
Chairman.

3. Each person so appointed shall, in the district for which he is appointed, have in all respects as regards the holding of the Courts aforesaid, the same powers as are vested in the Judges of the Superior Court in the other districts of Lower Canada, and may alone, or with the assistance of one or more other Justices of the Peace, hold any such Court of General Quarter Sessions of the Peace. 13, 14 V. c. 35, s. 10.

Duration of  
Sessions.

7. The said Sessions shall respectively continue and be holden until the Court declares the same closed, which shall not be done until the Court is of opinion that there remains no trial, matter or proceeding to be had or done by or before it which cannot more conveniently remain over until the then next Sessions. 13, 14 V. c. 35, s. 4,—16 V. c. 201, s. 1.

*The Court shall not be held at Gaspé unless upon a precept for summoning Jurors signed by three Justices of the Peace, and by a Judge of the Superior Court.*

In what cases  
only precepts  
for summoning  
Jurors to  
Courts of Q. S.  
in Gaspé.

8. Notwithstanding any such proclamation as aforesaid authorising the holding of Courts of General Quarter Sessions, in the district of Gaspé,—no precept shall issue for summoning Grand or Petit Jurors to any General Sessions of the Peace in the said district nor shall any such General Sessions be held unless, in addition to the signatures of some three Justices of the Peace to such precept, the same is also signed by the Judge of the Superior Court residing in the county where the Sessions are to be held; nor shall the Sheriff execute, nor cause to be executed, or be held to obey any precept to him addressed by any three or more Justices, unless as a voucher for the urgency or expediency of summoning Jurors to attend such General Sessions, the signature of such Judge of the Superior Court appears upon the precept to him addressed; and whenever any precept

so signed is addressed to the said Sheriff, he shall, cause such precept to be executed with all possible despatch, and at as little expense as possible to the Province for mileage or other incidental charges. 9 V. c. 16, s. 1.

QUALIFICATION OF JUSTICES OF THE PEACE IN THE MAGDALEN ISLANDS.

9. Every person being an inhabitant of and domiciliated in the Magdalen Islands, in the Gulf of Saint Lawrence, who is appointed a Justice of the Peace in and for the said Islands, shall be exempted from the necessity of the property qualification required by chapter one hundred of the Consolidated Statutes of Canada, and from all liability under the said Act, in having performed the duties of a Justice of the Peace within the said Islands, without being qualified as of property, as required by the said Act. 10, 11 V. c. 3.

Justices therein exempt from property qualification.

OF THE APPOINTMENT OF CONSTABLES AND OTHER PEACE OFFICERS.

10. The Justices of the Peace assembled in General or Quarter Sessions of the Peace, or a majority of the same, or the Judge holding the Court of Queen's Bench when no such Court of Quarter Sessions is held at any of the places hereinafter mentioned, shall annually name and appoint such and so many persons as they think sufficient, within the cities and *banlieues* of Quebec and Montreal, in the city of Three-Rivers, in the town of Sherbrooke, and in Kamouraska and Aylmer, to be constables and peace officers for carrying into execution the orders and decrees of the several Courts, and to preserve the public peace therein:—*And in the new districts—?*

Justices in Q. S. to appoint.

2. Every person so appointed shall faithfully perform the duties of the office for which he is so appointed for the space of one year, previous to the expiration whereof, the said Justices of the Peace or Court shall annually appoint others to serve in their stead, and may increase or diminish the number first appointed, as to them appears most for the public safety;

Appointment to be made yearly.

3. But no such appointment shall be valid in the case of a civil or military officer; or any person in priest's orders, or in the profession or practice of physic and surgery, or any miller, ferryman, schoolmaster or student of any college or seminary, or any person not of full age;

Not valid in certain cases.

4. And for neglecting or refusing to perform the said office, there shall be the forfeiture of eighty dollars, to be recovered in any court of record, with costs of suit. 7 G. 3, c. 6, s. 2,—1 G. 4, c. 15,—8 V. c. 18, s. 1,—12 V. c. 38, s. 12,—20 V. c. 44, s. 348.

Penalty for refusing duties.

Certain officers of militia to be peace officers *ex officio*.

**11.** All captains and other inferior officers of militia in the several parishes of Lower Canada, duly commissioned by the Governor or the Commander-in-chief, and likewise the serjeants named and appointed by the said captains and other officers within their respective parishes, are and shall be public and peace officers within their respective parishes, and authorized and enjoined to do and exercise all and singular the duties and services of public and peace officers within their respective parishes, according to law. 27 G. 3, c. 6, s. 1.

OF THE RULES OF PRACTICE AND THE TARIFFS.

Courts of Q. S. to make rules of practice and tariffs.

**12.** The several Courts of Quarter or General Sessions of the Peace in Lower Canada, or the Court of Queen's Bench as regards any Criminal Districts in which no Court of Quarter Sessions is held, shall make and establish a tariff of fees for the Officers of the said Court (except for the Clerks of the Peace, and the Sheriffs, Criers and Tipstuffs), and the Counsel, Advocates and Attorneys practising before such Courts respectively; and also such rules of practice as are requisite for regulating the conduct of the causes, matters and business before such Courts respectively, and all process and proceedings therein; which tariff of fees and rules of practice, as well as any other tariff of fees or rules of practice which may have been established by any such Courts before these Consolidated Statutes came into force, the said Courts respectively may repeal, alter and amend from time to time:

Not to be inconsistent with the laws of L. C.

2. No such tariff of fees or rules of practice shall be contrary to any Act or law in force in Lower Canada, otherwise the same shall be null and void. 13, 14 V. c. 35, s. 6,—20 V. c. 44, s. 143.

Fees to Clerks of Justices out of Sessions may be fixed by tariff.

**13.** The fees to which any Clerk to any Justice out of sessions, are entitled, shall be regulated in manner following, that is to say: the Justices of the Peace at their *General or Quarter Sessions*, for their several districts, shall, from time to time, as they see fit, respectively, make Tables of the Fees which in their opinion should be paid to the Clerks of the Justices of the Peace within their several jurisdictions, and which said Tables being signed by the Chairman of every such Court of *General or Quarter Sessions*, shall be laid before the Secretary of this Province, and such Secretary may alter such Tables of Fees, and subscribe a certificate or declaration that the fees specified in such Tables as made by such Justices, or as altered by such Secretary, are proper to be demanded and received by the Clerks, and such Secretary of the Province shall cause copies of such Table or set of Tables to be transmitted to the several Clerks of the Peace of the districts for which the said tariffs have been so made, to be by them distributed to the Justices within their several districts, and to be by the said Justices placed in the hands of their Clerks:

2. If after such copy is received by any such Clerk, he demands or receives any other greater fee or gratuity for any business or act done by him as such Clerk than such as is set down in such Table or set of Tables, he shall forfeit for every such demand or receipt the sum of eighty dollars, to be recovered by action of debt in any Court having jurisdiction for that amount by any person who sues for the same ;

Penalty for taking greater fees.

3. Until such Tables or set of Tables are framed and confirmed, and distributed as aforesaid, such Clerks may demand and receive such fees as they are now by any rule or regulation of a Court of General or Quarter Sessions or by chapter one hundred of these Consolidated Statutes, or otherwise authorized to demand and receive. 14, 15 V. c. 95, s. 26,—but see sect. 2, par. 2. and post, Cap. 100 of this work.

Fees until such tariff is made.

OF THE PENALTY AGAINST ABSENT WITNESSES, AND OF THE TAXING OF ACCOUNTS OF WITNESSES.

14. Any Court of General or Quarter Sessions of the Peace in Lower Canada, may punish by fine or imprisonment or both, any person who after having been duly summoned to appear and give evidence before such Court, refuses or neglects to comply with the order of the Court in that behalf, or any person who disobeys, refuses or neglects to comply with any order or judgment legally pronounced by any such Court :

Courts of Q. S. may fine or commit such witnesses.

2. But no such fine shall in any case exceed the sum of eighty dollars, and no person so offending shall, in consequence of such offence, be imprisoned for any time exceeding two months. 13, 14 V. c. 35, s. 11.

Fine or imprisonment limited.

15. The Judges of the Superior Court, or of the Court of Queen's Bench, and the Presidents of the General or Quarter Sessions of the Peace, shall alone have the power of taxing the accounts of witnesses attending at the Courts aforesaid, and who are to be paid by the Crown ; and of swearing such witnesses to the correctness of their accounts. 13, 14 V. c. 35, s. 12,—20 V. c. 44, s. 13 and 34.

Judges and Presidents only to tax Crown witnesses.

OF THE TRANSMISSION TO THE GOVERNOR, OF CASES IN WHICH HEAVY PENALTIES HAVE BEEN INFLICTED IN GASPÉ.

16. Whenever sentence has been pronounced ordering the payment of a fine exceeding *twenty pounds sterling money* of Great Britain, in the Courts of General Quarter Sessions of the Peace, held in the district of Gaspé, the majority of the Judges before whom the trial was had or by whom the judgment was rendered, shall transmit to the Governor, under their signature, copies of the indictment, information or charge and of the plea and other proceedings in the cause, and also the scope and substance of the evidence given to the Jury, of the points ruled in evidence,

Case to be reported to the Governor.

evidence, of their charge to the Jury, and a copy of the verdict and of every material transaction in the cause, together with such observations as they may think proper, and execution of such sentence or judgment shall be delayed until the signification of the pleasure of the Governor. 29 G. 3, c. 3, s. 5.

**OF THE COSTS OF APPEALS, AND OF THE EXECUTION OF WARRANTS OF THE COURT IN OTHER DISTRICTS.**

Court may condemn losing party to pay costs.

**17.** Any Court of Quarter or General Sessions of the Peace, in pronouncing judgment upon any appeal from any inferior tribunal, may condemn the losing party to pay the costs of such appeal; which costs may be levied by Warrant of distress out of the goods and chattels of such party. 13, 14 V. c. 35, s. 7.

Service of process beyond the district.

**18.** Every summons, warrant, or process issued out of any such Court of Quarter or General Sessions, may be served or executed in any part of Lower Canada, whether in or beyond the district wherein the same issued. 13, 14 V. c. 35, s. 8.

**OF THE WEEKLY SITTINGS IN QUEBEC, MONTREAL AND THREE RIVERS, AND OF SPECIAL SESSIONS OF THE PEACE.**

How to be held.

**19.** Two Justices of the Peace shall sit weekly in rotation, in the Cities of Quebec, Montreal and Three-Rivers, for the better regulation of the Police, and other matters and things belonging to their office, and the names of the Justices who are to sit in each week, shall be posted upon the door of the Session House, by the Clerk of the Peace; But nothing herein contained shall be construed to prevent the holding of Special Sessions of the Peace, for the purposes and in the manner by law allowed. 34 G. 3, c. 6, s. 34.

Proviso.

**THE CONTINUATION OF CERTAIN PENDING PROCEEDINGS BY 12 V. c. 38, &c.**

Certain provisions to remain in force.

**20.** Section eleven of the Act 12 V. c. 38, providing for the continuing of certain proceedings in Quarter Sessions at Quebec and Montreal, notwithstanding the establishment of the Districts of Kamouraska and Ottawa—and section two of 16 V. c. 30 providing for the continuance of Criminal proceedings and the continuance in office of certain Justices of the Peace, notwithstanding the separation of Ste. Anne des Monts and Cap Chat from the District of Gaspé, shall continue in force so far as any thing remains to be done under them. 12 V. c. 38, s. 11,—16 V. c. 30, s. 2,—16 V. c. 93.

**OF THE SIGNIFICATION OF CERTAIN EXPRESSIONS.**

Interpretation.

**21.** The expression "Court of Quarter Sessions," in this Act shall mean any Court of General Sessions of the Peace, whether the same be held every three months or at any other interval of time. 20 V. c. 44, s. 151.

## C A P . X C V I I I .

## An Act respecting Appeals from the decisions of Justices of the Peace in Summary Convictions.

**H**ER. Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. In any appeal to a Superior Court from the conviction, judgment or decision given by any one or more Justices of the Peace under the provisions of chapter one hundred and three of the Consolidated Statutes of Canada respecting *the duties of Justices of the Peace, out of Sessions, in relation to summary convictions and orders*, no judgment shall be given in favour of the appellant if the appeal is based on an objection to any information, complaint or summons, or to any Warrant to apprehend a defendant, issued upon any such information or complaint, for any alleged defect therein in substance or in form, or for any variance between such information, complaint, summons or warrant and the evidence adduced on the part of the informant or complainant at the hearing of such information or complaint,—unless it shall be proved before such Superior Court that such objection was made before the Justice or Justices of the Peace before whom the case was tried and by whom such conviction, judgment or decision was given,—nor unless it is proved that notwithstanding it was shewn to such Justice or Justices of the Peace that by such variance the person summoned and appearing or apprehended, had been deceived or misled, such Justice or Justices refused to adjourn the hearing of the case to some further day as provided in and by the said Act. 18 V. c. 97, s. 1.

Appeals from decisions of Justices, judgment not to be given for appellant on any defect, &c., in proceedings, unless the objection was urged before the Justices who gave the judgment.

2. In all cases where it appears by the conviction, that the defendant has appeared and pleaded, and the merits have been tried, and that the defendant has not appealed against the conviction where an appeal is allowed, or if appealed against, the conviction has been affirmed, such conviction shall not afterwards be set aside or vacated in consequence of any defect of form whatever, but the construction shall be such a fair and liberal construction as will be agreeable to the justice of the case. 4 G. 4, c. 19, s. 8.

In cases which have been tried on the merits, conviction not to be afterwards set aside for defect of form.

3. The Court to which an appeal is made from the conviction, judgment or decision of any Justice or Justices of the Peace in any case of summary conviction, or into which any case is removed by Writ of *Certiorari*, may or may not, in its discretion, award costs to the party in whose favor judgment is given, or against the party appealing. 18 V. c. 97, s. 2.

Discretion to Court as regards costs.

## C A P . X C I X .

## An Act respecting the Registers to be kept by Justices of the Peace.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Justices to keep registers of convictions.

**1.** Every Justice of the Peace in Lower Canada shall keep, in a register to be by him provided for the purpose, true and faithful minutes or memorandums at length of every conviction at any time by him made pursuant to any law or statute in force in Lower Canada. 4 G. 4, c. 19, s. 1.

Where two Justices present, registers to be kept by the senior and signed by the junior.

**2.** In all cases which are cognizable by any two or more Justices of the Peace, the minutes or memorandums of convictions by this Act required shall be kept by the senior Justice of the Peace, and be subscribed by the junior Justice of the Peace present during the proceedings which have been had :

In Quebec, Montreal and Three-Rivers, registers to be kept by Clerks of the Peace.

**2.** Except that in the cities of Quebec, Montreal and Three-Rivers, the registers which by this Act are directed to be kept, shall be kept by the clerks of the peace in the said cities respectively, who shall account for the fines imposed according to law, by the Justices of the Peace in the said cities respectively. 4 G. 4, c. 19, s. 2—See 14, 15 V. c. 95, s. 27.

What shall be specified in such registers.

**3.** All the costs allowed in each such case shall also be specified in such register, as well as the day when execution was issued to levy such costs and condemnation, and the day when the fine was paid into the hands of the clerk, pursuant to such condemnation ; and the amount of the fine and costs shall be distinctly specified in every writ of execution issued in any such case. 4 G. 4, c. 19, s. 3, and 14, 15 V. c. 95, s. 27.

Quarterly returns of prosecutions to be made by Justices to the Court of Quarter Sessions.

**4.** Each Justice of the Peace shall make a quarterly return of every prosecution for any offence of a public nature, or for the recovery of any penalty imposed for any such offence, which has been brought before him, (whether sitting alone or with any other Justice or Justices,) at any other place than the court house of any district, and such return shall be sent to the clerk of the peace for the district, not more than ten nor less than five days before the holding of each court of quarter sessions, and shall be filed of record by such clerk, and laid before the Justices at such Court, and such return shall extend from the date of the then last return to that of the return itself, and shall shew—

What particulars such return shall contain.

**1.** The Justice or Justices (if any,) sitting with the Justice making the return ;

2. The place of sitting ;
3. The name of the prosecutor ;
4. The name of the defendant ;
5. The offence ;
6. The result, whether conviction or acquittal ;
7. The judgment and amount of penalty, if any ;
8. The costs allowed to the successful party ;
9. The costs allowed against the unsuccessful party, for any thing done at his instance in or about the prosecution ;
10. The amount of penalty paid, and to whom or to whom to be paid ;
11. The amount of penalty applied to any public purpose, or remaining to be so applied, and in whose hands ;

And such return shall be dated at the time and place at which it is made, and signed by the Justice making it, and shall be made by each Justice, whether any such prosecution has been brought before him or not, during the period over which it extends. 2 (3) V. c. 20, s. 1.

*To be dated and signed by Justice.*

5. Each clerk of the peace, within ten days after each term of the court of quarter sessions for his district, shall return to the Governor the name of each Justice of the Peace in such district, who has not then complied with the requirements of this Act. 2 (3) V. c. 20, s. 2.

*Justices neglecting to make return.*

## C A P . C .

## An Act respecting Clerks and Bailiffs to Justices of the Peace.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Certain fees allowed to Clerks of Justices of the Peace in the country parishes.

1. No person acting as clerk to any justice of the peace in the country parishes, shall at any time, or under any pretext whatsoever, demand or require higher fees than those herein-after mentioned, that is to say :—

For drawing up a deposition, fifty cents ;

For drawing up a warrant, fifty cents ;

For drawing up a bail bond, fifty cents ;

For making out a *committimus*, fifty cents ;

For a summons, thirty cents ;

For each copy, ten cents ;

For a *subpœna*, twenty cents ;

For each copy, ten cents ;

For the entry of a final judgment, twenty-five cents ;

For a copy thereof, twenty-five cents ;

For a warrant of execution, twenty-five cents ;

For each copy of any entry made in the register kept by such magistrate, at the rate of ten cents for every hundred words.

Another tariff may be substituted.

2. But this section shall cease to be in force in any district whenever a tariff of fees has been made for such district under the *seventy-fourth* section of chapter one hundred and three of the Consolidated Statutes of Canada. 6 W. 4, c. 19, s. 1, and 22 V. (1859) c. 28, s. 3.

Duty of the Clerk to a Justice of the Peace.

3. The person performing the duty of the clerk shall not require any payment for any paper he prepares in any criminal prosecution (mere assaults and batteries excepted,) and shall, under the dictation and order of the justice of the peace, keep the register of such justice of the peace, without being entitled to any remuneration for so doing ; and such clerk shall likewise, at his own cost (either by employing a person to do the duty

duty of crier, or otherwise,) cause order to be maintained during the sittings of the court, and shall execute all the orders made by any such justice of the peace in that behalf. 6 W. 4. c. 19, s. 1.

3. Any Justice of the Peace may appoint one or more constables, if need be, to execute the orders of such Justice of the Peace, who may administer the requisite oath, which oath shall be enregistered in the register of such Justice of the Peace. 6 W. 4, c. 19, s. 4.

Constables may be appointed.

4. All bailiffs of the Superior Court are hereby authorized to execute all orders of Justices of the Peace within their respective districts without its being necessary that they should be appointed constables. 6 W. 4, c. 19, s. 6.

Bailiffs of S. C. may execute orders of Justices of the Peace.

5. No bailiff or constable employed to execute the orders of any justice of the peace, shall, at any time, or under any pretext whatever, demand or require higher fees than those hereinafter mentioned, that is to say :—

Fees to constables or bailiffs executing such orders.

For executing any warrant of arrest, one dollar, and fifty cents for his assistant, (*recors*) ;

For a seizure and sale under execution; the publication included, one dollar and fifty cents, and fifty cents for his assistant ;

And for a seizure only, not followed by a sale, one half of the said fees ;

For the service of any summons, *subpœna*, or order, twenty-five cents, and twenty cents for each league travelled to serve the same, the distance in returning not to be reckoned ;

For each official return of illegal resistance, fifty cents, and twenty-five cent for his assistant ;

But whenever any bailiff or constable serves several summons or *subpœnas* for the same complainant, at the same time and on the same road, he shall only be entitled to travelling expenses as far as for one journey, and the fees for the services, 6 W. 4, c. 19, s. 2.

In case of service of several summonses at the same place, time, &c.

6. Every person who contravenes this act, shall be liable to a penalty not exceeding twenty dollars, recoverable in a summary way before any justice of the peace of the district on legal proof, and whereof one moiety shall go to the prosecutor, with reasonable costs; and the other moiety shall belong to His Majesty, for the public uses of the Province. *ibid*, s: 3.

Penalty on contravention of this Act.

As to fees here-  
after establish-  
ed.

7. The fees established by this Act shall not in any wise pre-  
judice or affect the fees now especially established or which  
may so be hereafter, by any Act of the Provincial Parliament con-  
cerning the duties and services of clerks, constables or bailiffs  
above mentioned. *ibid*, s. 7.

Clerks, &c.,  
forbidden to  
plead before  
Justices.

8. No clerk or person performing the duty of clerk bailiff or  
constable executing the orders of a justice of the peace, shall in  
any manner represent either of the parties or plead before such  
justice of the peace under a penalty of four dollars to be reco-  
vered and applied in the manner mentioned in the sixth sec-  
tion of this act. *ibid*, s. 5.

Duration of this  
Act.

9. The foregoing provisions of this Act shall be in force until  
the end of the session of the provincial parliament next after the  
first day of January 1860, and no longer. 22 V. (1859), c. 28,  
s. 3.

C A P. C I.

An Act for the protection of Justices of the Peace, Magistrates and other officers, in the performance of public duties.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. No writ shall be sued out against any Justice of the Peace or other officer or person fulfilling any public duty, for any thing by him done in the performance of such public duty, whether such duty arises out of the common law, or is imposed by Act of Parliament, either Imperial or Provincial, nor shall any judgment or verdict be rendered against him, unless notice in writing of such intended writ, specifying the cause of action with reasonable clearness, has been delivered to such Justice, officer or other person, or left at the usual place of his abode, by the attorney or agent of the party who intends to sue out such writ, at least one month before suing out such writ :

A month's notice of action to be given to the magistrate, &c., in a certain form, and plaintiff to be bound by such notice.

2. In computing such month, the day of the service of such notice and the day of suing out such writ shall both be excluded ; and on such notice shall be written the name and place of abode of the attorney or agent suing out such writ ;--- and by the cause of action stated in such notice the party suing out such writ shall be bound, and shall not be allowed to give evidence of any other cause of action at the trial thereof. 14, 15 V. c. 54, s. 2.

Month how computed. Particulars on notice, &c.

2. Any such justice, officer or other person acting as aforesaid, may, at any time within one month after the service of such notice as aforesaid, tender amends to the party complaining, or his agent or attorney ; and in case the same is not accepted, may plead such tender in bar to any action brought against him grounded on such writ, together with the plea of not guilty, and any other plea ; and if the court or jury find the amount tendered to have been sufficient, they shall find for the defendant ; but if the court or jury find they were insufficient, or that no tender of amends was made, and also find the other issues against the defendant, or if they find against the defendant where no tender of amends is made or pleaded, then they shall give a judgment or verdict for the plaintiff, with such damages as they think proper, and the plaintiff shall have his costs of suit. *ibid*, s. 3.

Magistrate, &c., may tender amends.

Effect of such tender.

3. Any such action against such justice, officer or other person, acting as aforesaid, shall be laid and tried within the district or circuit, where the act complained of was done and committed :

In what district &c., action must be laid.

Changing  
*venue.*

2. Such justice, officer or other person, acting as aforesaid, may change the *venue* in such action, upon notice to the plaintiff in such action, if he thinks fit so to do ;

The same.

3. The *venue* may be changed to any other district or circuit, that the court in which such action is brought, or any judge thereof in chambers may order, if it is made appear to such court or judge that such action cannot be tried fairly and without prejudice in the district or circuit in which the *venue* in such action is laid. *ibid*, s. 4.

General issue  
may be plead-  
ed, &c.

4. Every such justice, officer or person acting as aforesaid, in any such action, may plead the general issue only thereto, that he or they is or are not guilty, and give all special matters of justification or excuse, or that he or they received no notice of action thereunder, as fully and amply as if the same were specially pleaded in such action. *ibid*, s. 5.

Magistrate,  
&c., may pay  
money into  
Court.

5. Such justice, officer or other person acting as aforesaid, if he has not tendered amends, or has tendered insufficient amends, may pay into court such sum as he thinks fit, without requiring the leave of the court or a judge therefor ; and such payment into court shall be specially pleaded, and shall have the same effect, and such proceedings shall be had thereafter, as in ordinary cases of payment of money into court. *ibid*, s. 6.

What costs de-  
fendant shall  
recover if suc-  
cessful.

6. If in any such action, judgment is rendered in favor of such justice, officer or other person acting as aforesaid, either on demurrer, verdict, non-suit, or *non-pros*, or otherwise, or the plaintiff discontinues his suit, the defendant shall be entitled to and recover against the plaintiff all his costs, as between attorney and client, but no double or treble costs shall in any case be taxed or allowed against the plaintiff. *ibid*, s. 7.

Limitation of  
actions against  
magistrates,  
&c.

7. No such action or suit shall be brought against any justice, officer or other person acting as aforesaid, for any thing done by him in the performance of his public duty, unless commenced within six months after the act committed. *ibid*, s. 8.

Protection to  
extend to the  
magistrate only  
&c., and in  
what cases to  
him.

8. The privileges and protection given by this Act, shall be given to such justice, officer or other person acting as aforesaid, only, and to no other person or persons whatever, and any such justice, officer and other person shall be entitled to such protection and privileges in all cases where he acts *bonâ fide* in the execution of his duty, although in such act done, he has exceeded his powers or jurisdiction, and has acted clearly contrary to law. *ibid*, s. 9

Provisions of  
Acts passed be-

9. So much of any Act, public, local, personal or private, passed before the 30th day of August, 1851, and in force in

Lower Canada, as confers any privileges,—either as to notice or limitation of action, or as to pleading the general issue and giving the special matter in evidence, or as to the *venue* of the action, or the tender of amends or payment of money into court,—upon any magistrate, public officer or other person for any Act done either by virtue of his office or under the provisions of any such Act, is repealed, except as to actions, or proceedings pending on the said day. 14, 15 V. c. 54, s. 1.

fore 14, 15 V. c. 54, conferring privileges in like matters, repealed.

## C A P. C I I.

## An Act respecting the Police in Quebec and Montreal, and certain regulations of Police in other Towns and Villages.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Appointment of Superintendents of Police.

1. The Governor may, in the cities of Quebec and Montreal, by a commission under the great seal, appoint fit and proper persons to be inspectors and superintendents of the police of the cities of Quebec and Montreal, to execute the duties of justices of the peace at the police offices established therein and in all parts of the said cities, and such other duties as are hereinafter specified, or as may be from time to time directed by the *civil secretary*, for the more efficient administration of the police within the limits of the said cities :

Governor may remove them and appoint others.

2. The Governor may remove the said inspectors and superintendents of police, if he sees occasion so to do, and may, upon any vacancy in the said offices, by death, removal or otherwise, appoint other fit persons as such inspectors and superintendents, to execute the duties aforesaid, in lieu of the persons making such vacancy ; and the Governor may appoint any person to be inspector and superintendent of the police, for either of the said cities, by virtue of this Act ; and any person so appointed may, during the continuance of his appointment, execute the duties of justice of the peace for the said cities, although he may not have the qualification required by law in case of any other person being a justice of the peace. 2 (1) V. c. 2, s. 1,—20 V. c. 44, s. 138, and see *Consol. Stat. of Can.* c. 105, ss. 30, 31.

To be *ex officio* Justices of the Peace.

Oath to be taken on appointment.

2. Every person appointed inspector and superintendent of the police of the said cities, shall, before he begins to execute the duties of his office, take the following oath before a Judge of Her Majesty's Court of Queen's Bench or of the Superior Court, that is to say :

“ I, A. B., do swear, that I will faithfully, impartially and honestly, according to the best of my skill and knowledge, execute all the powers and duties of a justice of the peace, under and by virtue of the chapter of the Consolidated Statutes for Lower Canada.” 2 (1) V. c. 2, s. 2.

Their powers and authority.

3. The inspectors and superintendents of the police of the cities of Quebec and Montreal respectively, shall be, in virtue of their offices, justices of the peace for the judicial districts in which the above cities are respectively situate, and vested with all the powers and authorities within the limits of their respective jurisdictions, of any one or two justices of the peace, as the

the case may require ; and all judgments, convictions and decisions rendered by them, respectively, shall have the same force and effect as if rendered by one or two justices of the peace whose names are included in the commission of the peace for the districts within which such inspectors and superintendents of police are respectively appointed to act. 20 V. c. 122.

To have the powers of two Justices of the Peace.

4. A sufficient number of fit and able bodied men shall, from time to time, by the direction of the *civil secretary*, be appointed as a police force for the said cities, who shall be sworn, by the said inspectors and superintendents of the police, to act as constables for preserving the peace and preventing robberies and other felonies, and apprehending offenders against the peace :

Police force may be embodied.

2. And the men so sworn shall, within the said cities, have all such powers, authorities, privileges and advantages, and be liable to all such duties and responsibilities as any constable duly appointed has, by virtue of the laws of Lower Canada, or any statutes made or to be made, and shall obey all such lawful commands as they, from time to time, receive from the said inspectors and superintendents of the police, for conducting themselves in the execution of their office. 2 (1) V. c. 2, s. 3.

Duties of the men composing it.

5. The said inspectors and superintendents of police may, from time to time, subject to the approbation of the provincial secretary, make such orders and regulations as they deem expedient, relative to the general government of the men appointed members of the police force under this Act, the places of their residence, the classification, rank and particular service of the several members, their distribution and inspection, the description of arms, accoutrements and other necessaries to be furnished to them, and all such other orders and regulations relative to the said police force, as the said inspectors and superintendents of the police from time to time deem expedient, for preventing neglect or abuse, and for rendering such force efficient in the discharge of all its duties :

Superintendents may make orders and regulations for its government.

2. The said inspectors and superintendents of the police may, at any time, suspend or dismiss from his employment any man belonging to the said police force, whom they think remiss or negligent in the discharge of his duty or otherwise unfit for the same ; and when any man is dismissed or ceases to belong to the said police force, all powers vested in him as a constable by virtue of this Act, shall immediately cease and determine. *ibid*, s. 4.

And may suspend or dismiss men composing it.

6. If any victualler or keeper of any house, shop, room, or other place for the sale of any liquors, whether spirituous or otherwise, knowingly harbours or entertains any man belonging to the said police force, or permits such man to abide or remain in his house, shop, room, or other place, during any part of the time

Penalty on victuallers, &c., harboring policemen on duty.

time appointed for his being on duty, such victualler or keeper, being convicted thereof before any two justices of the peace, shall for every such offence forfeit and pay such sum not exceeding *five pounds, sterling money of Great Britain*, as they think meet. 2(1) V. c. 2, s. 5.

Policemen on duty may apprehend loose and disorderly persons.

7. Any man, belonging to the said police force, may, during the time of his being on duty, apprehend all loose, idle and disorderly persons, whom he finds disturbing the police peace, or whom he has just cause to suspect of any evil designs, and all persons whom he finds lying in any field, highway, yard or other place, or loitering therein, and not giving a satisfactory account of themselves, and deliver any person so apprehended into the custody of the constable in attendance at the nearest watch house, in order that such person may be secured until he can be brought before a justice of the peace, to be dealt with according to law. *ibid*, s. 6.

Penalty on persons resisting police.

8. If any person assaults or resists any person belonging to the said police force, in the execution of his duty, or aids or incites any person so to assault or resist, such offender, being convicted thereof before two justices of the peace, shall, for each such offence, forfeit and pay such sum, not exceeding five pounds, sterling money aforesaid, as the said justices think meet. *ibid*, s. 7.

Application of next sections.

9. The *ten* sections next following apply not only to the cities of Quebec and Montreal, but also to every town and village Municipality in Lower Canada, *except the cities of Three-Rivers and St. Hyacinth and the Town of St. Johns*. 18 V. c. 100, s. 25,—20 V. c. 41, s. 7,—20 V. c. 129. s. 1,—20 V. c. 131.

OF THE POWERS OF JUSTICES OF THE PEACE WITH RESPECT TO DISORDERLY PERSONS—GAMBLERS, &c.

Proceedings as regards disorderly persons.

10. Any justice of peace may condemn all loose, idle and disorderly persons convicted before him on his own view or by their own confession, or on the oath of one or more credible witnesses, to pay immediately or within such period of time as he thinks fit, a fine not exceeding *five pounds sterling*, and in default of payment immediately or at the time appointed, (as the case may be,) such persons shall be imprisoned in the common gaol or house of correction of the district or in any lock up house or other place provided by the Municipality for the purpose, at hard labor, for any time not exceeding two months, the imprisonment to cease upon payment of the sum due :

Discretion of the Justice of the Peace.

2. But it shall be in the discretion of the justice before whom any person, apprehended as a loose, idle and disorderly person is brought, either to commit such person or to discharge him, although an act of vagrancy be proved to have been committed by

by him ;--and it shall also be in the discretion of such justice on discharging any such person to bind him in sufficient recognizance to appear before the justices at the next general or quarter sessions of the peace, to answer any charge or charges that may be alleged against him. 2 (1) V. c. 2, s. 8,--7 V. c. 2, s. 1,--9 V. c. 23,--20 V. c. 41, s. 7.

**11.** Persons who, being able to work, and thereby or by other means to maintain themselves and families, wilfully refuse or neglect to do so : Persons refusing to work.

Persons openly exposing or exhibiting in any street, road, public place, or highway, any indecent exhibition, or openly and indecently exposing their persons ; Exposing their persons, &c.

Persons loitering in the streets or highways and obstructing passengers, by standing across the footpaths, or by using insulting language, or in any other way,--tearing down or defacing signs, breaking windows, breaking doors or door-plates, or the walls of houses, yards or gardens, destroying fences, causing a disturbance or noise in the streets or highways by screaming, swearing, or singing,--being drunk, and impeding or incommoding the peaceable passengers ; Obstructing passengers, &c.

All common prostitutes or night walkers wandering in the fields, public streets or highways, not giving a satisfactory account of themselves ; Prostitutes, &c.

Persons in the habit of frequenting houses of ill-fame, not giving a satisfactory account of themselves ; Frequenters of houses of ill-fame.

Persons tipping in taverns or tap-rooms, after the hour of ten at night and before the hour of five in the morning, between the twenty-first day of March and the first day of October, and after the hour of nine at night and before the hour of six in the morning, from the first day of October to the twenty-first day of March ; And taverns.

Persons winning money or other valuable thing in playing at cards, dice or other chance game in taverns ; Gamblers--

Shall be deemed loose, idle and disorderly persons, within the meaning of this Act. 2 (1) V. c. 2, s. 9. Shall be deemed disorderly persons.

**12.** Any Justice of the Peace, upon information upon oath before him made, that any persons hereinbefore described are loose, idle and disorderly persons, and are, or are reasonably suspected, to be harboured or concealed in any house of ill-fame, tavern or boarding house may, by warrant under his hand or seal, authorize any constable or other person to enter at any time such house, or tavern, and to apprehend and bring before him or any other Justice or Justices, all persons found therein and so suspected as aforesaid : Justice may issue search warrants.

How such persons shall be punished.

2. And if, on examining such persons so apprehended and brought as aforesaid, it appears to such justice that they or any of them cannot give a satisfactory account of themselves, such Justice or Justices may condemn them to pay, either immediately or within such period as he shall think fit, a fine not exceeding *five pounds sterling*; and in default of payment at the time appointed, they shall be imprisoned in the Common Gaol or House of Correction, or in the lock-up-house, or other place provided by the Municipality for the purpose, at hard labor for any time not exceeding two months, the imprisonment to cease upon payment of the sum due. 2 (1) V. c. 2, s. 10,—7 V. c. 21, s. 1, and 9 V. c. 23.

Charges against them to be in writing.

13. In all proceedings against loose, idle, and disorderly persons, the charge shall be reduced to writing and shall be stated by the justice or justices of the peace to the party accused, who shall be held to plead forthwith to the same; and the said charge shall be summarily tried, due time being given to the party accused to procure the attendance of the necessary witnesses to establish his defence, if he so requires. 7 V. c. 21, s. 9.

Commitments to specify the facts of the case.

14. Every commitment to gaol or to the house of correction shall specify the particular fact or facts, as to time, place and circumstance, which constitute the offender a loose, idle and disorderly person; and any commitment which does not specify such facts, shall be held to be insufficient, and the party imprisoned under color thereof shall be entitled to be discharged from imprisonment, upon application to that effect to any judge of the Court of Queen's Bench or of the Superior Court, or any other person authorized by law to act in the absence of such judge. 7 V. c. 21, s. 5.

How cruelty to animals shall be punished.

15. Any justice of the peace may commit any person convicted before him, by his own view or by the oath of one or more credible witness or witnesses, or by his confession, of over-loading, over-driving or otherwise ill-treating any horse, dog or other animal, to the common gaol, for any time not exceeding one month; and all constables shall and may apprehend any such person, and bring him before a justice of the peace, to be dealt with according to the provisions of this Act. 2 (1) V. c. 2, s. 11.

Proceedings to enforce the appearance of a person charged under this Act.

16. Whenever any person is charged on the oath of a credible witness, before any justice of the peace, with any offence punishable by a penalty, on summary conviction under this Act, the justice may summon the person charged to appear before any two justices of the peace at a time and place to be named in such summons; and if the person charged does not appear accordingly, then (upon proof of the due service of the summons, by delivering a copy thereof to such person or by delivering a copy to the wife or servant or some inmate of the family of such person, at his usual place of abode,) the justices, before

before whom he ought to have appeared, may either proceed to hear and determine the case *ex parte*, or may issue their warrant for apprehending such person, and bringing him before them :

2. The prosecution for any offence punishable by a penalty upon summary conviction by virtue of this Act, shall be commenced within three calendar months after the commission of the offence and not otherwise. 2 (1) V. c. 2, s. 12. Limitation of prosecutions.

17. The justices of the peace by whom any person is convicted and adjudged to pay any sum of money, for any offence against this Act, may adjudge that such person shall pay the same either immediately or within such period as they think fit ; and in default of payment at the time appointed, the said person shall be imprisoned in the common gaol or house of correction, for any term not exceeding two calendar months, which said imprisonment shall cease upon payment of the sum due. 2 (1) V. c. 2, s. 14. Certain time may be allowed for the payment of the fine.

18. All fines and penalties imposed for offences against this Act, and recovered at Quebec or Montreal shall belong to the Corporation of the city in which they are imposed and shall be paid to the treasurer of the Corporation for the use thereof ; and those imposed in any other town or village shall be applied in the manner provided by the General Municipal Act, chapter twenty-four of these Consolidated Statutes with regard to pecuniary penalties levied under that Act. 2 (1) V. c. 2, s. 13,—18 V. c. 159, s. 68,—19, 20 V. c. 106, s. 5,—14, 15 V. c. 128, s. 83,—18 V. c. 100, s. 77, *par.* 8. Fines imposed in Montreal and Quebec.

19. Any person, convicted under this Act, may appeal from such conviction to the next ensuing General Quarter Sessions of the Peace, upon giving good and sufficient security to pay the penalty awarded against him and all costs of such appeal ; and the said sessions of the peace shall hear such appeal and dispose of the same, and award costs in manner and form as practised upon other appeals. 7 V. c. 21, s. 4. Appeals from convictions under this Act.

POWERS OF RECORDERS OF QUEBEC AND MONTREAL.

20. All the powers and jurisdiction conferred upon the Inspectors and Superintendents of Police for the Cities of Quebec and Montreal, and upon two or more justices of the peace by the foregoing provisions of this Act, shall be vested in and may be exercised by the Recorders and by the Recorders' Courts of and for the said Cities, and by those who by law may or are to act in the absence on account of sickness or otherwise of the said Recorders, or when there is no Recorder, and discharge the duties of their office. 19, 20 V. c. 106, ss. 1, 4, 8,—14, 15 V. c. 128, ss. 79, 82,—18 V. c. 162, s. 15. Powers of Inspectors of police may be exercised by Recorders.

## EXPENSES OF THE POLICE IN QUEBEC AND MONTREAL.

Expenses of police to be paid by the Governor.

**21.** The Governor may pay, out of any moneys in the hands of the receiver general, not otherwise appropriated, such sums as are required for the maintenance of the police under this Act; and all salaries, allowances and contingent charges in that behalf shall be paid upon pay lists to be made out on the first day of each month by the inspector and superintendent of police signed by him and approved by the provincial secretary. 2 (1) V. c. 2, s. 17.

Additional police for Harbor in Montreal to be paid by Harbor Commissioners.

**22.** Out of any moneys received for tolls, rates and wharfage dues by the commissioners for the improvement and enlargement of the harbor of Montreal, and remaining in their hands in any year after defraying all the special charges payable out of the same during such year, the governor may direct the commissioners to pay over to such officer or person as he may designate, such sum as may be required to defray the expenses attending the employment of the additional members of the police force established under this Act, whom it has been found necessary to employ during such year to act more especially as constables in the harbour and port aforesaid; the number of such additional members of the said police force to be so employed, and the remuneration to be allowed for their services, having been, previously to their employment, determined by the governor in council:

Account of such expenses.

2. And the officer or person to whom such sums are paid by the said commissioners shall apply the same to the payment of the expenses aforesaid, under such instructions as he may receive from the governor in that behalf, and shall account for the same in such manner and form as the governor shall direct. 14, 15 V. c. 24.

Payment of Quebec Harbor Police provided for.

**23.** All moneys raised, levied and received under the authority of the Acts 14, 15 V. c. 25, and 20 V. c. 124 (to provide for defraying the expense of the river police at Quebec) shall be applied by such officers or persons, and under such rules and regulations as the governor shall from time to time appoint for that purpose, in defraying the expense of maintaining and paying the members of the police force acting as constables in the port of Quebec, under this Act. 2 (1) V. c. 2, 14, 15 V. c. 25, s. 8, and 20 V. c. 124.

## INTERPRETATION.

Who shall be deemed provincial secretary.

**24.** For the purposes of this Act, any person acting as provincial secretary of the governor shall be taken to be the civil secretary: 2 (1) V. c. 2, s. 18.

What the word city shall include.

2. And for the purpose of this Act, the word *city* or *cities*, as applied to the cities of Quebec and Montreal, wherever used in this

this Act, shall be held to denote the said cities, together with such neighbouring districts as the governor has directed or may at any time direct by proclamation. 2 (i) V. c. 2, s. 19.

OF LABORERS, SERVANTS AND APPRENTICES FOUND GAMBLING, &c.

**25.** If any journeyman, day laborer, servant or apprentice, plays at any game of cards, dice, skittles or any other game, for money, liquor or otherwise, in any house, out-house, apartment or ground in the occupation of or belonging to any person licensed to sell spirituous liquors by retail, or to keep a house of public entertainment in Lower Canada, and such journeyman, servant or apprentice be convicted thereof before a justice of the peace in the villages or country parishes, or before the justices of the peace in their weekly sittings in the cities of Quebec, Montreal or Three-Rivers, by the oath of one credible witness, or by confession, he shall forfeit and pay for every such offence, a sum not exceeding four dollars, and not less than one dollar; and in default of payment of such fine or penalty within six days, such journeyman, labourer, servant or apprentice shall be committed to the house of correction for a space of time not exceeding eight days, in discharge of such penalty as aforesaid:

Servants or apprentices gambling in taverns how punished.

2. Nothing in this section shall affect any provision of the eighth chapter of these Consolidated Statutes relating to billiard tables. 57 G. 3, c. 16, s. 10.

Cap. 8 of these Con. Stat. not affected.

**26.** The justices of the Peace, before whom any such case is heard and determined, may award the costs which either of the parties shall have to pay the other, as they judge fit; and in case any person against whom any such costs are so awarded, does not pay the same within seven days next after they have been so awarded, any such justice or justices of the peace, whether in or out of session, may issue a warrant of distress for levying the same, by the seizure and sale of the offender's goods and chattels: *ibid*, s. 14.

Discretion of Justice as regards costs.

**27.** One moiety of every penalty imposed in virtue of the twenty-fifth section of this Act, shall belong to the informer, and the other moiety shall be paid to the Treasurer of Municipal Corporation of the place where the same is imposed, for the use of such corporation. 57 G. 3, c. 16, s. 13,—18 V. c. 159, ss. 68, 70,—14, 15 V. c. 128, s. 83,—14, 15 V. c. 95, s. 27.

Penalties how disposed of.

**28.** Upon every judgment under the said twenty-fifth section, by any justices of the peace, an appeal shall lie to the justices of the court of quarter sessions of the peace for the district where the judgment was rendered, upon which appeal the full merits of the original complaint may be heard and adjudged:

Appeals from judgments under sect. 25.

Security for  
costs.

2. But the appellant, before the allowance of any appeal as aforesaid, shall give good and sufficient security to pay the amount of the judgment appealed from, and costs as well on the original complaint as on the appeal ; 57 G. 3, c. 16, s. 12.

City of Three-  
Rivers.

The city of Three-Rivers is withdrawn from the operation of the Act 57 G. 3, c. 16.—20 V. c. 129, s. 1.

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## CAP. CIII.

## An Act respecting Officers of Militia as Peace Officers and inquest to be held by them in certain cases.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

## OF OFFICERS OF MILITIA AS PEACE OFFICERS.

**1.** All captains and other officers of militia in the several parishes of Lower Canada, duly commissioned and likewise the sergeants, appointed by the said captains and other officers in their respective parishes, are and shall be public and peace officers within their respective parishes, and authorized and enjoined to do and exercise all the duties and services of public and peace officers within their respective parishes according to law. 27 G. 3, c. 6, s. 1.

Officers of militia to be peace officers in their respective parishes.

**2.** Every captain, officer and sergeant of militia in Lower Canada, shall be a peace officer for the district within which he resides ; and it shall be his duty, when thereto commanded by any justice of the peace or superior officer of militia, to accompany and aid any other peace officer or constable, in conveying any prisoner or prisoners, charged with a criminal offence, to or towards any gaol in such district ; But such captain or officer of militia may require any militiaman or militiamen of his company to perform the aforesaid service. 6 W. 4, c. 37, s. 1.

And bound to aid in conveying prisoners to gaol.

**3.** Any justice of the peace in Lower Canada, or any captain or superior officer of militia, upon the requisition of a justice of the peace, may order any person belonging to the company of such captain, and having a carriage and horse, to furnish the same for the conveyance of any prisoner or prisoners charged with a criminal offence, and the effects of such prisoner or any other effects which it may be necessary to send along with such prisoners for the purposes of justice, to or towards the common goal of the district ; and every person having a carriage and horse, shall be bound to obey such order. *ibid*, s. 2.

Powers of Justices of the Peace as regards the providing for such conveyance.

**4.** Any captain, officer or sergeant of militia, who refuses to accompany or assist a constable or peace officer, in conveying any prisoner charged as aforesaid, to or towards a common goal,—and any person having a carriage and horse as aforesaid, who neglects or refuses, when ordered, to furnish the same for the conveyance of any such prisoner, to or towards such goal, shall, for every such offence, forfeit, being a commissioned officer, a sum not exceeding eight dollars, and every non-commissioned officer, or militiaman, a sum not exceeding four dollars

Penalty on refusal to render such assistance.

dollars to be recovered in a summary manner, upon complaint, hearing and conviction before any justice of the peace, on the testimony of one or more credible witnesses:

Its recovery.

2. Such penalty if not paid within twenty-four hours after conviction, shall be levied, together with costs, by distress and sale of the goods and chattels of the party convicted. *ibid*, s. 3.

Distance to which the prisoner is to be conveyed.

5. No such officer or sergeant of militia, nor the carriage or horse of any person commanded to furnish the same, shall be bound to go farther than the residence of the nearest captain or other commissioned officer belonging to the next company of militia, being such peace officer as aforesaid, living on or near the most direct or shortest route towards the prison to which such prisoner is to be conveyed. *ibid*, s. 4.

Disposal of penalties.

6. One moiety of the penalties imposed and to be levied by virtue of this Act, shall go to the informer, and the other moiety shall go to Her Majesty, for the public uses of this Province. *ibid*, s. 5.

Duty of officers of militia, when marks of violence are found on a dead body.

7. Where any marks of violence are found on any dead body the captain or senior officer of militia may, in his parish, summon together six respectable householders of his parish to inspect the same, and they shall, according to the opinion of such householders, report the manner and cause of such death in writing to the nearest justice of the Peace, and a further examination may if necessary be made therein. 34 G. 3. c. 6, s. 36.

## C A P. C I V .

## An Act respecting Goods unclaimed in the possession of the Clerks of the Peace.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. The Clerks of the Peace in the several old districts of Quebec, Montreal and Three-Rivers respectively, shall keep a book in which shall be regularly entered all goods or effects brought to their respective offices as having been stolen or suspected to be stolen, stating (if the same can be ascertained) from whom they were stolen, received or taken, and the person in whose possession they were found, and the time when, with such other particulars respecting the same, as may be deemed necessary towards proving the theft, of ascertaining the proprietors :

Book in which unclaimed goods are to be entered.

2. The said clerks of the Peace respectively shall cause a fair copy of all the entries of goods or effects in such book, which remain unclaimed in their several offices, to be made out and signed by them or any one of them, and laid before the Judges of the Court of Queen's Bench (Crown side,) at every term thereof, and the said Judges, or any of them, by a written order addressed to the said Clerks of the Peace, may authorize them to cause such of the said goods and effects as have not been claimed, and the owners whereof are not known, to be sold by Public Auction. 6 W. 4, c. 5, s. 1.

In case goods remain unclaimed Judges of Q. B. to order the same to be sold.

2. Such sales shall previously be publicly advertised in any two of the newspapers published in the City in which the goods and effects are, three times in the space of one month next after the date of the order to sell, with respect to such goods and effects as are judged susceptible of deterioration, and three times during six months, for such as are judged susceptible of being preserved without being spoiled during that time, giving notice of the place where the said goods and effects may be seen every day (Sundays and Holidays excepted) between the hour of noon and two in the afternoon before the sale, to the end that any person having lost such goods or effects, or any of them, or being interested therein, may claim them :

Sale to be advertised for a certain period.

2. If any of the said goods or effects are, on inspection, claimed by any person as owner thereof, any two justices of the Peace of the district, on legal proof that the same or any part of them, belong *bonâ fide* to the person claiming the same as owner, may deliver or order such goods or effects, so claimed, to be delivered to the owner thereof, who shall give a receipt for the same, which receipt shall be written in the said book of original entry. 6 W. 4, c. 5, s. 2.

Proceedings in case the goods are claimed.

Proceeds of sale  
of unclaimed  
goods.

**3.** If any such goods and effects are not claimed as above mentioned, the proceeds of the sale thereof (the necessary charges of advertising and selling the same being previously deducted) shall be paid over to the Receiver General and be at the disposal of the Legislature. 6 W. 4, c. 5, s. 3.

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## C A P. C V.

## An Act respecting certain matters connected with the administration of Justice in criminal matters.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

## FELONS ESCAPING FROM NEW BRUNSWICK.

**1.** If any person against whom a warrant is issued by the Chief Justice or any other Justice of the Court of Queen's Bench, or any Justice of the Peace, acting in the Province of New Brunswick, for any crime or offence against the laws of the said Province, escapes, comes into, resides or is in any part of Lower Canada, any Justice of the Peace of the district, county, city or place, where such person escapes, comes into, resides or is, may endorse his name on the said warrant, (due proof being first made of the hand-writing of the Magistrate issuing the same,) which warrant so indorsed shall be a sufficient authority to the person bringing such warrant, and to all persons to whom such warrant was originally directed, and also to all Constables of the district, county, city or place where such warrant is so indorsed, to execute the same by apprehending the person against whom such warrant is granted, and to convey him into New Brunswick, and before one of the Justices of the Peace acting within the said Province, to be there dealt with according to law. 36 G. 3, c. 12, s. 1.

Persons against whom warrants have issued in New Brunswick may be apprehended in Lower Canada.

## OF OFFENDERS BROUGHT FROM THE WESTERN COUNTRY, AND OF WITNESSES RESIDING WITHOUT THE LIMITS OF THE DISTRICT.

**2.** If it so happens that offenders brought up from very remote distances of the western country in the district of Montreal, or the witnesses, do not arrive in time for the trials, while the court is sitting at Montreal, then the bodies of the prisoners and their causes may be carried to Quebec, and be there proceeded in, to trial, judgment and execution, as fully to all intents and purposes as the same might have been had in the said district of Montreal, and by a jury of the same, and the witnesses be as compellable to attend at Quebec, as they were before to appear at Montreal, and new recognizances may be taken for that purpose accordingly. 27 G. 3, c. 1, s. 1.

In the case of offenders brought from remote distances.

## THE FOREMAN OF THE GRAND JURY TO SWEAR THE WITNESSES APPEARING BEFORE THEM.

**3.** In all courts of criminal jurisdiction, the foreman of the grand jury shall administer, in the presence of the grand jury, the usual oath to such persons as shall appear as witnesses before the grand jury; and such oath so administered shall be

Foreman of Grand Jury to administer oath to witnesses.

as

as valid and binding in law, as if the same had been administered by the Court. 44 G. 3, c. 7.

#### TRAVERSES NOT ALLOWED IN MISDEMEANOR.

No traverse allowed in misdemeanor.

4. No traverse or other postponement of trial on any charge of misdemeanor, shall be allowed in any court in Lower Canada, except upon special cause shewn to the satisfaction of the court or by consent of the prosecutor. 4, 5 V. c. 24, s. 3.

#### WITNESSES IN ANOTHER DISTRICT IN L. C.

How to be summoned.

5. If any witness in any criminal case cognizable in the Courts of Queen's Bench, resides in any part of Lower Canada, but without the district in which such criminal case is cognizable, the said court may, in the exercise of its jurisdiction in criminal matters, issue a writ of subpœna, directed to such witness, in like manner as if such witness were resident within the district in which such court is held; and if the witness does not obey such writ of subpœna, the said court sitting in the district in which the writ of subpœna issued, may proceed thereon against such witness for contempt or otherwise, in like manner as if such witness were resident within such district. 35 G. 3, c. 1, s. 6,—9 V. c. 35.

Commitment of witness not obeying.

#### OF WOMEN CONVICTED OF HIGH TREASON.

Judgment in such cases.

6. The judgment to be given and awarded against any woman convicted of high treason shall not be, that such woman shall be drawn to the place of execution, and be there burned to death, but that such woman so convicted, shall be drawn to the place of execution, and be there hanged by the neck, until she be dead. 41 G. 3, c. 9, s. 1.

Effect of the sentence.

7. Whenever any woman is convicted of the crime of high treason and judgment is given thereon, according to this Act, such woman being so attainted of such crime shall be liable to the like forfeitures and corruption of blood, as she would have been, in case she had been attainted of the like crime, before the passing of the Act 41 G. 3, c. 9. *Ibid*, c. 9, s. 3.

#### OF APPEALS TO HER MAJESTY FROM SENTENCES IMPOSING LARGE FINES.

Appeal to H. M. in Privy Council.

8. Inasmuch as His late Majesty, King George the Third, was pleased to signify it to be His royal pleasure, that appeals be admitted to Himself in privy council, in all cases of fines imposed for misdemeanors, provided the fines so imposed amount to or exceed the sum of *one hundred pounds*, sterling, the appellant first giving good security that he will effectually prosecute the same, and answer the condemnation, if the sentence by which such fine was imposed be affirmed:—As often

as

as such case happens, the execution, and all proceedings in the nature of execution, shall be stayed as to such fine, whenever such security is offered by recognizance filed for that purpose ; and whenever a doubt arises concerning the sufficiency of the security, it shall be deemed to be valid, and stay execution, unless the Governor, in twenty days from the filing of the said recognizance, certifies in writing to the court his disapprobation of the security so offered, and so *toties quoties*, until sufficient security is given in manner aforesaid. 27 G. 3, c. 1, s. 2.

Execution to  
be stayed on  
such appeal,  
&c.

## CAP. CVI.

## An Act respecting proceedings on recognizances.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

## OF RECOGNIZANCES TAKEN IN ANOTHER DISTRICT.

Recognizances transmitted from another district to Court where trial is had, to have the same effect as though taken in district where Court is held.

1. When a person shall have been arrested in any district for a crime or offence committed within the limits of Lower Canada, and a Justice of the Peace shall have taken recognizances from the witnesses heard before him or another Justice of the Peace, for their appearance at the next session or term of the Court of competent criminal jurisdiction, before which such person is to undergo his trial, there to testify and give evidence on such trial, and such recognizances have been transmitted to the office of the Clerk of such Court, the said Court may proceed on the said recognizances in the same manner as if they had been taken in the district in which such Court is held. 35 G. 3, c. 1, ss. 4. 5.

## PROCEEDINGS ON A FORFEITED RECOGNIZANCE.

Forfeited recognizances in criminal cases in Lower Canada to be certified to the Superior Court.

2. Whenever default is made in the condition of any recognizance lawfully entered into or taken in any criminal case, proceeding or matter in Lower Canada, so that the penal sum therein mentioned becomes forfeited and due to the Crown, such recognizance shall thereupon be estreated or withdrawn from any record or proceeding in which it then is,---or a certificate or minute of such recognizance under the seal of the Court shall be made from the records of such Court where the recognizance has been entered into orally in open Court :

2. Such recognizance, certificate or minute, (as the case may be,) shall be transmitted by the Court Recorder, Inspector and Superintendent of Police, Justice of the Peace, or Magistrate or Functionary before whom the cognizor (or the principal cognizor where there is a surety or sureties) was bound to appear or to do that by his default to do which the condition of the recognizance is broken, to the Superior Court in the District in which the place where such default was made is included for civil purposes, with the certificate of the Court, Recorder, Inspector and Superintendent of Police, Justice of the Peace, Magistrate or other Functionary as aforesaid, of the breach of the condition of such recognizance, of which and of the forfeiture to the Crown of the penal sum therein mentioned such certificate shall be conclusive evidence ;

Judgment to be entered thereon.

3. The date of the receipt of such recognizance or minute and certificate by the Prothonotary of the said Court, shall be endorsed thereon by him, and he shall enter judgment in favor  
of

of the Crown against the cognizor for the penal sum mentioned in such recognizance, and execution may issued therefor after the same delay as in other cases, which shall be reckoned from the time when the judgment is entered by the Prothonotary of the said Court;

4. Such execution shall issue upon fiat or præcipe of the Attorney General or Solicitor General for Lower Canada, or of any person thereonto authorized in writing by either of them; and the Crown shall be entitled to the costs of execution and to costs on all proceedings in the case subsequent to execution, and to such costs for the entry of the judgment as may be fixed by any tariff;

Execution to issue on fiat of Attorney or Solicitor General.

5. But nothing herein contained shall prevent the recovery of the sum forfeited by the breach of any recognizance from being recovered by suit in the manner provided by law, in any case where the same cannot for any reason be recovered in the manner provided in this section; 22 V. c. 28, s. 3.

Nothing herein to prevent recovery as already provided by law.

6. And in such case the sum forfeited by the non-performance of the conditions of such recognizance shall be recoverable with costs by action in any court having jurisdiction in civil cases to the amount, at the suit of the Attorney General or the Solicitor General or other party or officer authorized to sue for the Crown, and in any such action it shall be held that the party suing for the Crown is duly empowered so to do and that the conditions of the recognizance were not performed, and that the sum therein mentioned is therefore due to the Crown unless the Defendant prove the contrary; 12 V. c. 38, s. 97.

Proceedings in such case.

7. The word "cognizor" in this Act, shall include any number of cognizors in the same recognizance, whether as principals or sureties, unless such interpretation be inconsistent with the context. *ibid*, s. 5.

"Cognizor" how to be understood.

## CAP. CVII.

## An Act respecting the Payment of Crown Witnesses.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follow :

Crown witnesses in cases of felony or misdemeanor to be paid their expenses by the Sheriff upon an order from the Court.

**1.** Subject to the conditions in the next following section, in the case of every person subpoenaed on behalf of the Crown, or bound by recognizance to give evidence in the court of Queen's Bench, Courts of Oyer and Terminer or General Gaol Delivery, and General or Quarter Sessions of the Peace, touching any felony or misdemeanor, any such court, or any judge thereof, in which any such person appears by virtue of any subpoena or under any recognizance to give evidence as aforesaid, may order the sheriff of the district to pay out of moneys to be advanced to such sheriff for that purpose, out of any unappropriated moneys in the hands of the receiver general of the Province, by warrant of the Governor, to every such person such sum of money as the court or a judge thereof certifies him to be entitled to under the next following section, a reasonable allowance for his trouble and loss of time, which sum the sheriff, upon the production of the said order, shall forthwith pay, and the same shall be allowed in the accounts of the sheriff. 2 (3) V. c. 56, s. 1.

Sheriff to render an account with vouchers.

**2.** The sheriff to whom any moneys shall be advanced under the authority of this Act, shall render such account, and support the same by such vouchers, and transmit it at such time, as the Governor shall direct. *ibid*, s. 2.

Witness only to receive allowance in certain cases and on certain conditions.

**3.** But no such witness shall receive any allowance as such out of any public money, nor shall any order be made by any court, judge, recorder, inspector and superintendent of police, or presiding justice of the peace, for the payment of any such witness out of public moneys, except upon the certificate of the Attorney General or Solicitor General or other prosecuting officer on the part of the Crown, or of the clerk of the peace or other public officer prosecuting a felony or other offence in the court of quarter sessions or recorder's court, or before any other competent tribunal, that such witness, being subpoenaed or bound by recognizance to give evidence on the part of the Crown in such case, is entitled under this Act to the sum mentioned in such certificate, which sum shall be ascertained as follows :

Witness to be entitled to his disbursements only, unless poor and needy.

**1.** Unless the witness is poor and needy, he shall be entitled only to his actual travelling expenses from the place of his residence to the court and back, and just actual disbursements for board and lodging not exceeding the rate of one dollar per day, while detained in attending the court at a place where he does not reside ;

2. If the witness makes affidavit before the court, judge, recorder, inspector and superintendent of police, or justice of the peace, that he is poor and needy, he may also be allowed a reasonable sum for his trouble and loss of time, not exceeding in any case the rate of one dollar per day ;

If poor and needy, to receive an allowance for loss of time.

3. Any witness may, before receiving such certificate, be required to make affidavit that the sum he demands for disbursements or for trouble and loss of time, or both, is true and correct, and to answer on oath any pertinent question touching the same, which shall be put to him by the court, judge, recorder, inspector and superintendent of police or presiding justice of the peace, or by the prosecuting officer or person who is to sign the certificate. 22 V. (1858) c. 28, s. 1.

Witness may be required to make an affidavit as to sum demanded.

4. The defendant, in any case of felony, shall not obtain subpoenas for necessary witnesses for his defence without payment of fees, in the manner formerly used, except upon the order of some judge of the court in which the case is to be tried, or of the prosecuting officer in the case, which order shall be granted on the affidavit of the defendant that he is poor and needy, and that such witnesses are necessary to the defence, and the lawful fees of the proper officer issuing such subpoenas, shall then (but not otherwise) be paid as they now are ; but no expenses of serving such subpoenas shall be paid out of any public money :

Defendant in felony only to obtain subpoenas without fee on order of the Judge.

2. And in cases of misdemeanor or other offences less than felony; no expenses for subpoenas or service of subpoenas on the part of the defendant, shall be paid out of any public money, in whatever court such case be tried. *ibid*, s. 2.

Proviso:

## CAP. CVIII.

## An Act concerning the limitation in general of penal actions.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Actions for forfeitures on statutes or laws penal to be brought within two years.

1. All actions, suits or informations brought or laid in Lower Canada for any forfeiture on any statute or law penal, whereby the forfeiture is limited to Her Majesty, Her Heirs or Successors only, shall be brought within two years next after the offence committed against such statute or law penal, and not afterwards:

Where suit is limited to Her Majesty and any one in Her behalf.

2. All actions, suits or informations brought or for any forfeiture upon any penal statute or law, the benefit and suit whereof is by the said statute or law limited to Her Majesty, Her Heirs or Successors and to any other person who may prosecute in that behalf, shall be brought by such other person as aforesaid, within one year next after the offence committed and not afterward; and in default of any action or suit by such person, then the same shall be brought for Her Majesty, Her Heirs or Successors, at any time within two years after that year ended;

Suits brought after time limited to be void.

3. If any action, suit or information for any offence against any penal statute or law, shall be brought after the time in the behalf limited, then the same shall be void. 52 G. 3, c. 7, s. 1.

This Act to apply only to cases for which no other provision is made.

2. The foregoing section applies only to cases in which no other provision is made by law, and nothing herein contained shall prolong or extend in any manner the time or delay for the commencement of any action or suit or prosecution in virtue of any penal statute which fixes or prescribes a shorter time than that hereby limited. *ibid*, s. 2.

C A P. C I X.

An Act respecting Gaols and Houses of Correction.

**H**ER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. Every gaol in Lower Canada whether in any of the old or in any of the new districts is and has been the House of Correction for the district or districts of which it is the Common Gaol, and shall be so unless and until another building is by law made the House of Correction for such district or districts, and this provision shall apply to any Gaol to be built after this Act comes into force. 22 V. (1858) c. 5, s. 68.

Gaols in Lower Canada to be Houses of Correction.

2. The house of correction shall be under the sole care, superintendence and management of the sheriff of the district in which it is situate, so long as it is within the same building in which the gaol is. 9 G. 4, c. 4, s. 2.

Sheriff to have charge of Houses of Correction.

3. In all cases where any person has been convicted of any felony for which he is liable to suffer death, and Her Majesty is graciously pleased to extend the royal mercy to such offender on condition of imprisonment in the house of correction, the Governor may, by warrant under his hand and seal at arms, notify such intention of mercy to the judges, or justices, before whom such person was convicted, and thereby command such judges or justices to commit such person to the house of correction, in the district wherein he was convicted, there to be kept at hard labour for such time, less than two years, as such warrant shall specify :

Capital offenders whose sentences have been commuted may, in certain cases, be committed to Houses of Correction.

2. Such judges or justices, upon the receipt of such warrant shall, by warrant under their hands or seals commit such person to such house of correction, as aforesaid, there to be kept at hard labour for the time specified in such warrant of the Governor, and the person so committed shall be set at work, and kept at hard labour for and during the time specified in such last mentioned warrant, and after the expiration of such time shall be discharged, and be entitled to all the benefits and advantages of a pardon, as fully as if such conditional pardon had been granted under the great seal. 57 G. 3, c. 10, s. 6,-- and 14, 15 V. c. 2, s. 2.

Upon completion of term such offenders to be fully discharged.

4. Every person convicted of any crime for which he is liable by the law of Lower Canada to suffer death, and who shall be sent to any house of correction shall be kept in such house of correction, separate and apart from all other persons. 57 G. 3, c. 10, s. 7.

Such offenders to be imprisoned apart from all others.

Committees to be appointed for the management of Houses of Correction.

5. The Governor may appoint in each of the districts of Quebec, Montreal and Three Rivers, respectively, three persons, being justices of the peace for the said districts, as a committee to superintend the house of correction in such district; and the said committees shall provide stock and materials for the use and employment of the persons confined in the houses of correction in the said districts respectively, and shall also make orders for the regulation of the said houses of correction and of the respective masters of such houses of correction, and of the persons therein confined, in all cases as are not by law provided for; which orders of regulation being approved by the justices of the Court of Queen's Bench, in each of the said districts respectively, at any criminal term shall be carried into execution; and the said committees shall in like manner, from time to time, as often as they think necessary, make any other orders of regulation, as well for the repeal of such orders before made, as by way of addition thereto, but which, before they are carried into execution, must also be approved, by the said justices in manner aforesaid in each of the said districts, respectively; but no such regulation shall authorize any person to whip, or cause to be whipped any prisoner confined. 57 G. 3, c. 10, s. 3.

Their orders to be approved by the Judges of the Court of Queen's Bench.

Whipping prohibited.

Certain annual amounts appropriated to make provision for Houses of Correction.

6. Until separate houses of correction are erected in the said districts, respectively, the Governor may, out of any unappropriated moneys in the hands of the receiver general advance annually to the committees aforesaid in the said districts, a sum not exceeding eight hundred dollars, for the district of Quebec, a sum not exceeding eight hundred dollars for the district of Montreal, and a sum not exceeding four hundred dollars for the district of Three Rivers,—for the purpose of enabling the said committees, in their respective districts, to hire, or provide a building fit to serve for a temporary house of correction,—and also such accommodation for the performance of labour as may be requisite, and also to provide a stock of materials for the employment of the persons confined in the houses of correction, respectively, as well as for the purpose of allowing reasonable salaries to the superintendent and keepers thereof, in each of the said districts. 57 G. 3, c. 10, s. 1, and 58 G. 3, c. 14, s. 1.

A further sum may be allowed for the City of Montreal.

7. In consequence of the greater population of the district of Montreal, and the great number of prisoners in the house of correction for the said district, the Governor may advance out of any of the before mentioned funds, such further sum for the purposes aforesaid, as on a representation from the committee for superintending the said house of correction may be found necessary, and approved of by the Governor, but the additional sum so advanced over and above the said annual sum of eight hundred dollars, shall not in any one year exceed four hundred dollars. 58 G. 3, c. 14, s. 2.

8. The Governor may appropriate for the purposes of a House of Correction, such part or parts of the common gaols in the cities of Quebec, Montréal and in the town of Three Rivers, as may be vacant, and can be conveniently appropriated to that purpose, upon the report of the members of the committees appointed to superintend houses of correction. 57 G. 3, c. 10, s. 1, and 3 G. 4, c. 32.

Certain parts of Common Gaols may be set apart as Houses of Correction.

9. No spirituous liquor or strong waters shall be sold, supplied, afforded, or given, to any persons confined in any gaol in Lower Canada, unless the same be prescribed or given by or under the direction of a licensed physician, surgeon or apothecary :

Intoxicating liquors prohibited in.

2. If any gaoler, keeper or officer of any gaol, sells, lends supplies or gives away, or knowingly furnishes or suffers any spirituous liquor or strong waters to be sold, lent, supplied or given away in any gaol, or brought into the same, for the use of any prisoner confined therein, except when prescribed or given as aforesaid, such gaoler, keeper or other officer, shall, for every such offence, forfeit or lose the sum of forty dollars, and for a second like offence, shall, over and above such penalty incur the forfeiture of his office ; which said penalty shall be recoverable with full costs in any court of record in this Province ; and one moiety thereof shall go to Her Majesty, and the other moiety to such person as shall sue for the same :

Penalty on officers of Gaol selling or furnishing intoxicating liquors.

3. If any person carries, brings or attempts or endeavours to carry or bring into any of the said gaols, any spirituous liquor or strong waters, except when prescribed as aforesaid, the keeper or officer of any such gaol, may apprehend, or cause to be apprehended, such offender, and bring him before a justice of the peace for the judicial district in which such gaol shall be situated, who may hear and determine on such offence, in a summary manner, and, on conviction of the offender, shall commit him forthwith, to the common gaol or house of correction, for any time not exceeding three months. 4 V. c. 20, s. 18.

Penalty on persons bringing such liquors into the Gaol.

10. The control of the Sheriff over the Common Gaol in his district is provided for by chapter *ninety-two*.

## C A P . C X .

## An Act respecting Court Houses and Gaols in the new Districts.

Recital.

AND inasmuch as it is expedient to establish a Fund out of which, without the burden and cost of heavy local taxation, Court Houses and Gaols may be built in the New Districts, and Court Houses in the several Counties in which the District Court Houses are not situate: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

Lower Canada Municipalities Fund appropriated to the purposes of this Act.

1. The amount of the Lower Canada Municipalities Fund, under the Act respecting the Clergy Reserves, chapter *twenty-five* of the Consolidated Statutes of Canada, remaining after paying the charges upon it under the said Act, shall be appropriated for the purposes of this Act. 20 V. c. 44, s. 100.

\$300,000 may be raised by Debentures on the credit of the said Fund.

2. The Governor in Council may authorize the Receiver General to raise from time to time such sum or sums of money, not exceeding in the whole, (with any sum already raised for the same purpose, under the Act twenty Victoria, chapter forty-four,) the sum of three hundred thousand dollars, as may be required for the purposes of this Act, by the issue of Provincial Debentures, to re-pay and make good the principal and interest whereof all the moneys arising from the said Lower Canada Municipalities Fund, after the payment of the charges aforesaid, shall be and are hereby appropriated. *Ibid*, s. 101.

Form of Debentures.

3. The Debentures to be issued under this Act shall be in such form, for such separate sums either in sterling or currency, at such rate of interest not exceeding six per centum per annum, and the principal and interest thereof shall be made payable at such periods and places, as the Governor in Council shall deem most expedient, and shall from time to time direct; and any moneys forming part of the said Fund and applicable to the re-payment of the said principal and interest, and not immediately required for the purposes of this Act, shall be invested in Provincial securities by the Receiver General, under the direction of the Governor in Council. *Ibid*, s. 102.

Investment of any portion of the Fund not immediately required.

Appropriation for building Court House and Gaol in each New District.

4. Out of the said Lower Canada Municipalities Fund, a sum not exceeding twenty thousand dollars, to be fixed by the Governor in Council, taking into consideration the extent, population and business of the District, and other local circumstances thereof, may be expended in each of the New Districts in building a Court House and Gaol in and for the same; and such sum may from time to time be advanced and paid to the Commissioner of Public Works by the Receiver General on the Warrant of the Governor. *Ibid*, s. 103.

5. Provided that if the County Municipalities in any New District shall think proper to raise a further sum to be added to that allowed to the District under the next preceding section, and to be expended with it for the purpose of building a better Court House and Goal, they shall have full power so to do, and the County Delegates may agree upon such sum and the proportion thereof to be raised by each County, and the Council of each County shall have full power to raise the sum apportioned to it; and if any County or Local Municipality thinks proper to raise a further sum independently of the other Counties in the District, or of the other Local Municipalities in the County, it shall have full power so to do; and any such additional sum shall be applied and expended by the Commissioner of Public Works with that allowed to the District under the next preceding section. *Ibid*, s. 104.

Proviso: Municipalities may raise an additional sum to be added to that above limited.

6. The Municipality of the County in which the Gaol and Court House for any New District is to be built, shall furnish a proper site for the same, to be approved by the Commissioners of Public Works, and free of all incumbrances; and if the Council fails to furnish such site when called upon so to do by the said Commissioner, he may accept any proper site which shall be given to the Crown for the same at or near the *Chef-lieu*; or the Governor may, by Proclamation, appoint some other place at which a proper site shall be so given to be the *Chef-lieu*, which such place shall then be, as if named as such in the Schedule A to chapter *seventy-six* of these Consolidated Statutes. *Ibid*, s. 105.

County Municipality to furnish site.

Proceedings it fails so to do.

7. Out of the said Lower Canada Municipalities Fund, there shall be allowed to each County Municipality (including that of the County of Compton) in which there shall be no District Court, the sum of twelve hundred dollars towards building or procuring a County Court House at a place to be approved by the Governor as that at which the Circuit Court ought to be held in such County, and on a site to be furnished by the Local Municipality in which it is situate, free of all incumbrances and approved by the Commissioner of Public Works; and until the said sum is required for such purpose, the interest thereof shall be paid yearly to the County for Municipal purposes, or, at the option of such County, added to such sum in order to be applied in building or procuring a better Court House; And if there be more than one Court House to be built in the County, the second and all but the first shall be built at the expense of the County, on a site to be furnished as aforesaid by the Local Municipality in which it is built. *Ibid*, s. 106.

Allowance to Counties in which the *chef-lieu* shall not be for a County Court House.

If the Circuit Court is held at more than one place in the County.

8. Out of the said Lower Canada Municipalities Fund, there shall be allowed to each County Municipality in which there is no district Court, and in which no place can, under this Act, be appointed or continued as that at which the Circuit

Allowance to Counties in which the Circuit Court is not to be held.

Circuit Court shall be held, the sum of six hundred dollars, for municipal purposes. *Ibid*, s. 107.

Provision where there is now a Court House which will not be required under this Act.

**9.** If in any County in a New District, there is a Court House which will not be required for the use of such County or District, the Governor may, by order in Council, cause the same to be sold and add the proceeds of the sale to the share of the Municipalities' Fund coming to the District, or to the share of the County if the *chef-lieu* of the District is not in such County, as an addition to the fund for building the Court House and Gaol in such District, or the Court House in such County. *Ibid*, s. 108.

Court Houses and Gaols to be built by Commissioners of Public Works, whose powers shall apply to them.

**10.** The District Court Houses and Gaols above mentioned shall be built by the Commissioner of Public Works, under the control of the Governor in Council; and all the powers vested in the said Commissioner with regard to the taking of lands required for Public Works, and all other powers vested in him, or in parties who are empowered to contract with him for the conveyance of such lands, and all the provisions of the Acts relating to the said Commissioner and to Public Works constructed under his superintendence, shall, in so far as they may not be inconsistent with this Act, apply and extend to the said District Court Houses and Gaols, and the sites therefor, and the construction thereof, and to the said Commissioner in regard to them; but no plan shall be adopted by the said Commissioner for the construction of such Court Houses and Gaols, or any of them, until it has been approved by the Governor in Council:

Plans must be approved by Governor in Council.

Proviso.

2. Nothing herein shall prevent the exercise by any Municipality of the power of taking real property for municipal purposes, which the building of a Court House or Gaol shall always be held to be. *ibid*, s. 109.

Court Houses built under this Act to be the places for holding all Courts; and Gaols so built to be Common Gaols, &c.

**11.** All Courts to be held at the place where any Court House is built under this Act, shall be held in such Court House, unless the Governor, in case of the destruction of or great damage to the building, directs them, as he may, to be held in some other building; and the Gaol built under this Act in any District shall be the Common Gaol thereof, and also the House of Correction for such District until some other House of Correction shall be established for the same: and all general provisions applicable to Court Houses and Gaols in Lower Canada, shall apply to those built under this Act so far as they are not inconsistent herewith *ibid*, s. 110.

Title to Court House and Gaol to be in the Sheriff.

**12.** The title to the District Court House and Gaols in and for each of the New Districts respectively, shall be vested in the Sheriff of such District for the time being, and his successors in office for ever, and he and each of his successors in office shall be a Corporation sole for the purpose of holding the

the same for the purpose of this Act, but without power to alienate, charge or incumber the same; and the title to any County Court House, and of the site thereof, shall be vested in the Municipality of the County, for such estate or right as it has acquired therein. *ibid*, s. 111.

**13.** It shall be the duty of the Sheriff of each New District to keep the Court House and Gaol therein insured against loss by fire, for an amount and by an Insurance Company to be approved by the Commissioners of Public Works, and in case of loss by fire he may recover under the policy; and the amount recovered shall be applied to repair or re-construct the building destroyed or damaged. *ibid*, s. 112.

Sheriff to insure  
He may recover on the policy.

**14.** For keeping in good repair the District Court Houses and Gaols to be erected under this Act in the New Districts, and for paying the Petit Jurors in criminal cases in the same, there shall be, in and for each such District, a Fund, to be called "The Building and Jury Fund for the District of" (as the case may be), which shall consist of:

Fund established for repairing Court Houses and Gaols, and paying Petit Jurors in criminal cases.

1. All fines, forfeitures and pecuniary penalties collected in the District under the Police Ordinances, as extended by the *twenty-third* section of chapter *twenty-four* of these Consolidated Statutes; (18 V. c. 100, s. 25.)

Police fines.

2. The Crown's share of all fines, forfeitures or pecuniary penalties collected in the District on summary convictions under chapters *ninety-two* and *ninety-three*, of the Consolidated Statutes of Canada;

Summary conviction fines under 4, 5 V. c. 26, 27.

3. The Crown's share of all fines, forfeitures and pecuniary penalties collected within the District under chapter *twenty-two* of these Consolidated Statutes;

Fines under 7 G. 4, c. 3.

4. One per centum upon all moneys levied by the Sheriff of the District, or by any Bailiff therein, under execution in any civil case, such per centage to be retained by the Sheriff or Bailiff out of the sum payable to the party taking out such execution;

Percentage on moneys levied in execution.

5. All fines levied in the District under chapter one hundred and six of the Consolidated Statutes of Canada, respecting the trial and punishment of Juvenile Offenders;

Fines under Juvenile Offenders' Act.

6. All fines levied in the District for contempt of Court, or for non attendance of Jurors or Witnesses, or disobedience to any order of the Court;

And on Jurors and witnesses.

Yearly contribution by local Municipalities.

When payable and how enforced if not paid.

7. A yearly contribution from each Local Municipality in the District, which contribution shall be : forty-eight dollars yearly from the Local Municipality in which such Court House and Gaol shall be,---twenty-four dollars yearly from each other Local Municipality in the County in which such Gaol and Court House shall be,---and twelve dollars yearly from each other Local Municipality in the District ; which contributions shall be paid to the Sheriff by such Municipalities, respectively, in the month next after that in which *the District in which such Municipalities respectively lie, has become a Criminal District under a Proclamation issued under section eight or section nine of chapter seventy-six of these Consolidated Statutes*, and in the same month in each year thereafter, and if not so paid, may be recovered by the Sheriff for the time being as a debt due to him, or, in his option, may be levied by him from the rate-payers in the Municipality in default by an equal rate on their taxable property according to the valuation-roll then in force ; and for collecting and enforcing such rate, and the costs of levying the same, the Sheriff shall have the powers vested in the Secretary-Treasurer of such Municipality for the collection of rates duly imposed and to be collected by him in such Municipality. *ibid*, s. 113.

Fund to be received and disbursed by the Sheriff.

Under what supervision, &c.

15. The Fund last mentioned shall be received and disbursed by the Sheriff, who shall render an account thereof to the Minister of Finance, at such time, and in such manner and form as that officer shall appoint, and such account shall be audited by the Board of Audit ; and the Sheriff shall be deemed an Officer employed in the collection of the Revenue within the meaning of chapter sixteen of the Consolidated Statutes of Canada ; and any surplus moneys forming part of such Fund may be invested by the Sheriff in Government securities, with the approval of the Minister of Finance, and subject to such conditions as he thinks proper. *ibid*, s. 114.

Provision for re-building or enlarging any District Court House or Gaol.

16. If at any time it becomes necessary to re-build or enlarge any District Court House or Gaol, the same shall be re-built or enlarged by the Commissioner of Public Works, but at the expense of the Municipalities in the District, and if the Fund established by the next preceding sections added to the sum (if any) recovered by the Sheriff for the insurance thereon, is not sufficient to defray the expense of re-building or enlarging, then the sum required to make good the deficiency shall be furnished by the said Municipalities, in the proportions mentioned in the *seventh* paragraph of section *fourteen* and shall be paid over to the Sheriff, at such time as shall be prescribed by the Governor in Council, after such re-building or enlarging has been commenced, and if not so paid may be recovered by the Sheriff in the same manner and with the same powers as they are provided and given for the recovery of the contributions mentioned in the said *seventh* paragraph ; and the moneys in the hands of the Sheriff applicable to such re-building

Sheriff to disburse the money.

re-building or enlarging shall be disbursed by the Sheriff under the direction of the Commissioner of Public Works. *Ibid*, s. 115.

17. If at any time the said Fund is found in any District to be too large for the purposes to which it is made applicable, the contributions payable thereto by Local Municipalities in such Districts may be diminished by order of the Governor in Council to such extent as he deems advisable; and if at any time the said Fund be found insufficient in any District for such purposes, the said contributions may be increased by a like order to the extent which the Governor in Council deems expedient, but observing the same proportion as to the amount payable by the several Municipalities. *Ibid*, s. 116.

Contributions to Fund may be diminished if it prove too large, and vice versa.

#### DISTRICT OF CHICOUTIMI.

18. All moneys appropriated before the passing of the Act 22 V. c. 5, for the building of a Court house and Gaol at Chicoutimi, shall be available for building a Court house and Gaol at the *chef-lieu* of the new District of Chicoutimi. 22 V. c. 5, (1858) s. 74, *par.* 4.

#### GAOLS FOR NEW DISTRICTS UNTIL THEY BECOME CRIMINAL DISTRICTS.

19. And inasmuch as by the twenty-first subsection of section six of the Interpretation Act, chapter five of the Consolidated Statutes of Canada, it is provided that if by any Act "Any party is directed to be imprisoned or committed to prison, such imprisonment or committal shall, if no other place be mentioned, be in or to the Common Gaol of the locality in which the order for such imprisonment is made, or if there be no Common Gaol there, then in or to that Common Gaol which is nearest to such locality," and it is expedient to define which shall be deemed the nearest Common Gaols in or to which any party may be imprisoned or committed upon any order for such imprisonment, made in any civil suit or proceeding in the Superior or Circuit Court, or in any Commissioners' Court, in any New District, or by any Justice of the Peace in the exercise of his jurisdiction or powers in any civil case or proceeding in any New District, or in any civil case or matter in which any person may be imprisoned or committed to prison; Therefore,—until a Gaol has been built in any New District and has become the Common Gaol thereof, by virtue of any proclamation appointing the day when such District shall become a Criminal District for all purposes of the administration of Justice in Criminal matters, the Common Gaols which shall be held to be nearest to the said New Districts respectively, and in and to which such imprisonment or committal as aforesaid under any order, writ, process or proceeding in the said New Districts respectively, shall be as follows:

Recital.

Which shall be the Common Gaols of the New Districts.

The

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

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

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

Keepers to receive prisoners.

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

Proviso: as to the Old Districts.

Provided always, that for all purposes of the administration of Justice in Criminal matters, the Common Gaols in and for the Old Districts, as constituted before the passing of the said Lower Canada Judicature Act of 1857, shall continue to be the Common Gaols for the said Districts as then bounded, until the New Districts are, by Proclamation as aforesaid, respectively constituted Criminal Districts for all purposes of the administration of Justice in Criminal matters, after which they shall cease to be such Common Gaols for any portion of any Old District included in any New District which has become a Criminal District, except only as to persons committed or imprisoned before such New District became a Criminal District. 22 V. c. 5, s. 69.

C A P . L X X V .

An Act respecting the division of Lower Canada into Counties, and the boundaries of Cities and Towns represented in the Legislative Assembly.

NOTE.—The corrections to this Act were not received in sufficient time to insert it in its proper place.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. The Counties, Ridings, Cities and Towns and Unions of Counties hereinafter mentioned, shall be the subdivisions of Lower Canada upon which the Representation of the People thereof in the Legislative Assembly shall be based and the said counties are those intended for all purposes in these Consolidated Statutes and in the Consolidated Statutes of Canada, except only where it is otherwise expressly provided :—That is to say :

LOWER CANADA.

1. The County of Gaspé shall be bounded on the south-west by a line commencing at Mackarel point, on the north side and near the mouth of the Bay of Chaleurs, thence running north-west forty-seven miles, thence south sixty-nine degrees west until it strikes a line drawn south-east from Cap-Chat on the River St. Lawrence,—on the west by the line last mentioned,—and on the north and east by the River and Gulph of St. Lawrence ;—including in the said County the Island of Bonaventure and all the Islands wholly or in part opposite to the said County and nearest thereto ;—The said County so bounded comprising the Fiefs and Seigniories of Sainte Anne, Mont-Louis, La Magdeleine, Grande Vallée des Monts and Anse de l'Étang, Grand River and Pabos, and the Townships of Cap-Chat, Sydenham, Fox, Cap-Rosier, Gaspé Bay North, Gaspé Bay South, York, Douglas, Malbaie, Péréé and Newport, and the said Islands lying opposite to the said County and nearest to it ; 16 V. c. 152, s. 1, *sub-sect.* 1.

2. The County of Bonaventure shall be bounded on the east by the County of Gaspé,—on the north partly by the said County of Gaspé and partly by the County of Rimouski, on the prolongation of the same rear line, until it meets the River Patapédia,—on the west partly by the said River Patapédia and partly by the western limits of the Province,—and on the south by the Bay of Chaleurs and the southern limits of the Province, and shall comprise that part of the District of Gaspé lying between the County of Gaspé and the District of Quebec, including all the Islands wholly or partly opposite to the

General provisions.

County of Gaspé.

County of Bonaventure.

The river Patapédia or Mission the boundary of the Province by the Imperial Act, (1858.)

the said County of Bonaventure and nearest thereto;—save and except the Islands in the River Ristigouche;—The said County so bounded comprising the Seigniory of Shoolbred and the Townships of Port Daniel, Hope, Cox, Hamilton, New Richmond, Maria, Carleton, Nouvelle, Mann, Ristigouche and Matapédia; *Ib., sub-sect. 2.*

County of  
Rimouski.

3. The County of Rimouski shall be bounded on the north-east by the County of Gaspé,—on the south-west by the south-western line of the parish of Saint Simon, prolonged to the limits of the Province,—on the south-east by the County of Bonaventure and the southern limits of the Province,—and on the north-west by the River Saint Lawrence, including all the Islands in the said River lying nearest to the said County of Rimouski and wholly or partly opposite thereto,—The said County so bounded, comprising the parishes and settlements of Matane, Metis, Saint Joseph, Sainte Flavie, Sainte Luce, Saint Germain, Bic, Saint Fabien, Saint Simon, Saint Analet, the Seigniories of Lake Metis and of Lake Matapédia, and the Townships of MacNider, Matane, Saint Denis and the augmentation thereof, Cabot, Neigette, Macpés, Duquesne, Romieux, Cherbourg and Dalibaire; *Ib., sub-sect. 3.*

County of Té-  
miscouata.

4. The County of Témiscouata shall be bounded on the north-east by the County of Rimouski as hereinbefore described,—on the south-west by the north-eastern lines of the parishes of Saint André and Saint Alexandre and of the townships of Parke and Pohenegamook and the Province line,—on the south-east by the Province line,—on the north-west by the River Saint Lawrence,—including Green Island and all the Islands in the said River Saint Lawrence nearest to the said County of Témiscouata, and wholly or partly opposite thereto;—The said County so bounded comprising the parishes of Trois-Pistoles, Saint Eloi, Isle Verte, Saint George de Cacouna, Saint Arsène, Saint Patrice de la Rivière-du-Loup, Saint Modeste, Saint Antonin, and the Townships of Whitworth, Viger, Begon, Denonville, Raudot, Demers, Hocquart and the Seigniory and settlements of Témiscouata; *Ib., sub-sect. 4.*

County of Té-  
miscouata.

5. The County of Kamouraska shall be bounded on the north-east by the County of Témiscouata,—on the south-west by the south-western limits of the parish of Sainte Anne and of the township of Ixworth prolonged to the southern limits of the Province,—on the north-west by the River Saint Lawrence, including all the Islands in the said River nearest to the said County of Kamouraska and wholly or partly opposite thereto,—and on the south-east by the province line;—The said County so bounded comprising the parishes of Saint André, Saint Alexandre, Saint Louis of Kamouraska, Saint Paschal, Sainte Hélène, Saint Denis, Mont Carmel, Saint Pacôme, Rivière-Ouelle, Notre Dame du Portage, Saint Onésime and Sainte Anne,

Anne, and the townships of Bungay, Parke, Woodbridge, Chapais, Painchaud, Chabot, Pohenegamook and Ixworth; *Ib.*, *sub-sect.* 5.

6. The County of L'Islet shall be bounded on the north-east by the County of Kamouraska, as above described,---on the south-west by the south-western limits of the Parishes of L'Islet and Saint Cyrille, of the Township of Lessard prolonged to the Township of Arago, and of the Township of Arago, prolonged in a south-eastern direction to the province line,---on the south-east by the province line,---and on the north-west by the River St. Lawrence, including all the Islands in the said River nearest to the said County of L'Islet, and wholly or partly opposite thereto, but not including any part of the Islands hereafter annexed to the County of Montmagny;---The said County so bounded comprising the Parishes of Saint Roch, Saint Jean, L'Islet, Saint Cyrille and the Townships of Lessard, Fournier, Ashford, Garneau, Casgrain, Lafontaine, Dionne, Arago and Leverrier; *Ib.*, *sub-sect.* 6.

County of  
L'Islet.

7. The County of Montmagny shall be bounded on the north-west by the County of L'Islet as above described,---on the north-west by the River Saint Lawrence, including all the Islands in the said River lying nearest to the said County of Montmagny and wholly or partly opposite thereto,---on the south-east by the province line,---and on the south-west by the south-western limits of the Parishes of Berthier and Saint François prolonged to the Township of Mailloux, thence by the north-western and south-eastern lines of the said Township of Mailloux until this latter line reaches the limits of the Province;---The said County so bounded comprising Grosse-Isle, Isle aux Oies, Crane Island, Isle Sainte Marguerite, and all other Islands in the said River as aforesaid, the parishes of Cap Saint Ignace, Saint Thomas, Saint Pierre, Berthier, Saint François, the Townships of Ashburton, Montmini, Bourdages, Patton and the north-east part of the Township of Armagh; *Ib.*, *sub-sect.* 7.

County of  
Montmagny.

8. The County of Bellechasse shall be bounded on the north-east by the County of Montmagny as above described,---on the north-west by the River St. Lawrence,---and on the south-west by the south-western limits of the Parishes of Beaumont, Saint Charles, Saint Gervais and Saint Lazare, not including the Township of Buckland, but continuing to run on the northern line thereof as far as the Concession line next to the north-east of the Route de St. Lazare, and thence to the south-east along the said Concession line through the said Township of Buckland to the Township of Standon, thence following the north-western line of Standon and its augmentation by the north-eastern limits of the said augmentation and of the Township of Ware prolonged to the limits of the Province;---The said County so bounded comprising the Parishes of St. Vallier, Saint Raphael, Saint Michel, Beaumont, Saint Charles, Saint Gervais,

County of  
Bellechasse.

Gervais, Saint Lazare, the south-west part of the Township of Armagh and the part of the Township of Buckland, north-east of the sixth range thereof, and the Townships of Mailloux, Roux, Bellechasse and Daaquam ; *Ib.*, *sub-sect.* 8.

County of  
Lévis.

9. The County of Lévis shall be bounded on the north-east by the County of Bellechasse as above described, as far as the limits between the Parishes of Saint Henri and Saint Anselme---on the south-east by the north-western limits of the Parishes of Saint Anselme and Saint Isidore as far as the River Chaudière ;---and on the south-west side of the River Chaudière by such line as will comprise the whole of the Parishes of Saint Lambert and Saint Nicholas,---and on the north-west by the River Saint Lawrence ;---The said County so bounded comprising the Parishes of Saint Joseph of Pointe Lévy, Notre-Dame de la Victoire, Saint Jean Chrysostôme, Saint Henri, Saint Nicholas, Saint Romuald and Saint Lambert ; *Ib.*, *sub-sect.* 9.

County of Dor-  
chester.

10. The County of Dorchester shall be bounded on the north-east by the County of Bellechasse as above described,---on the south-east by the province line until it meets the sources of the River Metgermette,---on the south by the said River Metgermette as far as the Township of Linière,---on the north-west by the north-eastern and northern line of the said Township of Linière, the south-western line of the Townships of Watford, Cranbourne and Frampton, the south-eastern limits of the Parish of Sainte Marguerite, and of the Parish of Sainte Hémédine, the south-western limits of the said Parish of Sainte Hémédine, the south-eastern and south-western limits of the Parish of Saint Isidore as far as the River Chaudière, and on the south-west of the said River Chaudière by the south-eastern, south-western and north-western limits of the parish of St. Bernard,---and on the north-west by the said County of Lévis as above described ;---The said County so bounded comprising the Parishes of Saint Anselme, Saint Isidore, Sainte Claire, Sainte Marguerite, Saint Bernard, Sainte Hémédine, parts of the Townships of Buckland and Metgermette, and the Townships of Frampton, Standon and its augmentation, Cranbourne, Ware and Watford ; *Ib.*, *sub-sect.* 10.

County of  
Beauce.

11. The County of Beauce shall be bounded on the north-east by the County of Dorchester,---on the east by the province line,---on the west by the limits of the District of Quebec as far as the Township of Colraine,---and on the north-west by the southern limits of the Townships of Colraine, Thetford and Broughton,---again on the south-west by the south-eastern limits of the Township of Broughton and of the parish of Saint Sylvestre, as far as the County of Dorchester ;---and on the north-east by the said County of Dorchester ;---The said County so bounded comprising the Parishes of Saint Elzéar, Sainte Marie, Saint Joseph, Saint Frédéric, Saint François, Saint George,  
the

the Seigniory of Aubin-Delisle, part of the Townships of Metgermette and Clinton, the Kennebec Road Settlements, and the Townships of Jersey, Linière, Marlow, Rixborough, Spaulding, Ditchfield, Woburn, Gayhurst, Dorset, Shenley, Aylmer, Price, Lambton, Forsyth, Adstock and Tring; *Ib.*, *sub-sect.* 11.

12. The County of Megantic shall comprise the Townships of Inverness, Nelson, Somerset and its augmentations, Halifax, Leeds, Broughton, Thetford, Ireland and Colrairie; *Ib.*, *sub-sect.* 12. County of Megantic.

13. The County of Lotbinière shall be bounded on the north-west by the River Saint Lawrence,—on the south-west by the limits of the District of Quebec,—on the south-east by the County of Megantic,—and on the north-east by the Counties of Lévis, Dorchester and Beauce, as above described;—The said County so bounded comprising the parishes of Saint Sylvestre, Sainte Agathe, Saint Giles, Saint Antoine, Saint Flavien, Sainte Croix, Lotbinière, Saint Jean Deschaillons, Saint Apollinaire and all the remainder of the augmentations of the Seigniories of Deschaillons and Lotbinière, and of that part of the Seigniory of Sainte Croix which is not included in the above mentioned parishes; *Ib.*, *sub-sect.* 13. County of Lotbinière.

14. The County of Chicoutimi shall be bounded on the west by the County of Portneuf as hereinafter described,—on the south by the parallel of the forty-eighth degree of north latitude, as far as the prolongation of the eastern line of the township of Saint Johns on the Saguenay, thence on the east by the said prolongation and the said line to the River Saguenay, and crossing the River Saguenay, by the prolongation of the said eastern line to the River Sainte Marguerite,—on the north-east by a line to be drawn from the above point on the River Sainte Marguerite due north to the limits of the Province,—on the north by the limits of the Province;—The said County so bounded comprising the townships and settlements of Saint Johns, La Trinité, Harvey, Simard, Tremblay, Bagot, (including the Municipalities of Bagotville and Grande Baie) Chicoutimi, Laterrière, Simon, Jonquière, Kinogomi, Labarre, Metabetchouan, Signay, Mésy, Caron, Charlevoix, Bourgette, Taché, Roberval, Ouatichouan and Delisle; *Ib.*, *sub-sect.* 14,—22 V. (1859) c. 69. County of Chicoutimi.

15. The County of Saguenay shall be bounded on the south-east by the River Saint Lawrence, including all Islands nearest to the said County and wholly or in part opposite thereto on the south by the parallel of the forty-eighth degree of north latitude to the County of Chicoutimi as above described, on the north-west and west by the said County of Chicoutimi,—and on the north and north-east by the limits of the Province;—The said County so bounded comprising the townships and settlements of Saguenay, Tadoussac, Little Saguenay, Sainte Marguerite, Bergeronnes, Escoumins, Iberville, Laval, Latour, Betsiamites, the County of Saguenay.

the Seigniorship of Mille Vaches or Portneuf, the *Terra Firma* of Mingan, the Islets of Mingan, the Island and Seigniorship of Anticosti, the settlements and posts of Manicouagan, Betsiamites, Godbout, Saint Pancras, Pointe des Monts, Saint Paul, the Seven Islands, the Jeremie Islands, and all the other tracts of land comprised within the limits aforesaid; *Ib.*, sub-sect. 15,—18 V. c. 76, s. 10.

County of  
Charlevoix.

16. The County of Charlevoix shall be bounded on the south-west by a line to be drawn from Cap de l'Abattis on the River Saint Lawrence towards the north-west and parallel to the north-eastern line of the Seigniorship of Beauport, to the County of Chicoutimi as above described,—on the north by the Counties of Chicoutimi and Saguenay as above described,—on the south-east by the River Saint Lawrence;—The said County so bounded comprising the parishes of Little River, Baie Saint Paul, Saint Urbain, Eboulements, Saint Irénée, Malbaie, Sainte Agnès, Saint Fidèle, the townships of Settrington, De Sales, and Callières, Isle-aux-Coudres, Hare Island, and all the other tracts of land comprised within the above limits, and all Islands in the River Saint Lawrence nearest to the said County and wholly or partly opposite thereto; *Ib.*, sub-sect. 16,—18 V. c. 76, s. 11.

County of  
Montmorency.

17. The County of Montmorency shall be bounded on the west by the County of Quebec, as hereinafter described,—on the north by the parallel of the forty-eighth degree of north latitude,—on the east by the County of Charlevoix,—on the south-east by the River Saint Lawrence, including the Island of Orleans and all the Islands nearest to the County of Montmorency, and wholly or partly opposite thereto;—The said County so bounded comprising the parishes of Saint Pierre, Saint Jean, Sainte Famille, Saint Laurent and Saint François, Isle Madame, and Isle-aux-Reaux, and the parishes of Saint Féréol, Saint Joachim, Sainte Anne, Chateau Richer, Laval and Ange Gardien; *Ib.*, sub-sect. 17.

County of  
Quebec.

18. The County of Quebec shall be bounded on the south-west by the western limits of the parishes of Sainte-Foye, l'Ancienne Lorette and Saint Ambroise, and of the Seigniorship of Saint Gabriel and the prolongation thereof as far as the County of Chicoutimi as above described,—on the south-east by the River Saint Lawrence,—on the north-east by the south-western line of the Seigniorship of La Côte de Beauport until it meets the south-eastern line of the township of Tewkesbury, thence towards the north-east by the said south-eastern line as far as the eastern corner of the said township, thence by the north-eastern line of the said township to the rear thereof and by the prolongation of the said north-eastern line,—on the north by the County of Chicoutimi as above described, excepting therefrom the City of Quebec within its present extent and limits, and excepting also the parishes of Notre-Dame of Quebec and

and Saint Roch of Quebec;—The said County so bounded comprising the parishes and settlements of Beauport, Saint Edmond, Saint Gabriel de Valcartier, Saint Ambroise, Charlebourg, Sainte-Foye, Saint Colombe, and l’Ancienne Lorette, the townships of Stoneham and Tewkesbury, Fief Hubert, and all other tracts of land included in the above limits; *Ib., sub-sect. 18.*

19. The City of Quebec shall for the purposes of this Act comprise the present limits thereof *including* the parishes of Notre Dame of Quebec and of Saint Roch of Quebec; *Ib., sub-sect. 19.* City of Quebec.

20. The County of Portneuf shall be bounded on the north-east by the County of Quebec as above described and the prolongation of the south-western line thereof to the limits of the Province,—on the south-east by the River St. Lawrence,—on the north-west by the limits of the Province,—and on the south-west by the limits of the District of Quebec;—The said County so bounded comprising the Parishes of Saint Casimir, Grondines, Deschambault, Cap-Santé, Saint Basile, Saint Raymond, Sainte Catherine, Ecureuils, Pointe-aux-Trembles, Saint Augustin, Saint Alban, and the Townships of Gosford, Alton, Roquemont, Colbert, and the north-east part of the Township of Mekinac, bounded by the district line, and Montauban; *Ib. sub-sect. 20.* County of Portneuf.

21. The County of Champlain shall be bounded on the south-west by the River Saint Maurice until it meets the south-western line of the Seigniory of Cap de la Magdeleine, and thence by the said line prolonged to the limits of the Province, on the north-west by the limits of the Province,—on the south-east by the River Saint Lawrence,—on the north-east by the County of Portneuf as above described;—The said County so bounded comprising the Parishes of Sainte Anne, Batiscan, Sainte Geneviève de Batiscan, Champlain, Cap de la Magdeleine, Saint Maurice, Saint Stanislas, Saint Justin, Saint Prosper, Saint Narcisse, Notre-Dame du Mont Carmel, the Township of Radnor, and the south-west part of the Township of Mekinac; *Ib. sub-sect. 21.* County of Champlain.

22. The City of Three-Rivers shall comprehend the City of Three-Rivers within its present limits and the Banlieue of Three-Rivers; *Ib. sub-sect, 22.* City of Three-Rivers.

23. The County of Saint Maurice shall be bounded on the north-east by the Town of Three-Rivers as hereinbefore constituted and by the County of Champlain,—on the south-east by the River Saint Lawrence,—on the north-west by the limits of the Province,—on the south-west by the south-western limits of the Parishes of Yamachiche, Saint Sévère, Saint Barnabé, and the Township of Caxton, prolonged to the limits of the Province;—

The said County so bounded comprising the Parish of Three-Rivers without the Banlieue, Fief Saint Etienne, the Forges, the Parishes of Pointe-du-Lac, Yamachiche, Saint Sévère, Saint Barnabé, St. Boniface, and the Townships of Caxton and Shawinigan, and the augmentation of Caxton; *Ib.*, *sub-sect.* 23.

County of Maskinongé.

24. The County of Maskinongé shall be bounded on the north-east by the County of Saint Maurice as above described,—on the south-west by the limits of the District of Three-Rivers,—on the south-east by the River Saint Lawrence, including all Islands nearest to the said County and wholly or partly opposite thereto,—on the north-west by the limits of the Province;—The said County so bounded comprising the Parishes of Maskinongé, Rivière-du-Loup, Saint Léon, Saint Paulin, Sainte Ursule, Saint Didace, St. Justin, and the Township of Hunters-town, and the Gore thereof; *Ib.*, *sub-sect.* 24.

County of Nicolet.

25. The County of Nicolet shall be bounded on the north-east by the limits of the *Old* Districts of Quebec and Three-Rivers, up to the division line between lots Nos. eighteen and nineteen, in the ninth range of the Township of Blandford,—thence on the south-east by a perpendicular line drawn across the Township of Blandford, and thence by the south-western line thereof to the limits of the Seigniories, and by the limits thereof to the Seigniories and the Townships as far as the north-eastern line of the Parish of Saint Célestin, comprising in the said County of Nicolet all that part of the said Parish of Saint Celestin which is in the Township of Aston and the augmentation and the Gore thereof, thence by the south-eastern line of the augmentation of the Seigniorie of Nicolet,—on the south-west by the south-western limits of the Seigniorie of Nicolet and augmentation,—on the north-west by the River Saint Lawrence;—The said County so bounded comprising the Parishes of Saint Pierre, Gentilly, Sainte Gertrude, (except that part of the Township of Maddington, lying south of the north line of the eleventh range) Bécancour, Saint Grégoire, Nicolet, Sainte Monique, part of the Township of Blandford and the Parish of Saint Célestin; *Ib.*, *sub-sect.* 25. 22 V. (1858) c. 40.

County of Yamaska.

26. The County of Yamaska shall be bounded on the north-east by the County of Nicolet as above described,—on the north-west by the River Saint Lawrence,—on the south-west by the limits of the Old Districts of Three-Rivers and Montreal,—on the south-east by the north-western limits of the Township of Wendover, the River Saint Francis and the north-western limits of the Township of Upton;—The said County so bounded comprising the Abenaki Settlement, and the Parishes of Saint David, Saint Michel, Saint François, La Baie St. Thomas de Pierreville, and Saint Zéphirin, the Seigniories of Pierreville and Bourgmairie Est, and the augmentation of the Township of Wendover, and the Gore of Upton,

Upton, in the Parish of Saint Thomas de Pierreville ; *Ib.*, *sub-sect.* 26, as amended by 18 V. c. 76, s. 1.

27. The County of Berthier shall be bounded on the south-east by the River Saint Lawrence, including Isle Saint Ignace, Isle du Pads, and all Islands nearest to the said County and wholly or in part opposite thereto,—on the north-east by the County of Maskinongé,—on the south-west by the south-western limits of the Parish of Lavaltrie, the north-western limits of the said Parish of Lavaltrie and of the Parishes of Lanoraie, Saint Norbert and Berthier, the south-western limits of the Parish of Saint Cuthbert prolonged to the Township of Brandon, and by the south-western line of the said Township of Brandon prolonged to the limits of the Province,—on the north-west by the limits of the Province ;—The said County so bounded comprising the Parishes and Settlements of Isle Saint Ignace, Isle du Pads, Berthier, Lanoraie, Lavaltrie, Saint Norbert, Saint Cuthbert, Saint Barthélemi, Saint Gabriel and the Township of Brandon, and the north-east part of the Township of Joliette ; *Ib.*, *sub-sect.* 27. County of Berthier.

28. The County of Joliette shall be bounded on the south-east and the north-east by the County of Berthier as above described,—on the north-west by the limits of the Province,—on the south-west by the south-western limits of the Seigniory of Lavaltrie prolonged to the limits of the Province ;—The said County so bounded comprising the Parishes of Saint Charles Borromée, Saint Paul, Saint Félix, except that part thereof which is in the Township of Brandon, Saint Thomas, Sainte Elizabeth, Sainte Mélanie, Saint Ambroise, Bienheureux Alphonse de Rodriguez, comprehending also the whole of the Township of Kildare and augmentations, the Township of Cathcart and the south-west part of the Township of Joliette ; *Ib.*, *sub-sect.* 28. County of Joliette.

29. The County of Montcalm shall be bounded on the north-east by the Counties of Berthier and Joliette, as above described,—on the south-east by the north-western limits of the Parishes of L'Assomption, Saint Roch and Saint Lin, and of the Seigniory of Terrebonne, to the south-western line of the Township of Kilkenny,—on the south-west by the south-western line of the Township of Kilkenny prolonged to the limits of the Province,—on the north-west by the limits of the Province ;—The said County so bounded comprising the Parishes of Saint Jacques, Saint Alexis, Saint Esprit, Saint Liguori, and the Townships of Rawdon, Chertsey, Kilkenny, Wexford, Chilton, Doncaster and Carrick ; *Ib.*, *sub-sect.* 29. County of Montcalm.

30. The County of L'Assomption shall be bounded on the north-east by the Counties of Berthier and Joliette as above described,—on the south-east by the River St. Lawrence, including all Islands nearest to the said County and wholly or County of L'Assomption.

in part opposite the same,---on the south-west by the south-western limits of the Parishes of Lachenaie, Saint Henri de Mascouche and Saint Lin,---on the north-west by the County of Montcalm as above described ;---The said County so bounded comprising the Parishes of Saint Sulpice including Isle Bouchard, Repentigny, L'Assomption, Saint Roch, Lachenaie, Saint Henri St. Paul L'Hermite, L'Epiphanie and Saint Lin ;  
*Ib., sub-sect. 30.*

County of  
Terrebonne.

31. The County of Terrebonne shall be bounded on the south-east by the northern branch of the Ottawa River, including all Islands in the said River nearest to the said County and wholly or in part opposite the same,---on the north-east by the Counties of L'Assomption and Montcalm as above described,---on the south-west by the south-western limits of the Parishes of Sainte Thérèse and Saint Janvier, and of that part of the Parish of Saint Jérôme which is in the continuation of the Seigniory of Mille Isles, as far as the cordon between the Côte de la rivière à Gagnon and the Côte Saint Joseph, then following the said line or cordon to that part of the continuation of Mille Isles called the Seigniory Dumont, thence along the division line between the Seigniories Dumont and Bellefeuille, thence along the south-eastern line of the Township of Morin to the line between numbers twenty-six and twenty-five thereof, thence along the line between the said numbers to the Township of Howard, thence along the eastern line of the Township of Howard, the southern and the western line of the Township of Beresford, and the prolongation of this latter line to the County of Montcalm ;---The said County, so bounded, comprising the Parishes of Terrebonne, Sainte Thérèse, Sainte Anne, Saint Janvier, Lacorne, part of the Parish of Saint Jérôme, the Townships of Abercrombie and Beresford, and part of the Township of Morin ;  
*Ib., sub-sect. 31. amended by 18 V. c. 76.*

County of Two-  
Mountains.

32. The County of Two-Mountains shall be bounded on the north and east by the County of Terrebonne as above described,---on the south by the River Ottawa and the Lake of the Two-Mountains, including all Islands nearest to the said County and wholly or in part opposite thereto,---on the west by the western limits of the Parishes of Saint Placide, St. Hermas and Saint Columban and the eastern limit of the Township of Gore ;---The said County so bounded comprising the Parishes of Saint Eustache, Saint Augustin, Saint Benoit, Sainte Scholastique, Saint Columban, the Mission of the Lake of Two-Mountains, that part of the Parish of Saint Jérôme which is in the Seigniory of Two-Mountains, and the Parishes of Patronage de St. Joseph, St. Canut, Saint Placide and Saint Hermas ;  
*Ib., sub-sect. 32, as amended by 18 V. c. 76, s. 4.*

County of Ar-  
genteuil,

33. The County of Argenteuil shall be bounded on the east by the County of Two-Mountains and the northern portion of the County of Terrebonne as above described, on the north-east by the northern portion of the County of Montcalm as  
above

above described, on the south by the River Ottawa and the Lake of the Two-Mountains including all Islands nearest to the said County and wholly or in part opposite thereto, on the west by the eastern limits of the Seigniorie of Petite Nation by the Western limit of the Township of Harrington and the prolongation thereof to the County of Montcalm ;—the said County so bounded comprising the Parishes of Saint Andrews, Saint Jérusalem, and that part of the Parish of St. Jérôme which comprises the Côtes Saint Joseph, Saint Eustache, Sainte Marguerite, and Sainte Angélique,—and the Townships of Chatham, Wentworth, Grenville and Augmentation, Harrington and Augmentation, Gore, Howard, Arundel, Montcalm, Wolfe, Salaberry and Grandisson, and that part of the Township of Morin which lies to the south-west of the line between lots numbers twenty-four and twenty-five of all the ranges thereof ; *Ib.*, *sub-sect.* 33, *as amended by* 18 V. c. 76, s. 5.

34. The County of Ottawa shall be bounded on the east by the County of Argenteuil,—on the north-east by the northern portion of the County of Montcalm,—on the south-east by the Grand or Ottawa River, comprising all Islands in the same opposite to the County and belonging to Lower Canada,—on the south-west by the south-western limits of the Township of Eardly prolonged to the County of Montcalm ;—The said County so bounded comprising the Seigniorie of Petite Nation, the Townships of Lochaber and its Augmentation, Buckingham, Templeton, Hull, Eardly, Masham, Wakefield, Portland, Derry, Rippon, Denholm, Low, Aylwin, Hincks, Bowman, Villeneuve, Lathbury, Hartwell, Suffolk, Ponsonby, Amherst, Addington, Preston, Bidwell, Welis, Bigelow, Wright, Northfield, Blake, McGill, Killaly, Dudley, Chabot, Bouchette, Cameron, Maniwaky, Kensington, Egan, Aumon, Bouthillier, Kiamica, Merritt, Sicotte, and Campbell ; *Ib.* *sub-sect.* 34. County of Ottawa.

35. The County of Pontiac shall be bounded on the north-east by the County of Ottawa as above described,—and on the south-west and north by the Grand or Ottawa River to the head of Lake Temiscaming and a line thence drawn due north to the limits of the Province, by the said limits of the Province, and by the County of Montcalm,—comprising the Grand Calumet, Allumettes and little Allumettes Islands, and all other islands in the said River opposite to the said County and belonging to Lower Canada ; The said County so bounded comprising the Islands as aforesaid, and the Townships of Onslow, Bristol, Clarendon, Litchfield, Thorne, Aldfield, Mansfield, Waltham, Chichester, Sheen, Esher, Aberdeen, Malakoff, Aberford, Kirkaby, Labouchère, Gladstone, Graham, Cawood, Leslie, Stanhope, Clapham, Huddersfield and Pontefract ; *Ib.* *sub-sect.* 35. County of Pontiac.

36. The County of Drummond shall comprise part of the Township of Upton, from the first to the seventh ranges thereof inclusive, and the Townships of Durham, Grantham, Wendover, Simpson, County of Drummond.

Simpson, Wickham and Kingsey; *Ib. sub-sect. 36, as amended by 18 V. c. 76, s. 2. Boundary lines altered by Bouchette. And see as to part of Upton, 16 V. c. 194, s. 35.*

County of  
Arthabaska.

37. The County of Arthabaska shall comprise that part of the Township of Maddington, south of the north line of the eleventh range,—that part of Blandford not included in the County of Nicolet, the Townships of Warwick, Horton, Stanford, Arthabaska, Bulstrode and Augmentation, East Chester, West Chester and Tingwick, and that part of the Township of Aston and its Augmentation and Gore which is not included in the County of Nicolet as above described; *Ib. sub-sect. 37,—and 22 V. (1858) c. 40.*

County of  
Richmond.

38. The County of Richmond, shall comprise the Townships of Melbourne, Brompton, Shipton, Cleveland, Windsor and Stoke; *Ib. sub-sect. 38, as amended by 18 V. c. 76, s. 12,—and 18 V. c. 100, s. 33, par. 11.*

County of  
Wolfe.

39. The County of Wolfe shall comprise the Townships of Wolfestown, Ham, South Ham, Wotton, St. Camille, Garthby, Stratford, Weedon and Dudswell; *Ib. sub-sect. 39,—and 22 V. (1859) c. 67.*

Town of Sher-  
brooke.

40. The Town of Sherbrooke shall, for the purposes of this Act, comprise the Town of Sherbrooke *as bounded on the 14th day of June, 1852*, and the whole of the Townships of Orford and Ascot; *Ib. sub-sect. 40.*

County of  
Compton.

41. The County of Compton shall comprise the Townships of Compton, Westbury, Eaton, Clifton, Hereford, and Augmentation, Bury, Newport, Auckland, Lingwick, Hampden, Ditton, Winslow, Whitton, Marston, Chesham and part of the Township of Clinton; *Ib. sub-sect. 41,—and see as to Registration, 18 V. c. 99, s. 11,—and as to Municipal purposes, 18 V. c. 100, s. 4, par. 5.*

County of  
Stanstead.

42. The County of Stanstead shall comprise the Townships of Stanstead, Barnston, Hatley, Barford, and Magog East and West; *Ib. sub-sect. 42.*

County of  
Shefford.

43. The County of Shefford shall comprise the Townships of Milton, Roxton, Ely, Grandby, Shefford, and Stukely; *Ib. sub-sect. 43.*

County of  
Brome.

44. The County of Brome shall comprise the Townships of Bolton, Potton, Sutton, Brome and that part of the Township of Farnham which is east of the prolongation of the rear line of the Seigniorship of Saint Hyacinth; *Ib. part of sub-sect. 44, as amended by 18 V. c. 76, s. 13.*

County of  
Missisquoi.

45. The County of Missisquoi shall comprise the Parishes of Saint Thomas and Clarenceville; Saint Armand East and West,

West; Notre Dame des Anges, the Village of Philipsburgh and the Townships of Dunham and Stanbridge, and the Western part of the Township of Farnham; *Ib. part of sub-sect. 44, as amended by 18 V. c. 76. Query as to the necessity of inserting boundary lines for these two Counties. They are bounded by Rivers.*

46. The County of Richelieu shall be bounded on the north-east by the County of Yamaska as above described,—on the south-east by the south-eastern limits of the parishes of Saint Aimé and Saint Oûrs,—on the south-west by the south-western limits of the said parish of Saint Ours, and on the north-west by the river St. Lawrence, including all Islands in the said River nearest to the said County of Richelieu, and wholly or in part opposite thereto, except such as are hereinbefore annexed to the County of Berthier;—The said County so bounded comprising the Town of William Henry and the parishes of Sorel, Sainte Victoire, Saint Aimé, St. Marcel, St. Robert, St. Roch and Saint Ours; *Ib. sub-sect. 45.*

County of Richelieu.

47. The County of Saint Hyacinth shall be bounded on the north-east by the north-eastern limits of the Parishes of Saint Denis, La Présentation, Saint Barnabé, Saint Jude and Saint Hyacinth,—on the south-east by the south-eastern limits of the Parishes of Saint Hyacinth and Saint Damase,—on the south-west by the south-western limits of the Parishes of Saint Damase and Saint Charles,—on the north-west by the River Richelieu including all Islands in the said River Richelieu nearest to and lying wholly or in part opposite the said County;—The said County so bounded comprising the City of Saint Hyacinth, and the Parishes of Saint Hyacinth, Saint Damase, La Présentation, Saint Barnabé, St. Jude, St. Charles, St. Hyacinth le Confesseur, and Saint Denis; *Ib. sub-sect. 46, and see as to Acton and part of Upton, 16 V. c. 194, s. 35.*

County of St. Hyacinth.

48. The County of Rouville shall be bounded on the north-east by the County of Saint Hyacinth as above described as far as the northern angle of the Parish of Saint Césaire, thence by the north-eastern limits of the Parishes of Saint Césaire and Saint Paul of Abbotsford,—on the south-east by the Counties of Shefford and Missisquoi as above described and by the southern limits of the Parishes of L'Ange Gardien, Saint Césaire, Sainte Marie and Saint Mathias,—on the south-west and on the north-west by the River Richelieu, including all Islands in the said River nearest to or lying wholly or in part opposite the said County;—The said County so bounded comprising the Parishes of Saint Mathias, Sainte Marie, Saint Hilaire, Saint Jean Baptiste, Saint Césaire, l'Ange Gardien and Saint Paul of Abbotsford; *Ib. sub-sect. 47,—and see 22 V. (1859) c. 61, as to St. Césaire.*

County of Rouville.

49. The County of Bagot shall comprise part of the Township of Upton from the eighth to the twenty-first range inclusive, the

County of Bagot.

the township of Acton and the parishes of Saint Hugues, Saint Simon, Sainte Rosalie, Saint Dominique, St. Helene, St. Liboire and Saint Pie; *Ib.*, *sub-sect.* 48, *as amended by* 18 V. c. 76, s. 3. *And see as to Acton*, 16 V. c. 194, s. 35,—*and as to St. Pie*, 22 V. (1859) c. 61.

County of  
Iberville.

50. The County of Iberville shall be bounded on the north-west and north-east by the County of Rouville as above described,—on the east and south by the County of Missisquoi as above described, and on the west by the River Richelieu, including all Islands in the said River nearest to or lying wholly or in part opposite the said County;—The said County so bounded comprising the parishes of St. George de Henryville, Saint Alexandre, Saint Athanase, Saint Grégoire and Sainte Brigitte; *Ib.*, *sub-sect.* 49.

County of Ver-  
chères.

51. The County of Verchères shall be bounded on the north-east by the County of Richelieu as above described,—on the north-west by the River Saint Lawrence,—on the south-east by the River Richelieu,—and on the south-west by the south-eastern limits of the Parishes of Chambly, Saint Bruno and Boucherville, including all Islands in the said Rivers Saint Lawrence and Richelieu, nearest to the said County and wholly or in part opposite to the same;—the said County so bounded comprising the Parishes of Varennes, Verchères, Contrecoeur, Belœil, Saint Marc, Saint Antoine and Sainte Julie; *Ib.*, *sub-sect.* 50.

County of  
Chambly.

52. The County of Chambly shall be bounded on the north-east by the County of Verchères as above described,—on the south-east by the River Richelieu,—on the north-west by the River Saint Lawrence,—on the south-west by the south-western limits of the Parishes of Chambly and Longueuil, including all Islands in the said Rivers Saint Lawrence and Richelieu nearest to the said County and wholly or in part opposite to the same;—The said County so bounded comprising the Parishes of Boucherville, Longueuil, St. Bruno and Chambly; *Ib.*, *sub-sect.* 51.

County of La-  
p Prairie.

53. The County of Laprairie shall comprise the Parishes of Laprairie, Saint Philippe, Saint Jacques le Mineur, Saint Isidore and Saint Constant, including the whole of the Indian Lands of Sault Saint Louis, and all Islands in the River Saint Lawrence nearest to and lying wholly or in part opposite to the said County; *Ib.*, *sub-sect.* 52.

County of St.  
John's.

54. The County of St. John's shall comprise the Parishes of Saint Luc, Blairfindie, Saint Jean, Saint Valentin and Lacolle, including all Islands in the River Richelieu lying nearest to and wholly or in part opposite to the same; *Ib.*, *sub-sect.* 53.

County of  
Napierville.

55. The County of Napierville shall comprise the Township of Sherrington and the Parishes of Saint Cyprien, Saint Edouard, St. Michel and Saint Rémi; *Ib.*, *sub-sect.* 54.

56. The County of Chateaugai shall be bounded on the north-east by the Counties of Laprairie and St. John's,—and on the south-east by the north-western limits of the Townships of Hemmingford and Franklin,—on the south-west by the south-western limits of the Seigniorie of Beauharnois,—on the north-west by the south-eastern limits of the Parishes of Saint Louis, Saint Timothée, Saint Clément, and the River Saint Lawrence, including all Islands lying nearest to and wholly or in part opposite to the same ;—The said County so bounded comprising the Parish of Sainte Philomène and Chateaugai, the Settlements and Parishes of Russelltown, not included in the Township of Franklin, Saint Jean Chrysostôme, Sainte Martine, Saint Urbain, Saint Malachie and the remainder of the Seigniorie of Beauharnois with the exception of the Parishes of Saint Clément, Saint Louis and Saint Timothée ; *Ib.*, sub-sect. 55. *But see 20 V. c. 120, detaching the Township of Franklin and so altering boundaries. Amended accordingly.*

County of  
Chateaugai.

57. The County of Beauharnois shall be bounded on the north-east and south-east by the County of Chateaugai,—on the south-west by the south-western limits of the Seigniorie of Beauharnois,—on the north-west by the River St. Lawrence, including all Islands nearest to and wholly or in part opposite the said County ;—The said County so bounded comprising the Parishes of Saint Clément, Saint Louis de Gonzague, Saint Stanislas Kostka, Ste. Cecile and Saint Timothée ; *Ib.*, sub-sect. 56.

County of  
Beauharnois.

58. The County of Huntingdon shall be bounded on the south by the Province line,—on the east by the Counties of Saint John's and Napierville,—on the north-west and north-east by the County of Chateaugai,—on the north-east again by the County of Beauharnois,—and on the north by the River Saint Lawrence, including all Islands nearest to the said County and wholly or in part opposite to the same ;—The said County so bounded comprising the Indian Lands of Saint Regis, the Village of Huntingdon, and the Townships of Godmanchester, Elgin, Dundee, Hinchinbrooke, Havelock, Hemmingford and Franklin ; *Ib.*, sub-sect. 57, as amended by 20 V. c. 120,—22 V. (1858) c. 36, corrected accordingly.

County of  
Huntingdon.

59. The County of Soulanges shall comprise the Seigniories of Soulanges and New Longueuil, and the fifth, sixth, seventh and eighth ranges of the Township of Newton and of the Augmentation of Newton ; *Ib.*, sub-sect. 58, as amended by 18 V. c. 76, s. 6, altered accordingly.

County of Sou-  
langes.

60. The County of Vaudreuil shall comprise Isle Perrot, the Seigniories of Vaudreuil and Rigaud, and the first, second, third and fourth ranges of the Township of Newton, and its augmentation adjacent ; *Ib.*, sub-sect. 59, as amended by 18 V. c. 76, s. 7.

County of  
Vaudreuil.

County of  
Laval.

61. The County of Laval shall comprise Isle Jesus, and all Islands lying nearest to or wholly or in part opposite to the same, except Isle Bizard; *Ib.*, sub-sect. 60, as amended by 18 V. c. 76, s. 8.

County of  
Hochelaga.

62. The County of Hochelaga shall comprise the Parish of Montreal, without the City, and the Parishes of Longue Pointe, Pointe aux Trembles, Rivière des Prairies and Sault au Recollet, and all the Islands lying nearest to and wholly or in part opposite the same; *Ib.*, sub-sect. 61, as amended by 18 V. c. 76, s. 16.

County of  
Jacques Car-  
tier.

63. The County of Jacques Cartier shall comprise the Parishes of Lachine, La Pointe Claire, Sainte Anne, Sainte Geneviève and Saint Laurent, and all the Islands lying nearest to and wholly or in part opposite the same, including Isle Bizard; *Ib.*, sub-sect. 61, as amended by 18 V. c. 76, ss. 9 and 15.

City of Mont-  
real.

64. The City of Montreal shall be comprised within the limits it had on the fourteenth day of June, one thousand eight hundred and fifty-three. *Ib.*, sub-sect. 62.

As to augmen-  
tations, and  
places not men-  
tioned.

2. All augmentations or gores of parishes, townships or seignories, and all towns, villages or reserves of the same not specially mentioned in this Act, shall be considered as forming part of the County in which the principal part of such locality or in the immediate vicinity of which, such town, village or reserve is situate,--unless it be otherwise ordered by some Statute in force, for any purpose or purposes. 16 V. c. 152, s. 9.

As to Rivers  
between Coun-  
ties, &c.

3. Wherever both banks of any River in Lower Canada are in any District or County, there the river itself is within such District or County :

2. Wherever one bank of any River is in one District or County and the opposite bank is in another, there the centre of the main channel of the river is the boundary between the two Districts or Counties, each of which extends to the centre of such main channel ;

3. And wherever any River or portion of a River is in any County, it is also within the District of which such County forms part. 22 V. (1858) c. 5, s. 64.

# SCHEDULE A

REFERRED TO IN THE

## ACT RESPECTING THE CONSOLIDATED STATUTES FOR LOWER CANADA,

BEING THE SCHEDULE OF ACTS AND PARTS OF ACTS REPEALED BY  
THE SAID ACT, AND EMBODIED IN THE SAID

## CONSOLIDATED STATUTES.

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25 GEORGE III.

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27 GEORGE III.

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1. ADMINISTRATION of Justice.  
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