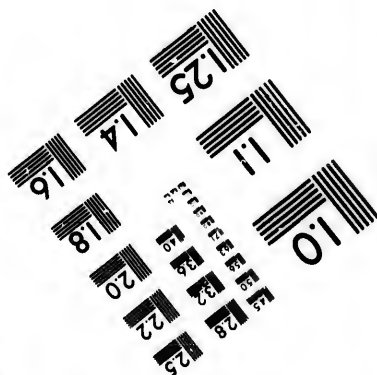
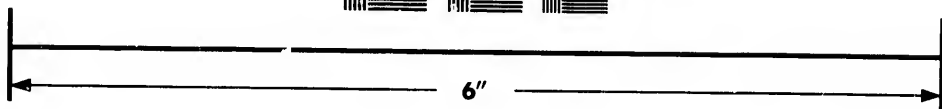
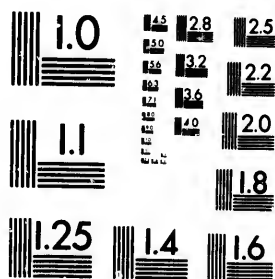


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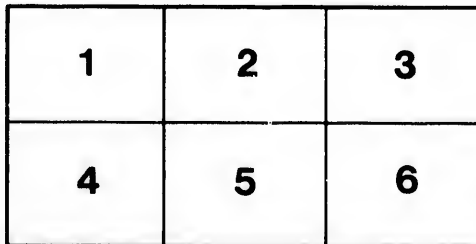
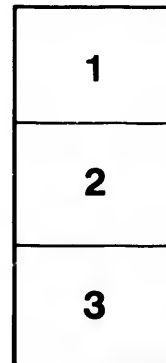
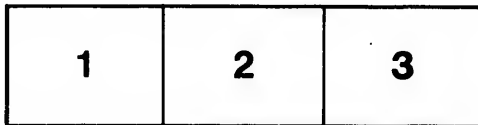
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A LETTER.

ON THE SUBJECT OF THE

DIVISION COURTS:

WITH

PROPOSED ALTERATIONS

IN THE

JURISDICTION AND DETAILS

OF THE

SYSTEM.

**FROM HIS HONOUR JUDGE BURNS, TO THE ATTORNEY
GENERAL, CANADA WEST.**

TORONTO:

PRINTED BY SCOBIE & BALFOUR, ADELAIDE BUILDINGS, KING STREET.

1847.

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A LETTER

ON THE SUBJECT OF THE

DIVISION COURTS.

SIR,—In addressing you on the subject of the Division Courts, in respect to which I am about to propose reforms and amendments, I but follow the practice in England, which is, whenever any gentleman thinks he can advantageously suggest an alteration, reformation or amendment, in any particular, to address his remarks to some prominent leader in the profession, within whose province it would naturally fall to inquire into the subject, and, if worthy of attention, might afterwards take measures before the legislature upon the suggestions. For some time, I have observed that many alterations and additions to the Division Court might be introduced with great advantage to the public; but what has more immediately prompted me to consider the subject now, is, observing by an order of the Queen in Council of the 19th December last, that the recent Act passed in the British Parliament, entitled, "An Act for the more easy recovery of small debts and demands in England," is about to be called into operation, and thereupon the former Court of Requests in many towns and places will cease. From the experience I have had in the working of our Act of 1841, creating the present Division Courts and abolishing the Court of Requests, and which Act is similar to the one now introduced into England, I think many amendments can be made to our law, which will render the system more perfect, and at the same time make it more decidedly useful to those who feel themselves compelled, from the nature of their dealings and transactions, to enter the inferior tribunals of the law.

I propose to lay the whole of the English Act before the public, so that those who are not called upon to legislate may have an opportunity of expressing their opinions to those who may be so called upon, and thus that every one may judge for himself as to the probable advantages to arise or disadvantages attendant upon it. Instead, however, of making any connected dissertation upon the English bill, I intend to add, by way of notes to each clause, such remarks as may suggest themselves, and to the whole add the clauses of an entirely new

Bill to supersede the Act of 1841. To the general reader, I am aware, such a course will appear dull, tedious and uninteresting; but the comprehensiveness in such a plan, and its practical utility to those who may be really desirous of discussing the subject, is more than sufficient to counterbalance the disadvantages. I shall therefore offer no more apologies, but at once proceed to the task before me.

I have the honour to be,

Your obedient servant,

ROBERT E. BURNS.

An Act for the more easy Recovery of Small Debts and Demands in England.

[25th August, 1846.]

Whereas sundry Acts of Parliament have been passed, from time to time, for the more easy and speedy recovery of Small Debts within certain towns, parishes and places in England, &c.

[The remainder of the Section is unimportant in this country, for it is merely giving power to order the Act to be put in force.]

Section 2. That Counties be divided into Districts.

Section 3. Courts held under this Act, to have the same jurisdiction as County Courts, and to be Courts of Record.

[Hitherto the Division Courts in this province have not been made Courts of Record; but inasmuch as I shall propose to invest these Courts with more extensive powers, and authority to commit to prison in certain cases, I think it would be proper to place them upon the same footing as those in England.]

Section 4. Preserving the jurisdiction of the County Courts.

Section 5. Her Majesty may order any Court under Acts in Schedules (A) and (B), to be held as County Courts, and may assign a District to the same.

Section 6. When a County Court shall be established under this Act, recited Acts, and all other Acts affecting its jurisdiction repealed.

Section 7. Proceedings under former Acts to be valid.

Section 8. Orders in Council to be published in the *London Gazette*.

Section 9. Appointment and qualification of Judges. Proviso as to Attornies acting as Judges under Acts cited in Schedules (A) and (B).

Section 10. Judges at present acting in the Courts of Bath, Bristol, Liverpool and Manchester, entitled to the appointment under this Act for those places.

Section 11. Stewards of Manors of Sheffield and Eccleshell, appointed under 48 Geo. III. ch. 103, to be the first Judges under this Act, for those Districts.

Section 12. The present County Clerk of Middlesex, appointed under 28 Geo. II. ch. 38, to be the first Judge under this Act, and may continue to appoint a Deputy, subject to approval of Secretary of State. Present Registrar to be the first Clerk.

Section 13. Provisions for certain Lords of Manors having rights of appointments under the Acts hereby repealed.

Section 14. Lords of Manors, &c., may surrender Courts, with consent of persons interested.

Section 15. Appointments of Judges who have previously officiated in any County Courts, not subject to 5 and 6 Vict., ch. 122.

Section 16. For supplying vacancies among the Judges of the County Court.

Section 17. That no Judge appointed under this Act shall, during his continuance as such Judge, practice as a Barrister within the District for which his Court is holden under this Act, except those Barristers already appointed to preside in or hold the said Courts in Bath, Bristol, Liverpool, Manchester, Sheffield, Eccleshell and Middlesex, and now practising in chambers as conveyancing counsel, who may continue such practice.

[The Judges, by this clause, are only restricted from practising at the bar in the Districts over which they preside; and those who have been practising before the Act came into operation, are allowed to continue. Having taken office upon the understanding that they were at liberty to do so, such right is continued to them. If our Legislature had done the same thing in 1845, to those who accepted office after 1841, upon such an understanding, it would have been doing only what the mother country has deemed a just right to individuals. Instead, however, of legislating upon this principle, a change was suddenly made, without the least notice of it, and without any remuneration. Such is Canadian opinion of what is right.]

Section 18. That it shall be lawful for the said Lord Chancellor, or where the whole of the District is within the Duchy of Lancaster, for the Chancellor of the said Duchy, if he shall think fit, to remove, for inability or mis-

behaviour, any such Judge already appointed, or hereafter to be appointed.

Section 19. Provided always, that it shall be lawful for the Lord Chancellor or the Chancellor of the said Duchy, within their several jurisdictions, to remove any Judge from any District to which he shall have been appointed, for the purpose of appointing him to any other District in which the salary of such Judge shall not be less than in the District from which he shall be so removed.

Section 20. As to the appointment of a Deputy to a Judge.

Section 21. Judges may act as Justices, if in the Commission of the Peace.

Section 22. That the Judges and other officers to be appointed under this Act shall be authorised and required to perform all such duties in, and relating to, any causes or matters depending in the High Court of Chancery, or before any Judge thereof, or before the Lord Chancellor, in the exercise of any authority belonging to him, necessary or proper to be done in their respective Districts, as the Lord Chancellor shall, from time to time by any general order direct; and for this purpose, and subject to the general rules and orders of the said Court, shall have and exercise all such authorities as may be duly exercised by the Commissioners or other officers of the said Court by whom such duties are now usually performed, and shall be entitled to receive the same fees and sums of money as are now payable in respect thereof, to be accounted for and applied by them as the other fees authorised by this Act to be received, are directed to be accounted for and applied: provided always, that the future amount of such fees shall continue subject to the same authority for revising the same to which it is now subject.

[Some years since, when changes were spoken of with reference to the practice of the Court of Chancery in this province, it occurred to me that the Judges of the District Courts would be proper persons to do all the duties of Master Extraordinary and Examiner in each of the Districts; and I mentioned the subject more than once to different members of the profession. The change which I spoke of in this country, has, as we see by this clause, actually been made in England. I thought it then advantageous to transfer these duties to a Judge, and it would, I am sure, be found equally so in this country, as they seem to think in the Mother Country. By such a system, I am convinced we might entirely get rid of that useless system of written interrogatories, which only multiply and increase unnecessary labour and expenses. It cannot be questioned, that the Legislature contemplated there might be examinations without written interrogatories; and undoubtedly the parties might exercise the right of examination without written interrogatories if they pleased. As to the expediency of such examinations, none will deny who are in the habit of examining witnesses. Mr. Hoffman, in his work upon the practice of the Court of Chancery in the State of New York,

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appointed, says: "There is no express provision preventing the use of written interrogatories before an Examiner, but the rules are entirely silent upon such a practice; and ever since the rule of Dec. 1, 1925, they have been almost wholly disused. One good effect of that disuse is, the extinction of the practice of referring interrogatories, which may carry a cause upon an interlocutory point through almost every stage, and become a fruitful source of litigation and delay." And again he says: "Upon the examination, if a witness is objected to as interested or otherwise incompetent, or any interrogatory is objected to as improper or irrelevant, the Examiner may reserve the question, or decide upon the objection, as he may deem proper. If he reserves the question, or decides against the objection, he shall note the same, and proceed with the examination. If he decides in favour of the objection, the testimony may be taken down, if insisted on by the solicitor or counsel of the party against whom the decision is made. In such case, the objection and decision shall be noted, and the party making the objection may at the hearing, on due notice, apply to have the deposition suppressed, or the objectionable testimony expunged. These are very beneficial regulations, by which the course before the examiner is rendered precise, and all questions are reserved for the decision at the hearing." Mr. Hoffman observes, that when the evidence is taken before the Examiner, it is written out fairly, and the witness signs it; but when taken before one of the Cica-Chancellors, it is taken down in the mode usually adopted in trials at Nisi Prius. By adopting these suggestions, which may be easily carried out by rule of court, and enacting a clause similar to the one in England, the whole system of taking evidence would be much simplified, and the expenses greatly reduced. There might be days appointed by the judge of the District Court for the purpose at each of the District Court sittings.]

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Section 23. Treasury to appoint Treasurers of Courts holden under this act.

Section 24. That for every Court under the authority of this act there shall be a Clerk, who shall be an Attorney of one of her Majesty's superior courts of common law, and whom the Judge shall be empowered to appoint, subject to the approval of the Lord Chancellor, and in case of inability or misbehaviour to remove, subject to the like approval; and until otherwise directed by her Majesty, with the advice of her Privy Council, every such Clerk shall be paid by fees, as hereinafter provided; and in cases requiring the same, such assistant Clerks as may be necessary shall be provided and paid by the Clerk of the Court.

Section 25. In populous districts, Lord Chancellor may direct two Clerks to be appointed.

Section 26. In case of illness, &c., of Clerk, a deputy may be appointed.

Section 27. Duties of Clerks.

[The duties of the Clerk are the same as prescribed by our Act, but the schedule of fees provides for the payment to the Clerk for all duties required of him, whereas our Act is greatly deficient in this respect. There is much labour performed by the Clerk at present, for which he receives no compensation.

The Legislature, of course, did not intend it should be so, but it is impossible for any one to provide for all contingencies, who is not thoroughly acquainted with the practical working of the system. The present scale of remuneration is not adequate to the duties performed: that is, if it is to be taken as being the full amount to be paid him. The fees allowed in the schedule are sufficient for the duties prescribed by it; but the Act requires him to perform a variety of matters for the parties, for which he receives no remuneration; and it is such matters as operate hardly upon the Clerk, and causes him by far the most trouble. He is obliged from the first stage of suits to the last, to receive in and pay out all suitors' moneys; to do which, with any degree of regularity, he must necessarily make a great many entries and consume a good deal of time. The proposed Act, from which our Act of 1841 was chiefly copied, provided for the Clerk being paid for this duty, and so does the present English Act. I shall propose that the Clerk be paid by the Plaintiff in each case a small remunerating fee for receiving, taking charge of, and paying him his money and taking a receipt for it. When a Defendant pays the Clerk, which he may do without judgment, the Clerk is not bound, nor is he bound after judgment, on payment being made, to give the Defendant any certificate of payment. I shall not propose to oblige the Defendant to take one, but we know that most parties desire an acquittance when they pay money; and to oblige the Clerk to give one without being paid for so doing, is manifestly unjust; I shall therefore propose that whenever a defendant desires an acquittance or certificate of payment, he may have it by paying the Clerk a small fee for it. I have known many sums of money lost, and I have reason to think from some cases before me, that sums of money have been exacted twice for want of such vouchers. What has occurred once may happen again; but when the Defendant may have such a certificate by paying for it, if such a thing should happen, it would be his own fault.]

Section 28. Offices of Clerk, Treasurer, and Bailiff, not to be conjoined.

Section 29. Officers not to act as Attornies in the Court.

Section 30. Penalty of £50 on non-observance of the two previous enactments.

Section 31. Appointment of Bailiffs.

Section 32. Provision for the High Bailiff of Westminster and Southwark.

Section 33. Duties of the High Bailiffs, &c.

Section 34. Provision respecting Clerks and High Bailiffs of Courts under acts cited in schedules (A) and (B).

Section 35. Provision respecting the officers of the two Courts at Bristol.

Section 36. Treasurers, Clerks and High Bailiffs, to give security.

Section 37. Fees to be taken according to schedule (D), and tables to be exhibited in conspicuous places. Fees may be reduced. Appropriation of surplus fees.

Section 38. Compensation for persons whose rights or emoluments will be diminished.

Section 39. Officers of Courts may be paid by salaries instead of fees. If Court abolished, no compensation allowed except in certain cases.

Section 40. Limiting amount of salaries to be paid under this act. To the Judge £1200, and to the Clerk £600.

Section 41. That the Clerk of every Court holden under this act, from time to time, as often as he shall be required so to do by the Treasurer or Judge of the Court, and in such form as the Treasurer or Judge shall require, shall deliver to the Treasurer a full account in writing of the fees received in that Court, under the authority of this act, and a like account of all fines levied by the Court, and of the expenses of levying the same; and shall pay over to the Treasurer, quarterly or oftener in every year, by order of the Court, the monies remaining in his hands over and above his own fees, and such balance as he shall be allowed, by order of the Court, to retain for the current expenditure of the Court.

[The Clerks in the Division Courts of this province as the law stands, are compelled to furnish at their own expence the books necessary for the records of the Court; and yet these books are made public property. This has always appeared to me to be very unjust to the Clerks. It will be seen that by the English act, such an expenditure can be provided for. There has been another oversight committed in our act, in not allowing the Judges to permit the Clerks to retain other current expenses of the Courts; such as for fuel, lights, and the use of rooms to hold the Court in. It has happened, that the Judge has been obliged to adjourn the Court after going to the place appointed for it, because the person at whose house it had been holden, took it into his head to withhold the permission any longer. It has also been the case that the Judge has been obliged to pay out of his own pocket for fuel to warm the room; and when he has been unable to finish his cause list before dark, to pay for candles rather than adjourn over till the next day. No one could imagine that either the Judge or Clerk should pay these charges, or should be obliged to furnish a room. It is true that the hospitality of the people in the country is great in respect of these accommodations; but it is not right that the Courts should depend upon that, or that it should be expected individuals should furnish such things gratuitously for the community. There must have been an oversight in the Legislature, which I should propose now be remedied by merely adopting the provisions of the English act.]

Section 42. Clerks accounts to be audited and settled by Treasurers, and Treasurer to pay fees to the Judge.

[It has always appeared to me a cumbrous mode of paying the salaries adopted in our act, that is, that the Treasurer should half yearly make up the accounts for the Receiver General, and if there be not enough received to pay disbursements, then a warrant shall issue for the deficiency. In such districts as the fees are sufficient no inconvenience is felt, but in those districts where the fees are deficient there is great inconvenience and delay. It is often from two

to three months after time for payment, before the salary of the Judge is fully settled. Why should it be so? All the Judges of the province, except the District Court Judges, are paid their salaries by warrant on the consolidated fund every quarter. No reasonable reason can be given for adopting the exception. The consolidated revenue is chargeable with all ultimate deficiencies, but it is unjust to the Judge to make him wait till that be ascertained before he shall be paid, besides undoubtedly the present system is complicated, both to the Receiver General and the Treasurer. The certainty to the Judge of being paid his salary by warrant every quarter, is of no small moment to him, and why he should be placed upon a different footing from all others, is a question no one can answer. I shall therefore propose so to alter the 13th and 14th sections of our act, as that the Treasurer shall pay over the monies he receives as he receives them, to the Receiver General, and that the Judges' salaries be paid as all other salaries are paid.]

Section 43. Treasurer of the Court to render accounts to Audit Board.

Section 44. Commissioners of Treasury to direct how balances shall be applied.

Section 45. Accounts of Treasurers to be audited under powers of 25 Geo. 3, ch. 52.

Section 46. Clerk to send to Commissioners of Audit an account of all sums paid by him to Treasurer.

Section 47. Accounts, when audited, to be sent to Treasury.

Section 48. Treasurers, with approval of Secretary of State, to provide court houses, offices, &c.

Section 49. Where Common Gaols are inconvenient, prisons belonging to Courts under Acts cited in Schedules (A) and (B) may be used.

Section 50. Power for purchasing Land.

Section 51. Treasurer empowered to borrow money for the purposes of this Act.

Section 52. A general fund to be raised for paying off money borrowed.

Section 53. Property of Courts in Schedules (A) and (B) to vest in the Treasurer of the County Court.

Section 54. Provisions for outstanding liabilities.

Section 55. Clerks to have the charge of the court houses, &c., and to appoint and dismiss servants, &c.

Section 56. Judge to hold the Court where her Majesty shall direct. Notices for holding Courts to be put up in a conspicuous place.

Section 57. Process of the Court to be under seal.

Section 58. That all pleas of personal actions, where the debt or damage claimed is not more than £20, whether on balance of account or otherwise, may be holden in the

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[This clause summary w- ur Courts; all amount there can be Courts of local Courts so have con- small matte- ry such ma- Court of Re- ay, from pr- would have- be so in fut- to send th- expense an- others, in t- the amount- importance- disposed of- I can cite- one person- four of his- eight dolla- destroying- or £3, and- remedy of- borrowing- ing them. - pen to be h- antly are, - the ignor- because th- their cases- conferring- why they- property o- sum of £- deliver a- boards, or- altogether- of £3 or- not feel o- have don- £20. Th- of this co- in such c- value of p- is equal- gest that- damages- parties at- Courts. - so called- As we p-

Why should the County Court without writ; and all such actions brought in the said Court shall be heard and determined in a summary way in a Court constituted under this act: Provided always that the Court shall not have cognizance of any action of ejectment, or in which the title to any corporeal or incorporeal hereditaments, or to any toll, fair market or franchise shall be in question, or in which the validity of any devise, bequest, or limitation under any will or settlement may be disputed, or for any malicious prosecution, or for any libel or slander, or for criminal conversation, or for seduction, or breach of promise of marriage.

[This clause gives jurisdiction to dispose of in a summary way a great mass of cases which occupy the Courts; and in a great many instances to the full amount of the jurisdiction of the District Courts. There can be no doubt that since the abolition of the Courts of Request, and substitution of the present local Courts, it would have been found advantageous to have conferred a jurisdiction to entertain and try small matters of trespass and trover. The power to try such matters was given in several of the English Court of Requests Acts to the extent of £10. I can say, from practical observation, that such a jurisdiction would have been found beneficial, and of course will be so in future; for I have in many cases been obliged to send the parties to another Court, at a great expense and loss of time both to themselves and others, in matters which, so far as regarded either the amount in dispute by way of damages, or the importance of the suit, might have been far better disposed of in their own Division Courts at home. I can cite as instances, cases of this description: one person's dogs worrying and killing some three or four of his neighbour's sheep, worth some six or eight dollars; or one farmer's cattle getting into and destroying another's grain, to the value of some £2 or £3, and the party being unable to proceed by the remedy of distress; and the more familiar cases of borrowing goods and not returning them, or damaging them. Whenever cases of this description happen to be brought to Court, and many of them ignorantly are, reform is loudly called for, and many of the ignorant feel disposed to blame the Judge, because they are made to pay costs, for his not trying their cases, rather than blame the Legislature for not conferring the power; for they cannot understand why they should not recover for a damage to their property of a value of some £2 or £3, as well as a sum of £2 or £3 for the breach of an agreement to deliver a thousand, or a couple of thousand feet of boards, or the value of a cow sold, which may depend altogether upon opinion as to her value, or for a sum of £3 or £4 for goods sold or work done. I should not feel disposed at present to go the length they have done in England in actions of tort, that is to £20. The time will arrive when the transactions of this country will warrant an increased jurisdiction in such cases; but at present it may be said that the value of property here is such that a jurisdiction of £10 is equivalent to £20 in England. I shall therefore suggest that in cases of trespass and trover where the damages sought to be recovered do not exceed £10, the parties should be allowed to proceed in the Division Courts. In actions of assumpsit and debt, technically so called, I should propose to go to the extent of £20. As we proceed with the bill, we shall find that the

provisions respecting costs do not make it compulsory upon plaintiffs, except as to certain amounts, to proceed in the small courts. In like manner, in our law the provision as to costs of suits under £10 might remain as it is in actions of contract; and might be applied to actions of tort, when the sum recovered should not exceed £5. The effect of this would then be, that plaintiffs might, in actions of contract between £10 and £20, and in actions of tort between £5 and £10, resort to the Division Court or to the District Court at their option. This option of the plaintiffs could have no injurious or ill effect to the defendants, for I should propose to adopt, as in England, a provision that defendants might in cases of £10 or £5 as the case might be, apply to the judge to remove the case to the District Court, if the judge deemed it proper to be more formally tried and disposed of than in the Division Court. This option would confer a great benefit upon plaintiffs, who merely seek to make collections by giving them a speedy and inexpensive tribunal, at the same time would give the defendant the right to have the cases more formally tried if they were disposed to do so. The Division Courts are essentially courts for the collection of debts; and to show that to be so, I will state that I kept a register of the whole business of all the Division Courts of the Home District, for the year 1846, and out of 4103 cases pending for the year, only 699 were disputed, 2223 were undisputed and judgments given upon them, and 1181 cases were paid or settled by the parties without going into court. The same result would happen, I have not the slightest doubt, if the facility of enabling parties to collect their debts under £20 were given to the Division Courts. The principle I propose to apply to the Division Courts might be applied to the District Courts, and the jurisdiction of that court be extended to £100 in cases of contract, and £50 in cases of tort. The option to the plaintiff, the provision in favour of defendants, and the power of appeal, would afford great convenience to parties, and effectually guard every one against injurious or bad decisions. I have given the matter a good deal of consideration, and I am satisfied that the reform introduced into England by the Local Courts bill, might be extended both to our Division and District Courts, with great advantage to the public.]

Section 59. Suits to be by Plaintiff.

[According to the provisions of this Act, no deposit is required to be made by the Plaintiff when commencing his suit; all he is required to do, is to pay the fees in advance. During three years past, I have not once had occasion to make any inquiry respecting the deposit money. It appears to me altogether a useless provision; for the Judge is invested with ample powers to award a Defendant compensation, and to enforce payment of it. Obliging a Plaintiff to make a deposit of one-twentieth part of the amount of his demand, in addition to payment of fees, is not only an inconvenience to him, but also to the Clerk in keeping accounts with respect to it; and I have seen no instance, when there has been occasion to make a defendant an allowance for his trouble and expenses, that the deposit was adequate for the purpose. I shall propose to omit this provision; for though, when the act was passed in 1841, it was considered an additional safeguard against parties bringing into Court unjust accounts and demands against Defendants, it has failed in having such effect; and practical experience convinces me of its utility.]

Our Act professes to give forms of proceedings necessary to the working of the Act, but it has left many unprovided for, and what is proposed to do now in respect of the Courts, would make it inconvenient to profess to give all the necessary forms; besides, there is no necessity to give any forms at all—the Judges being now professional persons, can frame the necessary forms by rule under authority given for that purpose. It is better that it should be so, and we cannot go wrong by following the English Act in this respect. I shall propose to limit the personal service of summons to amounts above £5. No inconvenience can arise to a Defendant for any intimation that the demand would be disputed, would cause the Judge, as he now frequently does, to adjourn the cause, and such an alteration would be a great convenience to Plaintiffs, and a great saving of expense and travelling to the bailiffs.]

Section 60. Summons may issue though cause of action may not arise in the District.

Section 61. Processes out of District of Court, may be served by Bailiff of any other Court.

Section 62. Proof of service of Process out of the District, or in the absence of the Bailiff.

Section 63. Demands not to be divided for the purpose of bringing two or more suits.

Section 64. Minors may sue for wages.

Section 65. Cases of Partnership and intestacy.

[The effect of this clause is, to give the Judge certain of the powers of a Court of Equity in matters of partnership and legacies; when the amount to be recovered does not exceed £20, and to be settled in a summary way. I must say that I am altogether in favour of such a power being given to the Division Courts, and I say so from practical observation. I have occasionally met with cases which come within these classes, and which I have been obliged to dismiss for want of jurisdiction. I can cite as instances, persons entering into a partnership of making bricks, and the whole amount of the balance in dispute between them being only a few pounds; and again, a couple of Shoemakers, after being in partnership a short time, separate, and the one contends the other has received too much for his share by some £10. To send such parties to the Court of Chancery is a farce; and their not being able to pay the expenses of that Court, amounts to a denial of justice to them; for if they should be mad enough to do it, they would be unable to pay the expenses of drafting the Bill and Answer which would be required, to say nothing of the expenses of the other interminable proceedings which would be required before it could be ascertained whether the one owed the other £5 or not. I have observed an influential journal in England, advocating that such equity powers ought not to stop there, but should be extended to a variety of other cases, which, from the amount in question is considered beneath the dignity of the Court of Chancery, or in which parties are advised that the remedy would be worse than the disease. I am satisfied the jurisdiction as given in England, to say the least of it, is no more than what parties having small demands against each other, growing out of the settlement of their partnership transactions or from small legacies left to them, have a right to expect the Legislature should provide for,

when providing a remedy speedy and inexpensive for other cases, and I know there are a great many persons to whom such a tribunal would be beneficial and highly advantageous. If we find, as we do, persons willing to try the experiment of the Courts having jurisdiction, we may well conclude that there are hundreds of others, every year, who know, or are told that they cannot succeed, and consequently do not attempt it.

Section 66. Executors may sue and be sued

[In this Province, Executors have always been suffered to sue in the Division Courts, because the only sought to avail themselves of the jurisdiction to reduce to their possession what once belonged to the testator, but which the law has veiled in them; but on the other hand, it has always been considered that no suit could be there maintained against them in their representative capacity. The Act is silent as respects Executors; but as no execution could issue *de bonis testatoris* it must follow that no such judgment could be given. This state of the law is, as it is felt to be a great hardship. It is only within a few days past that a case occurred of a Defendant being sued in the District Court for a demand of £2. An application was made to restrain the Plaintiff from recovering full costs, but it could not be granted inasmuch as he could not be sued in the Division Court. An alteration of the law is very desirable in this respect, and such an alteration, it is to be presumed, will not meet with objection from any one.]

Section 67. No privilege allowed.

Section 68. One of several persons liable may be sued.

Section 69. Judge alone to determine all questions, unless a Jury be summoned.

Section 70. Actions may be tried by a Jury, when parties require it.

Section 71. Party requiring a Jury, to make a deposit.

Section 72. Who shall be Jurors.

Section 73. Number of the Jury. Five to be sworn. Verdict to be unanimous.

Section 74. Proceedings on hearing the Plaintiff.

Section 75. No evidence of demand to be given not in summons.

Section 76. Notices to be given to the Clerks of special defences, who shall communicate the same to the Plaintiff.

[In the Schedule of fees, this duty to be performed by the clerk is provided for. In this country he has never received anything. I know no reason why he should be obliged to take such trouble for nothing; the plaintiff must pay the clerk for the steps in the cause he wishes done, and upon the same principle so should the defendant. If a fee were given the clerk for performing this duty, we should find it better attended to. I have known cases very frequently adjourned, to enable a defendant to comply with the provision of the Act respecting the giving of notices of defences. With respect to cases which may be adjourned, at present the clerk has a great deal of trouble with the entering of the minutes made upon them, and again bringing the cases down to the next

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court. The party asking for indulgence ought to pay the clerk for this trouble, just as much as paying the expenses of the opposite party. I shall propose to do so as in England, provide for a small fee to be paid the clerk for both the foregoing services.]

Section 77. Suits may be settled by arbitration.

[This provision I think a most excellent one, viz., that the Judge may, with the consent of the parties, refer the suit to arbitration. I have often recommended to the parties such reference at the Division Courts, and they have frequently adopted it; and I have retained the suit, so that if they did not settle in that way, I might afterwards hear and determine it. This clause, however, recognises an award made under such a reference, and gives it the operation of a Judgment, and is final unless the Judge shall see fit, on an application to be made to him, to set it aside.]

Section 78. Forms of procedure in courts to be framed by the Judges.

Section 79. Proceedings if Plaintiff does not appear or prove his case.

Section 80. Proceedings if the defendant does not appear, and power to set aside the judgment, and grant a rehearing.

[Every Judge in the Province will say that the want of a power to set aside the judgment, and grant a rehearing, has been felt more or less in every District, and at every court. Some accident may happen to a defendant to prevent his getting to court; he may be detained and prevented by circumstances over which he can exercise no control—or he may be from home when the summons served, and continue to be so when the judgment rendered. A great many things may happen or take place which are sufficient to prove there should be a corrective power vested somewhere. Why this evil—for evil I call it, to say the least of it—should have been allowed to exist so long, I do not understand; and it appears to me it is only necessary to mention it, in order that it should be remedied. I can say, and I am sure every Judge in the Province will say the same thing, that abundant proof is afforded, not once or twice, but very often, that such a power should have existed long since.]

Section 82. Defendant may pay money into Court. Notice of such payment to be given to Plaintiff.

[Our Statute at present has a provision of this nature, but is a very absurd one, and no guard against expenses being entailed upon parties without the possibility of being avoided. The law, as it stands, is, that at any time before the day appointed for the trial, the defendant may pay money into court, that is, he may do so after witnesses have been subpoenaed, and their attendance cannot be prevented; the payment may be made in the afternoon of the day before the return day of the summons, and yet it is provided that the clerk shall give immediate notice of such payment to the plaintiff, and the plaintiff shall signify within three days after he shall have received the notice, whether he intends to proceed for any more! I propose that the defendant shall make his payment to the clerk five days at least before the return day, and then time would be afforded to give the plaintiffs the notice.]

Section 83. Parties and others may be examined.

Section 84. Persons giving false evidence, to be guilty of perjury.

Section 85. Summonses to witnesses.

Section 86. Penalty on witnesses neglecting summonses.

Section 87. Fines, how to be accounted for, and enforced.

Section 88. Costs to abide the event of the action, unless otherwise ordered by the Judge, and to be in his discretion.

Section 89. Judgments, how far final.

Section 90. No action to be removed into superior court but on certain conditions.

Section 91. Who may appear for any party in the said courts, together with what fees and costs shall be allowed to Barristers and Attornies.

Section 92. Court may make orders for payment by instalments.

Section 93. Provision where cross judgments.

Section 94. Court may award execution against goods, &c.

Section 95. Execution not to issue till after default in payment of some instalment, and then it may issue for the whole sum due.

Section 96. What goods may be taken in execution.

Section 97. Securities seized to be held by Bailiff, and if the execution be not paid, the plaintiff may sue in the name of the defendant on the securities, when due.

[The law has always been considered by almost every one to be greatly deficient in giving the plaintiff proper facilities and effectual remedies in reaching the effects of the debtor after judgment has been obtained, and rendering the same available to pay the amount. The debtor may have the means of sufficiently and abundantly paying or securing the amount of the judgment against him; but, unless his property consists of something which the Bailiff could expose for sale as well as seize, the writ of execution is perfectly useless. These two clauses enable plaintiffs to seize the monies and securities of the debtor, and to hold them in payment, and towards satisfaction of the judgment; and if the defendant does not satisfy the demand, power is given to the plaintiff to collect so much of the securities, when they become due, as will satisfy the judgment. Why the law should have so long remained without giving creditors full right and power to look to, and make available all the property of the debtor, as well as a portion, is not easy to explain, and why a defendant's pockets full of money, and securities for money and money due to him from others, should not be as available, as circumstances will admit of, to satisfy a debt which he owes, as his horse and carriage, is a question which cannot admit of a negative answer. The alteration in our law is loudly called for. Not a court is held that does not afford practical proof of the necessity. At every Division Court a multitude of questions are

put by suitors to the judge, to know whether parties cannot seize upon monies of their debtors, which they see paid before their faces into the hands of the clerk or bailiff, and whether they cannot in some way get at notes or securities, which are known to be in the hands of the debtor, and which the debtor, doubtless, could make available to secure the amount due by him, if he felt disposed to do so. But enough at present upon these sections, for the matter is intimately connected with those which follow.]

Sections 98 and 99. If the claim be not satisfied, or debt paid, the creditor may obtain a summons, requiring the debtor to appear again and answer such charges as are laid against him, and as to his conduct in not paying the debt; and if he shall not attend the summons, nor allege a sufficient excuse, or refuse to be sworn, or make proper disclosure, nor by his answers satisfy the Judge, or has obtained credit from the plaintiff under false pretences, or by means of fraud or breach of trust, or has willfully contracted such debt or liability without having had, at the same time, a reasonable expectation of being able to discharge the same, or shall have made, or caused to be made, any gift, delivery, or transfer of any property, or shall have charged, removed, or concealed the same, with intent to defraud his creditors, or any of them; or if it shall appear to the satisfaction of the Judge, that the party so summoned has then, or has had since, the judgment obtained against him sufficient means and ability to pay the debt, or damages, or costs so recovered against him, either altogether, or by instalments; and if he shall neglect to refuse to pay the same as shall have been ordered, it shall be lawful for such Judge, if he shall think fit, to order that any such party may be committed to the common gaol, or to any prison which shall be provided as the prison of the court, for any period not exceeding forty days.

[These powers not only are for the purpose of extending the principle of making the property of the debtor available to the creditor, but also to punish fraud committed by the debtor. The want of such a power in this country has been felt as a real grievance by a large portion of the community. It is true that the power to punish for fraud in certain cases was provided for by the 8th Sec. of Stat. 5, V. William IV., and some convictions have taken place under that Act; but the provision falls far short of what is necessary to discover the truth, and affords no remedy whatever to the creditor as to the matters complained of. The whole of the circumstances of the fraud must be proved by other than the testimony of the party; for, unless the defendant seek the protection or indulgence afforded him by different statutes providing for such, no power is given to ask him a single question about his property. Creditors feel that the act is almost a dead letter, for when property is to be made away with, concealed, &c., the intent constitutes the crime, and that intent, unless indeed the parties wished to run into the meshes of the law with their eyes open as to the consequences, would be confined as much as possible to the immediate parties concerned, who could not be examined as witnesses

against each other, for as both are rendered liable to misdemeanour, neither would be bound to criminate himself. The small creditor would find, were he to proceed under this Act, that it would cost him, to follow up the tedious and troublesome remedy by indictment, more than any benefit he would derive; besides, in case of failure, exposing himself to a malicious prosecution in a case, too, perhaps where, if the defendant could have been interrogated as provided for by this Act, the creditor might triumphantly have succeeded in punishing the party, and have made such discovery as would have led to the ultimate payment of his debt.

I had considered the subject upon this Act thus far, and committed my views to paper, when, by the kindness of a gentleman, I was referred to an article in the January number of the *Westminster Review* upon this subject, and I make the following extract from it, the language of which I think peculiarly applicable to this Province.

"The most important change in a right direction, that is, in the direction of public honour and honesty, is found in the Act of last session, entitled 'An Act for the more easy Recovery of Small Debts and Demands in England,' 28th August, 1846. But here let it be observed, that the term *small debts* is likely to suggest that the matter is one of but small and partial importance, that it belongs but to a small and unimportant section of commercial transactions; it is not so, but, on the contrary, it is one of the greatest possible importance, because it affects the money affairs of a very large portion (almost all) of the middle classes of society, and, indirectly, of the humbler classes too. If there be any truth in the aphorism of Bentham—'*Maxima felicitas plurimorum*'—the question of *small debts*, being a question of subsistence to nearly the whole people, and a question of good morals into the bargain, it becomes, next to the means by which men's lives and persons are secured against violence, a matter of grandest importance. Poor-laws are not more vital to the existence of the working classes than are small debt laws to the existence of the same working classes, and the middle classes as well. Great men can protect themselves; great properties can protect themselves; but small men and small properties (small debts especially) must be protected by the law, or they all become annihilated."

Section 100. Power of Judge to rescind or alter orders.

Section 101. Power to examine and commit at hearing of cause.

Section 102. Mode of issuing and executing warrants of commitment.

Section 103. Imprisonment not to operate as a satisfaction of the debt.

Section 104. How execution may be had out of the jurisdiction of the court.

Section 105. Power to Judge to suspend execution in certain cases.

Section 106. Regulating the sale of goods taken in execution.

Section 107. As to the liability of goods taken in execution under 3 Anne, chap. 17. Landlords may claim rent in arrear. Bailiffs

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Section 108. No execution shall be stayed by writ of error.

Section 109. Execution to be superseded on payment of debt and costs.

Section 110. Debtor to be discharged from custody upon payment of debt and costs.

[I may introduce here some remarks about the facility of parties removing their goods before any judgment can be obtained, and so defeat the claims of creditors. Instances have frequently occurred where a defendant has either been served with summons or apprehended he would, and packed up his goods and removed them out of the province. One of the first cases brought under my notice in the Division Court, was of this description: the defendant, a few days before the sitting of the court, removed the whole of his effects to the States and defrauded his creditors, who had sued him for various small sums, amounting in the whole to nearly £50. Other cases have come under my notice since that time of a similar thing being done, and the number of such cases it is impossible to say, inasmuch as when plaintiffs find themselves placed in a position where they incur expenses without any prospect of payment, they generally abandon further proceedings. I propose that the plaintiff shall be allowed, upon making affidavit of the truth of his debt, and that the party is about to remove his goods, which shall be confirmed by some one not a creditor of the defendant, to obtain from the Clerk a warrant of attachment, to enable the Bailiff to seize and detain the goods till judgment given, or the Judge make other order in the matter. If the defendant give security to abide the judgment, to have his goods restored to him, and that the Judge shall be invested with power to inquire, at the hearing of the cause, whether there were grounds or not to detain the defendant's goods, and if he think not, to compensate the defendant for any injury he has sustained. The facility of removing goods and effects beyond the power of the courts is so great in this country, and there being no right to arrest for less than £10, it seems to be absolutely necessary to protect creditors in small debts by some provision of this kind.]

Section 111. Minutes of proceedings to be kept.

Section 112. Suitors' monies unclaimed in six years, to go to the general fund.

Section 113. Power of committal for contempt.

Section 114. Penalty for assaulting Bailiffs, or rescuing goods taken in execution.

Section 115. Bailiff made answerable for escapes and neglect to levy execution.

Section 116. Remedies against, and penalties on, Bailiffs and other officers for misconduct.

Section 117. Penalty on officers taking fees besides those allowed.

Section 118. Claims as to goods taken in execution to be adjudicated in court.

[This provision is of the nature of the interpleader law, of which Sheriffs can avail themselves when

claims are made to goods seized by them, I consider this a most excellent provision for all parties. Claims are made upon goods seized by the bailiff constantly—the bailiff is unwilling to proceed to sale without an indemnity—the plaintiff does not know what to do: he cannot learn the facts upon which the claim is based, for the parties studiously avoid giving him any information, and thus he is placed in the position of either being compelled to give an indemnity, and run the risk of being sued upon it; or he must tell the bailiff to find out the truth of the claim in the best way he can, and take his remedy against the bailiff, if he thinks he can succeed. The plaintiff may exercise some choice, and abstain from pressing; but the bailiff has no choice, he must necessarily expose himself to the claims of one or other of the parties. The interpleader Act affords the Sheriff a protection; but at present there is no protection or means given of ascertaining the claims of parties upon a Division Court execution. Suits and complaints are brought, and made constantly in consequence of the want of a summary power to settle these claims. It is obvious that if it be necessary to protect small debts, by giving an easy remedy for their recovery, it is equally necessary to afford a summary remedy to ascertain claims on the means of paying those debts to the extent of the demand.]

Section 119. Actions of Replevin may be brought without writ.

Section 120. Plaints where to be entered.

Section 121. How actions of Replevin may be removed.

Section 122. Possession of small tenements may be recovered by Plaintiff in County Court. If tenant, &c., neglect to appear or refuse to give possession, Judge may, on proof of service of summons, issue a warrant to enforce same.

Section 123. The manner in which such summons shall be served.

Section 124. Judges, Clerks, Bailiffs, or other officers not liable to actions on account of proceedings taken.

Section 125. Where Landlord has a lawful title, he shall not be deemed by reason of irregularity.

Section 126. How execution of warrant of possession may be stayed.

Section 127. Proceedings on the bond for staying warrant of possession, &c.

Section 128. Concurrent jurisdiction with superior Courts.

[The foregoing sections contain provisions with respect to overholding tenants, and how landlords are to proceed in such cases before the small courts. We have provisions by our laws now in force for that purpose, and as I have not heard complaints against the system, I suppose it has been found to be sufficient.]

Section 129. As to actions brought for small debts in superior Courts.

[This section renders it compulsory at the risk of costs, to bring suits, if founded on contract when the verdict shall be less than £20 in the County Court;

and actions if founded on tort when the verdict shall be less than £5. The effect of this is, that plaintiffs in actions of tort may go to the County Court, if they please, for claims less than £20, but are not compelled to do so for less than £5. I propose to leave the provision respecting costs in actions founded on contract as it is at present. This will not render it compulsory upon plaintiffs to sue for demands between £10 and £20 in the Division Court—they may do it if they please; and I shall propose a clause giving the defendants a right to apply to the Judge of the District Court, or a Judge of the Queen's Bench, to remove the suit upon terms that may be thought right between the parties. In like manner with actions founded on tort, I shall propose it to be compulsory in cases below £5, that they be sued in the Division Court; but between £5 and £10, the plaintiff may bring his suit there if he pleases, and the defendant may remove the suit, as in other cases.]

Section 130. Penalties and costs to be recovered before a Justice, and levied by distress.

Section 131. In default of security, offender may be detained till return of warrant of distress.

Section 132. In default of distress, offender may be committed.

Section 133. Penalties not otherwise applied, to be paid into the general fund.

Section 134. Justices may proceed by summons in the recovery of penalties.

Section 135. Form of conviction.

Section 136. Proceedings not invalid for want of form.

Section 137. Distress not unlawful for want of form.

Section 138. Limitation of actions for proceedings in execution of this Act.

Section 139. Provision for the protection of officers of the Court.

Section 140. Act not to affect rights of Universities of Oxford and Cambridge.

Section 141. Nothing to affect the Courts of the Wardens of the Stanneries.

Section 142. Interpretation of Act.

Section 143. Act may be amended, &c.

[I shall now lay before the public the draft of an entire new bill, amending the Act of 1841 and subsequent Acts, upon the basis of the English Act, and the observations I have made upon some of its clauses. The clauses have been framed with reference to the practical working of the present system, and I am convinced the alterations will be found beneficial to the commercial as well as every other part of the community. My opinion, however, is but one among thousands who may consider the question; and for that reason I place it before the public in order that its various provisions may be well digested before alterations be adopted. By way of illustration of the practical use of the Division Court, and how it may tend to assist in adopting provisions for extension and amendment, I subjoin a statistical table, kept for the Home District, for the year 1846:—

STATISTICAL ACCOUNT of the business in the Division Courts of the Home District, from 1st January to 31st December, 1846.

| 1st Division.. | 2nd Division.. | 3rd Division.. | 4th Division.. | 5th Division.. | 6th Division.. | 7th Division.. | 8th Division.. |
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WHEREAS it is expedient to amend and reduce into one Act the laws now in force in that part of this Province formerly Upper Canada, for the recovery of small debts, and to make other provisions therefor: *Be it therefore enacted* by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, intituled 'An Act to re-unite the Provinces of Upper and Lower Canada, and for the government of Canada,' and it is hereby enacted by the authority of the same, That it shall and may be lawful for the Justices of the Peace of each District, now or hereafter to be erected in Canada West, to declare and appoint the limits and extent of not less than three, nor more than nine divisions within their respective Districts; and from time to time, but subject to the foregoing restrictions, in like manner to alter the number, limits and extent of such divisions: *Provided always*, that there shall be one Division Court held in every City and District Town; and that a Court shall be holden under this Act once in two months in and for every such Division; and it shall and may be lawful for the Judge presiding over the said Courts respectively, to fix and appoint the times and the places within such divisions when and at which such Courts shall be holden, and in like manner from time to time to alter the same.

II. *And be it enacted*, That the Divisions of each District so declared and appointed, and the times and places of holding such Courts, and all alterations that may be from time to time made therein as aforesaid, shall be entered and recorded by the Clerk of the Peace, in a book to be by him kept for that purpose; and it shall be his duty to transmit to the Governor of this Province, a copy of such entry and record as soon as the same shall have been made.

III. *And be it enacted*, That the Justices so assembled as aforesaid, shall be required to number the said Divisions, beginning at number one; and that the Court to be held in each Division shall be known by the name and style of *The* (first or other as the case may be) *Division Court for the District of* —.

IV. *And be it enacted*, That the Judges of the District Courts of the several Districts in Canada West, shall preside over the Division

Courts within their respective Districts, and no such Judge shall, during the continuance of his appointment be capable of being elected, or of sitting as a Member of the Legislative Assembly of this Province; and every Court holden under this Act shall be a Court of Record.

V. *And be it enacted*, That in case of the illness or unavoidable absence of the Judge of any such District Court, it shall be lawful for such Judge to appoint some other person, who would be otherwise qualified to be appointed a Judge of such District Court, to act as his Deputy; and every person so appointed shall, during the time for which he shall be so appointed, have all the powers and privileges, and be subject to all the duties of the Judge by whom he shall have been so appointed; and notice of every such appointment shall be forthwith sent by the Judge or Deputy Judge, to the Governor of this Province, and such notice shall specify the name, residence and profession of the Deputy Judge, and the cause of his appointment, and no such appointment shall be continued for more than one calendar month without a renewal of the like notice; and it shall be lawful for the Governor to annul any such appointment of which he shall disapprove.

VI. *And be it enacted*, That for every Court holden under the authority of this Act, there shall be a Clerk, and one or more Bailiffs; and the Judge of the District Court shall from time to time appoint, and at his pleasure remove, the Clerk and Bailiffs of the Courts holden by him.

VII. *And be it enacted*, That the Judges of the said District Courts in their respective Districts, shall be authorized and required to perform all such duties in, or relating to any causes or matters depending in the Court of Chancery for that part of this Province formerly called Upper Canada, necessary or proper to be done in their respective Districts, as the Vice Chancellor of the said Court of Chancery shall from time to time by any general order direct, and for this purpose and subject to the general rules and orders of the said Court, shall have and exercise all such authorities as may be exercised by the Examiners, Masters Extraordinary and Commissioners, or other officers of the said Court by whom such duties are now usually performed; and shall be entitled to receive the same fees and sums of money as are now payable in respect thereof, to be accounted for and applied by them, as the other fees authorized by this Act to be received, are directed to be accounted for and applied; *Provided always*, That the future amount of such fees shall continue subject to the same authority for revising the same, to which it is now subject.

VIII. *And be it enacted*, That no person who is an articled clerk, or a practising attorney

shall hereafter be appointed as Clerk in any Court holder under this Act, and that every Clerk of such Division Courts shall be paid by fees, as hereinafter provided, and that it shall be lawful for the Clerk of every such Division Court [with the approval of the Judge thereof] to appoint from time to time a deputy to act for him in the office of the Clerk of the Court, at any time when he shall be prevented by illness or other unavoidable accident from acting in such office, and to remove such deputy at his pleasure; and such deputy, during the time for which he shall be so appointed, shall have the like powers and privileges, and be subject to the like duties, as if he were the Clerk of the Court for the time being, and the Clerk of the Court shall be civilly responsible for all the acts and omissions of his deputy.

IX. And be it enacted, That the Clerk of each Division Court shall issue all summonses, warrants, precepts, and writs of execution, and register all orders and judgments of the Court, and keep an account of all proceedings of the Court, and shall take charge of, and keep an account of, all Court fees and fines payable or paid into Court, and of all suitors' monies paid into and out of Court, and shall enter an account of all such fees, fines and monies in a book to be kept by him for that purpose, which book shall be open to all persons desirous of searching the same, on payment of one shilling for each search; and it shall be the duty of the said Judges to inspect and examine the quarterly accounts [the said Clerks making such quarterly returns as may be directed and appointed by the Governor] of the several Clerks within the District of every such Judge, of the fees and monies received by them, and to compare such accounts with the book required to be kept by the Clerk, and with the accounts, papers, and minutes of proceedings; and such Judge shall certify, on each such account, that he has examined the same, and believes it to be correct, or if he does not believe it to be correct, he shall state his objections thereto, and the Clerk shall therefore forward the account, with such certificate, to the Treasurer of his District.

X. And be it enacted, That the Bailiffs shall attend every sitting of the Court, and shall serve all summonses and orders, and execute all the warrants, precepts, and writs issued out of the Court; and the Bailiffs shall, in the execution of their duties, conform to all such general rules as shall be from time to time made for regulating the proceedings of the Court, as hereinafter provided, and subject thereunto to the order and direction of the Judge; and the said Bailiffs shall be entitled to receive all fees and sums of money allowed by this Act in the name of fees payable to the Bailiff; and every such Bailiff shall be responsible for all the acts and defaults of himself, in like manner as the

Sheriff of any District is responsible for the acts and defaults of himself and his officers.

XI. And be it enacted, That the Treasurer, Clerk, and Bailiff of every Court holden under this Act, who may receive any monies in the execution of his duty, shall give security for such sum, and so many sureties, and in such manner and form as the Governor of this Province shall see reason to direct, for the due performance of their several offices, and for the due accounting for, and payment of all monies received by them under this Act [or which they may become liable to pay for any misbehaviour in their office.]

XII. And be it enacted, That there shall be payable on every proceeding in the Court holden under this Act, to the Judges, Clerks, and Bailiffs of the several Courts, such fees as are set down in the schedule to this Act annexed, or which shall be set down in any schedule of fees reduced under the power herein after contained for that purpose, and none other; and a table of such fees shall be put up in some conspicuous place in the place where the said Court shall be holden, and also in the Clerk's office; and the fees on every proceeding shall be paid, in the first instance, by the plaintiff or party on whose behalf such proceeding is to be had on or before such proceeding, and, in default, payment thereof shall be enforced by order of the Judge, by such ways and means as any debt or damage ordered to be paid by the Court can be recovered; and the fees upon executions shall be paid into Court at the time of the issue of the warrant of execution, and shall be paid by the Clerk of the Court to the Bailiff, upon the return of the warrant of execution, and not before. *Provided always,* that if the Bailiff shall neglect or refuse to make a return within the time required by law of any summons, order, precept, or warrant of execution, or other process, he shall, for each such neglect, forfeit his fees on such summons, order, precept, or warrant of execution, or other process; and all fees so forfeited shall be accounted for, and paid by the Clerk of the Court to the Treasurer of the District, to form part of the general fee fund.

XIII. And be it enacted, That it shall and may be lawful for the Governor of this Province at any time hereafter, whenever the aggregate amount of the fees payable into the fee fund under this Act, in the different districts of Canada West, together with the fees payable to the same fund under the present District Court Acts, or under any other Act now in force, or hereafter to be passed, shall be more than sufficient to pay the salaries of the different Judges of the said District Courts; to lessen the amount of the fees to be taken for the Judges in the Courts holden under this Act in such manner as to him shall seem fit, and

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to at any time after the passing of this Act, less the amount of the fees to be taken by the Clerks and Bailiffs, or either of them, as him shall seem fit, and again to increase all any or either of the foregoing fees, so that the scale of fees given in the schedule to this Act be not in any case surpassed.

XIV. *And be it enacted*, That the Treasurer every District shall be the Receiver General of the several Division Courts within his District; and every such Treasurer shall be paid a per centage of three pounds on every hundred pounds of the gross produce of the fees of the Courts of which he is the Receiver General, and every Judge shall be paid by a certain salary; the salary of a Judge being in no case more than £ — or less than £ — including the salary already mentioned in the Vic. ch. 13, and the Governor in Council shall fix the salaries to be paid to the Judges, having due regard to the population of the several Districts; and the salaries to be paid to the Judges may be increased, or as vacancies shall occur may be diminished, by the same authority by which they shall be first fixed, and the amount of such salaries shall be charged upon the consolidated fund of this province.

XV. *And be it enacted*, That the Clerk of each Division Court shall, from time to time and as often as he shall be required so to do by the Treasurer of his District, and at least once every three months, deliver to him a full account in writing of the fees received in such Court under the authority of this Act, and a true account of all fines levied by the Court, and of the expenses of levying the same, and a return of the account of the monies paid into and received out of Court by the Defendants and Plaintiffs in the said Court, under any orders and decrees of the Court, or under process of the Court, and of the balance then remaining in Court belonging to the Plaintiffs or Defendants; and the amount of such fees and balance of such fines, from time to time received by such Clerk, shall be paid over, after deducting such sum or sums as the Clerk shall be allowed, by order of the Court, to retain for the current expediture of the Court, from time to time to the Treasurer (such payment being made at least once in every three months), and shall form part of a fund to be called the General Fee Fund of the Division Courts.

XVI. *And be it enacted*, That the Treasurer of every District shall, after the receipt by him of the quarterly or other payments so to be made by the Clerks as provided for, pay over the same to the account of the Receiver General of this province, in like manner as other public monies are paid over; and also shall, on or before the 30th June and 31st December, in every year, render to the Inspector General of this province a true account in writing of all monies received on account of the Division Courts

holden under this Act, during the period comprised in such account, in such form and with such particulars as the said Inspector General shall from time to time require, and shall within ten days after the rendering of every such account pay over the amount of any monies so received as aforesaid to the Receiver General of this province, in manner as aforesaid, which may then remain in his hands; and if default shall be made in such payments, the amount due by the Treasurer shall be deemed a speciality debt to her Majesty.

XVII. *And be it enacted*, That the accounts to be kept by the several Treasurers on account of the said Courts, shall be deemed public accounts, and shall be inquired into and audited, and shall be within any provision of law now or hereafter to be in force for auditing public accounts.

XVIII. *And be it enacted*, That if any person having resigned, or having been removed from the office of Treasurer, or of Clerk of a Division Court, shall neglect, after twenty-one days notice to such person, which notice the Judge shall cause to be given, to account for and pay to the Receiver General of this province, or the Treasurer of the District for the time being, all such sums as shall remain in his hands of monies received under the authority of this Act, it shall be lawful in the case of the Treasurer to proceed as in ordinary cases of debtors to the Crown, and in the case of a Clerk of any Division Court, for the Treasurer for the time being, in his own proper name only, or by his name and description of office, to sue for and recover the same from such person, with double costs of suit, in any Court of Record in this province having competent jurisdiction, by action of debt; in which action it shall be sufficient for such Treasurer to declare as for money had and received to the use of such Treasurer, for the purposes of this Act; and the Court in which the action shall be brought may, at the instance of either of the parties, refer the account in dispute in a summary way, to be audited by any officer of the Court or other fit person, who shall have power to examine the parties and all witnesses upon oath; and upon the report of the referee (unless either of the parties shall show good cause to the contrary), the Court may make a rule either for the payment of such sum as upon the report shall appear to be due, or for staying the proceedings in the action, and upon such terms and conditions as to the Court shall appear reasonable; or the Court may order judgment to be entered up as by confession, for such sum as upon the report shall appear to be due.

XIX. *And be it enacted*, That in all actions to be brought, as well as in all proceedings whatsoever to be instituted or carried on by any Treasurer, by virtue of this Act, proof of

his acting in the execution of the office of Treasurer, shall be sufficient evidence of his holding such office, unless the contrary shall be shown in evidence by the defendants in such actions, or the parties against whom such proceedings shall be instituted and carried on.

XX. *And be it enacted*, That for every Court holden under this Act, there shall be made a seal of the Court, and all summonses and other process issuing out of the said Court shall be sealed, or stamped with the seal of the Court; and every person who shall forge the seal or process of the Court, or who shall serve or enforce any such forged process, knowing the same to be forged, or deliver, or cause to be delivered to any person, any paper falsely purporting to be a copy of any summonses, or other process of the said Court, knowing the same to be false, or who shall act, or profess to act, under any false colour or pretence of the process of the said Court, shall be guilty of felony.

XXI. *And be it enacted*, That all pleas of actions founded on contract, where the debt or damage claimed is not more than £20, whether on balance of account or otherwise, and all pleas of actions founded on tort, respecting personal property, where the damage claimed is not more than £10, may be holden in the Division Courts under this Act without writ; and all such actions brought in the said Courts shall be heard and determined in a summary way: *Provided always*, That the said Courts shall not have cognizance of any action in which the title to lands, or to any corporeal or incorporeal hereditaments, or to any toll, fair, market, or franchise, shall be in question, or in which the validity of any devise, bequest, or limitation under any will or settlement maybe disputed, or for any breach of promise of marriage, or for any gambling debt, or for any spirituous or malt liquors drunk in a tavern or ale house.

XXII. *And be it enacted*, That the plaintiff, in any suit brought in any Division Court, shall enter a copy of his account or demand in writing, wherein he shall state the defendant's name at length, and his place of residence, which shall be numbered according to the order in which it shall be entered, and thereupon a summons, stating the substance of the cause of action, and bearing the number of the account or demand on the margin thereof, shall be issued under the seal of the Court, according to such form as shall be directed by the rules made for regulating the practice of the Court, as hereinafter provided; and a copy of such summonses, to which shall be attached a copy of such account or demand, shall be served on the defendant eight days at least before the day on which the Division Court shall be holden, at which the cause shall be tried; and delivery of such copies of summonses and account, or demand

to the defendant, or delivery thereof to his wife, or servant, or any grown person, being an inmate of his dwelling-house, or usual place of abode, trading or dealing, shall be deemed good service of such summonses. *Provided always*, That personal service on the debtor of such summonses shall be necessary in all cases where the amount sued for exceeds the sum of five pounds.

XXIII. *And be it enacted*, That all suits brought under this Act shall be tried at the Court holden for the Division, wherein the defendant, or where there shall be more than one defendant, wherein any one of the defendants shall dwell, or carry on his business at the time of entering the account or demand, or at the Court holden for the Division within which the debt was contracted, or tort committed.

XXIV. *And be it enacted*, That any summons or other process which, under this Act, shall be required to be served out of the Division from which the same shall have issued, may be served by the bailiff of any other Division, and such service shall be as valid as if the same had been made by the bailiff of the Court out of which such summonses or other process shall have issued within the jurisdiction of the Court for which he acts.

XXV. *And be it enacted*, That service of any summons or other process of the Court which shall require to be second out of the Division, may be proved by affidavit, purporting to be sworn before any commissioner for taking affidavits in the Court of Queen's Bench, in Canada West; and the fee for taking such affidavit shall not be more than one shilling; and it shall be the duty of the Bailiff serving such summonses to state, in such affidavit, the number of miles travelled to make such service, and to transmit by the post the original summonses, together with such affidavit immediately after the service thereof, to the Clerk of the Court from which the same was issued; and the expense of postage, and also postage in the transmitting the summonses for service, if any, together with the fee for swearing the affidavit of service, shall be costs in the cause, and be allowed in any judgment to be rendered for the plaintiff.

XXVI. *And be it enacted*, That it shall not be lawful for any plaintiff to divide any cause of action into two or more suits, for the purpose of bringing the same within the jurisdiction of any Division Court; but any plaintiff having a cause of action above the value of £20, for which a suit might be brought under this Act, if the same were not above the value of £20, may abandon the excess, and thereupon the plaintiff shall, on proving his case, recover to an amount not exceeding £20, and the judgment of the Court upon such suit shall be in full discharge of all demands in respect of such

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That all suits to be tried at the Court wherein the cause shall be more than £20 of the defendant's business at the demand, or at any time within which the cause was committed.

any summons issued under this Act, shall be issued from the Division Court, and if the same had been issued out of the Court out of process shall be a nullity of the Court.

That service of the Court out of the Court, purporting to be for taking the Bench, in taking such a shilling; Bailiff serving an affidavit, the original sum- immediately Clerk of the Court issued; and postage in the service, if any, of the affidavit cause, and be ordered for the

cause of action, and the entry of judgment shall be made accordingly.

XXVII. *And be it enacted,* That it shall be lawful for any person under the age of twenty-one years, to prosecute any suit in a Division Court under this Act, for any sum of money not greater than £20, which may be due to him for wages or piece-work, or for work as a servant, in the same manner as if he were of full age.

XXVIII. *And be it enacted,* That no privilege shall be allowed to any person to exempt him from the jurisdiction of the Courts created by this Act.

XXIX. *And be it enacted,* That the jurisdiction of the Division Courts under this Act, shall extend to the recovery of any demand not exceeding the sum of £20, which is the whole or part of the unliquidated balance of a partnership account, or the amount or part of the amount or a distributive share under an intestacy, or of any legacy under a will.

XXX. *And be it enacted,* That it shall be lawful for an Executor or Administrator to sue and be sued in any Court held under this Act, in like manner as if he were a party in his own right and judgment, and execution shall be such as in the like case would be given or issued in any superior Court.

XXXI. *And be it enacted,* That where any plaintiff shall have any debt or demand recoverable under this Act, against two or more persons, partners in trade or otherwise jointly answerable, it shall be sufficient if any of such persons be served with process, and judgment may be obtained and execution issued against the person or persons so served, notwithstanding that others jointly liable may not have been served or sued, or may not be within the jurisdiction of the Court; and every such person against whom judgment shall have been obtained under this act, and who shall have satisfied such judgment, shall be entitled to demand and recover in the Division Courts under this Act, contribution from any other person jointly liable with him.

XXXII. *And be it enacted,* That the Judge of the District Court, or his deputy as aforesaid, shall be the sole Judge in all actions brought in the Division Courts, and shall determine all questions, as well of fact as of law, unless a Jury be summoned as hereinafter mentioned; and no suitors shall in any case be summoned to hold or have any jurisdiction in any Court holden under this Act.

XXXIII. *And be it enacted,* That in all actions where the sum claimed shall exceed £2 10s., it shall be lawful for the plaintiff or defendant to require a Jury to be summoned to try the said action; and in every such case a Jury shall be summoned according to the provisions hereinafter contained to try such action: *Provided always,* That if the Plaintiff require

a Jury to be summoned, he shall give notice in writing to the Clerk of the said Court at the time when he shall enter his account or demand; and the summons shall be marked in the margin thereof by the Clerk, with the words "Jury Case;" and if the defendant shall require a Jury to be summoned, he shall give notice in writing to the Clerk, within five days after service of the summons on the said defendant, and the Clerk shall cause a copy of such notice to be communicated to the plaintiff either by post, or causing the same to be delivered at his usual place of abode or business; but it shall not be necessary to prove on the trial that such notice was communicated.

XXXIV. *And be it enacted,* That any party requiring a Jury to be summoned, shall at the time of giving the notice hereby required, and before he shall be entitled to have such Jury summoned, pay to the Clerk of the Court such sum of money as is set down in the schedule of fees for the time being, for or towards the payment of the expenses of said Jury.

XXXV. *And be it enacted,* That the causes which are to be heard by the Judge alone, shall be set down for hearing in a separate list from the list of causes which are to be tried by a Jury, which two lists shall be severally called "The Judge's List," and "The Jury List;" and the causes shall be set down in such lists in the order in which they were entered in the first instance with the Clerk of the Division Court; and "The Jury List" shall be first disposed of, and then "The Judge's List."

XXXVI. *And be it enacted,* That the Clerk of the Peace in every District shall deliver, or cause to be delivered, to the Clerk of each Division Court within his District, at the same time and in like manner as Clerks of the Peace are now required by law to deliver lists of Jurors to the several Sheriffs, a true and complete list of the Jurors residing within every such division respectively; and whenever a Jury shall be required, the Clerk of the Court shall cause not less than fifteen of the persons named in such list to be summoned in rotation, to attend at the time and place to be mentioned in the summons; and the persons so summoned shall attend at the Court at the time mentioned in the summons; and in default of attendance, shall be liable to a fine not to exceed ten shillings to be set on each person by the Judge, which fine shall be levied and collected as other fines are hereinafter directed to be levied and collected, and shall form part of the general fee fund to be paid to the Treasurer of the District.

XXXVII. *And be it enacted,* That each Juror shall receive from the Clerk of the Division Court, out of the monies so deposited with him for that purpose, the sum of six pence for every cause in which such jurymen shall be sworn.

XXXVIII. *And be it enacted*, That whenever there are any jury trials, five jurymen shall be impanelled, and sworn to do justice between the parties, according to the best of their skill and ability, and to give a true verdict according to the evidence: and either of the parties to any such cause shall be entitled to his lawful challenge against all or any of the said jurors in like manner as he would be entitled in any superior Court; and the jurymen so sworn shall be required to give a unanimous verdict.

XXXIX. *And be it enacted*, That on the day named in the summons, the plaintiff shall appear, and therefore the defendant shall be required to appear to answer; and on answer being made in Court, the Judge shall proceed in a summary way to try the cause and give judgment without further pleading a formal joinder of issue.

XL. *And be it enacted*, That no evidence shall be given by the plaintiff on the trial of any cause as aforesaid, of any demand or cause of action, except such as shall be stated and contained in the account or demand entered as hereinbefore directed.

XLI. *And be it enacted*, That all defendants shall be allowed to set off any debt or demand, not exceeding £20, claimed to be due from the plaintiff, or to set up by way of defence, and to claim and have the benefit of infancy, coverture, or any statute of limitations, or of discharge under any statute relating to Bankrupts or any act for relief of Insolvent Debtors, or of any other relief or discharge under any statute now or hereafter to be in force in Canada West: *Provided always*, That if the defendant's demand, as proved, exceed that proved by the plaintiff, the Court may give judgment in favour of the defendant for such balance as may be due from the plaintiff, with costs of suit, which shall be recovered by such ways and means as any judgment rendered in favour of a plaintiff may be recovered: *Provided also*, That no such defence shall be admitted on the hearing a trial of any cause under this Act, unless notice thereof in writing shall have been delivered to the plaintiff or left for him at his usual place of abode or business within five days after the service of the summons upon the defendant; and in cases where the plaintiff has no place of abode or business within the Division where the suit is commenced, or where the place of abode or business of the plaintiff shall be unknown to the defendant, and he has been unable to discover the same, then the defendant shall deliver, or cause to be delivered, to the Clerk of the Court within five days after the defendant shall have been served with the summons, the said notice, and the Clerk of the Court shall, as soon as conveniently may be after receiving such notice, communicate the same to the plaintiff by the post or otherwise; but it shall not be necessary for the defendant

to prove on the trial that such notice was communicated to the plaintiff by the Clerk.

XLII. *And be it enacted*, That when a defendant hath any claim or demand against the plaintiff exceeding the sum of £20, he may abandon the excess, and on proving such demand he shall be entitled to set off the same in like manner as he would in case the same did not exceed £20, and the judgment of the Court on such set off shall be a full discharge, as well of the amount allowed to be set off, as the amount by which such claim of the defendant exceeded £20, and such judgment shall be so entered accordingly.

XLIII. *And be it enacted*, That the Judge may in any case, with the consent of both parties to the suit, order the same, with or without other matters, within the jurisdiction of this Court, in dispute between such parties, to be referred to arbitration, to such person or persons, and in such manner and on such terms as he shall think reasonable and just: and such reference shall not be revokable by either party, except by consent of the Judge. And the award of the arbitrator or arbitrators, or umpire, shall be entered as the judgment in the cause, and shall be as binding and effectual, to all intents, as if given by the Judge: *Provided*, That the Judge may, if he think fit, on application to him at the first Court held after the expiration of one week after the entry of such award, set aside any such award so given as aforesaid, or may, with the consent of both parties aforesaid, revoke the reference, or order another reference to be made, in the manner aforesaid.

XLIV. *And be it enacted*, That whenever the Judge holding any Division Court shall be satisfied that a jury sworn in any cause before him cannot agree upon their verdict, after having been out a reasonable time, he may discharge them, and then order the Clerk to summon a new jury for the next sitting of the court to be held in that division; unless the parties shall have consented that the Judge may render judgment on the evidence already taken before him, in which case he is hereby authorized to give judgment accordingly.

XLV. *And be it enacted*, That every decision of the Judge, in any case heard before him, shall be openly pronounced in court, as soon as may be after the hearing thereof.

XLVI. *And be it enacted*, That the Judge of the District Court shall have power from time to time to make general rules for regulating the practice and proceedings of the said Division Courts, and also to frame forms for every proceeding in the said Courts, for which he shall think it necessary that a form be provided; and also for keeping all books, entries and accounts to be kept by the Clerks of the said Courts, and from time to time to alter any

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such rule or form: *Provided always*, That such rules or forms so made, framed and altered, shall not be brought into use until the same shall have been submitted to and approved by the Chief Justice, and Judges of the Court of Queen's Bench, for that part of this province formerly called Upper Canada, or any two of them; and in any case not expressly provided for herein, or by the said rules, the general principles of practice, in the superior courts of common law may be adopted and applied, at the discretion of the Judges, to actions and proceedings in their several courts.

XLVII. *And be it enacted*, That if upon the day of the return of any summons, or at any continuation or adjournment of the said court, or of the cause for which the said summons shall have been issued, the plaintiff shall not appear, the cause shall be struck out; and if he shall appear, but shall not make proof of his demand, to the satisfaction of the Court, it shall be lawful for the Judge to nonsuit the plaintiff, or to give judgment for the defendant; and in either case, where the defendant shall appear, and shall not admit the demand, to award to the defendant, by way of costs and satisfaction for his trouble and attendance, such sum as the Judge in his discretion shall think fit, and such sum shall be recoverable from the plaintiff, by such ways and means as any debt or damage ordered to be paid by the same court can be recovered: *Provided always*, That if the plaintiff shall not appear when called upon, and the defendant, or some one duly authorized on his behalf, shall appear, and admit the cause of action to the full amount claimed, and pay the fees payable in the first instance by the plaintiff, the Court, if it shall think fit, may proceed to judgment, as if the plaintiff had appeared.

XLVIII. *And be it enacted*, That if the day so named in the summons, or at any continuation or adjournment of the Court or cause in which the summons was issued, the defendant shall not appear or sufficiently excuse his absence, or shall neglect to answer, when called in Court, the Judge, upon due proof service of the summons, may proceed to the hearing or trial of the cause on the part of the plaintiff only, and the judgment thereupon shall be as valid as if both parties had attended: *Provided always*, That the Judge in any case, at the same or any subsequent Court, may set aside any judgment so given in the absence of the defendant, and the execution thereupon, and may grant a new trial of the cause, upon such terms, if any, as to payment of costs, giving security for debt or costs, or such other terms as he may think fit, on sufficient cause shown to him for that purpose.

XLIX. *And be it enacted*, That the Judge may, in any case, make orders for granting

time to the plaintiff or defendant, to proceed in the prosecution or defence of the suit, and also may, from time to time, adjourn any Court, or the hearing, or further hearing of any cause, in such manner as to the Judge may seem fit.

L. *And be it enacted*, That it shall be lawful for the defendant, in any action brought under this Act, at least five days before the return day of the summons, to pay into Court such sum of money as he shall think a full satisfaction for the demand or cause of action of the plaintiffs, together with the cost incurred by the plaintiff up to the time of such payment; and notice of such payment shall be forthwith communicated by the Clerk of the said Court to the plaintiff, by post, or by sending the same to his usual place of abode or business, and the said sum of money shall be paid to the plaintiff, and all proceedings in the said action shall be stayed, unless the plaintiff shall, within three days after the receipt of notice of such payment, signify to the Clerk of the said Court his intention to proceed for the remainder of the demand claimed; and in such case the action shall proceed as if it had been brought originally for such remainder only: *Provided always*, If the plaintiff shall recover no further sum in the action than such sum as shall have been paid into Court under the provision herein before contained, the plaintiff shall pay to the defendant all costs, charges, and expenses incurred by him in the said action, after such payment as aforesaid, and such costs, charges, and expenses shall be settled by the Court, and shall be recovered by the defendant by such ways and means as any debt ordered to be paid by the Court can be recovered.

LI. *And be it enacted*, That on the hearing or trial of any action, or on any other proceeding under this Act, the parties thereto, their wives, and all other persons, may be examined either on behalf of the plaintiff or defendant, upon oath or solemn affirmation in those cases in which persons are by law allowed to make affirmation, instead of taking an oath, to be openly administered by the Judge to each party or witness at the time of his giving his evidence, without regard to any objection on the ground of incompetence from interest or otherwise.

LII. *And be it enacted*, That every person who in any examination shall wilfully and corruptly give false evidence, shall be deemed guilty of perjury.

LIII. *And be it enacted*, That either of the parties to the suit, or any other proceeding under this Act, may obtain, at the office of the Clerk of the Court, summonses to witnesses, to be served by one of the bailiffs of the Court, or in a case of a witness residing in another Division, then service thereof by the bailiff of such other Division, shall be deemed good service, and the service may be proved by affidavit

to be transmitted to the Clerk in the same manner as herein before directed of summons to a party, and such summonses to witnesses may be with or without a clause, requiring the production of books, deeds, papers, and writings in their possession or control, and in any such summons any number of names may be included.

LIV. *And be it enacted*, That every person on whom any such summons shall have been served either personally or in such other manner as shall be directed by the general rules or practice of the Courts, and to whom, at this time, payment, or a tender of payment of his expenses shall have been made on such scale of allowance as shall be from time to time settled by the general rules of practice of the Court, and who shall refuse or neglect, without sufficient cause, to appear, or to produce any books, papers, or writings required by such summons to be produced, and also any person present in Court, who shall be required to give evidence, and who shall refuse to be sworn and give evidence, shall forfeit and pay such fine, not exceeding £5, as the Judge shall set on him; and the whole, or any part of such fine, in the discretion of the Judge, after deducting the costs, shall be applicable towards indemnifying the party injured, by such refusal or neglect, and the remainder thereof shall form part of the general fund of the Court in which the fine was imposed; *Provided always*, in addition to the fine, such witness shall be liable to be imprisoned by order of the Court for a term not exceeding one Calendar month.

LV. *And be it enacted*, That any fine imposed by any Court, under the authority of this Act, may be enforced on the order of the Judge, in like manner as payment of any debt adjudged in the said Court, and shall be accounted for as herein provided.

LVI. *And be it enacted*, That all costs of any action or proceeding in the Court, not otherwise provided for, shall be paid by or apportioned between the parties in such manner as the Judge shall think fit; and in default of any special direction shall abide the event of the action, and execution may issue for the recovery of any such costs, in like manner as for any debt adjudged in the said Court.

LVII. *And be it enacted*, That any order and judgment of any Court holden under this Act, except as herein provided, shall be final and conclusive between the parties; but the Judge shall have power to nonsuit the plaintiff in any case in which satisfactory proof shall not be given to him, entitling either the plaintiff or defendant to the judgment of the Court; and shall also in any case whatever, have the power, if he shall think fit, to order a new trial to be had on such terms as he shall think reasonable, and in the mean time to stay the proceedings.

LVIII. *And be it enacted*, That no action brought in any Division Court holden under this Act, nor any order, verdict, judgment or proceeding therein shall be removed into any superior Court, by any writ or process whatever, unless in actions of contract where the debt or damage claimed shall exceed £10, or in actions respecting personal property, when the damage claimed shall exceed £2 10s.; and then only by leave of a Judge of the said Court of Queen's Bench, or a Judge of the District Court, in cases which shall appear to the Judge fit to be tried either in the Court of Queen's Bench or the District Court, and upon such terms as to payment of costs, giving security for debt and costs, or such other terms as he shall think fit.

LIX. *And be it enacted*, That in all cases of actions of tort where the damage claimed shall exceed £2 10s., and in all cases of actions of contract, where the debt or damages claimed, shall exceed £10, the plaintiff or defendant may appear and prosecute or defend, by any Barrister-at-Law or any Attorney of the Court of Queen's Bench; and in such cases it shall be lawful for the said Judge in his discretion to allow to either party obtaining judgment, in the taxation of costs, a sum not less than 10s., no more than £1 5s. for fees and costs, to be recovered in the same manner that other monies ordered to be paid under this Act are recovered.

LX. *And be it enacted*, That the Judge may make orders concerning the time or times, and by what instalments any debt, or damages, or costs, for which judgment shall be obtained in the said Court, shall be paid; and all such monies shall be paid into Court, unless the Judge shall otherwise direct; *Provided always*, that in any such order for time, reference shall be had to the day on which the summons was served on the defendant, and issuing of execution shall not be postponed without the consent of the party entitled to the same for a longer period than fifty days from the service of the summons.

LXI. *And be it enacted*, That it shall and may be lawful for the Judge, at any time after the giving and recording of any judgment, upon application being made to him by the party in whose favour such judgment shall be given, upon oath or other sufficient testimony to the satisfaction of the Judge, that the party will be in danger of losing the amount of such judgment, if he be compelled to wait till the day of payment thereof, before any execution can issue thereon, to order the issue of an execution at such time as he shall think fit.

LXII. *And be it enacted*, That if there be cross judgments between the parties, execution shall be taken out by that party only who shall have obtained judgment for the larger sum, and for so much only as shall remain after deducting the smaller sum, and satisfaction for the

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if both sums shall be equal, satisfaction shall be
entered upon both judgments.

LXIII. *And be it enacted*, That whenever
the Judge shall have made an order for the
payment of money, the amount shall be reco-
verable, in case of default or failure of payment
thereof forthwith, or at the time or times and in
the manner thereby directed, by execution
against the goods and chattels of the party
against whom such an order shall be made ;
and the Clerk of the said Court, at the request
of the party prosecuting such order, shall issue
under the seal of the Court a writ *fiery
facias*, as a warrant of execution to the bailiff
of the Court, who by such warrant shall be
empowered to levy, or cause to be levied by
distress and sale of the goods and chattels of
such party, such sum of money as shall be so
ordered, wheresoever they may be found within
the district, and also the costs of the execution,
and shall pay the same over to the said Clerk ;
and all constables and peace officers within
their several jurisdictions shall aid in the execu-
tion of every such warrant.

LXIV. *And be it enacted*, That it shall and
may be lawful for any bailiff of a Division
Court, to whom a warrant of execution shall
be directed against the goods and chattels of
any defendant, according to the provisions of
this act, in case he shall not find sufficient goods
or chattels of the defendant within the district
in which such Division Court is holden, to apply
to any Justice of the Peace acting for and
within any other adjoining district in which the
goods and chattels of such defendant shall be,
and such Justice of the Peace is hereby author-
ized and required, upon such bailiff producing
the precept or warrant, and making oath,
(which such Justice is hereby empowered to
administer,) that the same has been duly issued
out of the said Division Court, and that the
goods and chattels of the defendant are not to
be found within the district in which such Divi-
sion Court is held, but are believed by such
officer to be within the district where such
Justice acts, to sign his name on the back of
such precept or warrant of execution, and
thereupon such bailiff shall have power to take
the goods and chattels of such defendant,
wheresoever the same shall be found within
such district, and deal therewith in like manner
as if the same had been taken within the juris-
diction of the said Division Court, and all con-
stables and other peace officers are hereby
required to be aiding within their respective
jurisdictions in the execution of the precept or
warrant so indorsed.

LXV. *And be it enacted*, That if the Judge
shall have made any order for payment of any
sum of money by instalments, execution upon

such order shall not issue against the party,
until after default in payment of some instal-
ment according to such order, and execution or
successive executions may then issue for the
whole of the said sums and costs then remaining
unpaid, or for such portion thereof as the Judge
shall order, either at the time of making the
original order, or at any subsequent time, under
the seal of the court.

LXVI. *And be it enacted*, That every bailiff
or officer executing any process of execution
issuing out of the said Division Courts against
the goods and chattels of any person, may by
virtue thereof, seize any of the goods and chat-
tels of such person, (excepting the wearing
apparel and bedding of such person and his
family in actual use,) and may also seize and
take any money or bank notes, and any cheques,
bills of exchange, promissory notes, bonds, spe-
cialties or securities for money belonging to
any such person against whom any such execu-
tion shall have issued as aforesaid.

LXVII. *And be it enacted*, That the bailiff
shall hold any cheques, bills of exchange, pro-
missory notes, bonds, specialties, or other secu-
rities for money, which shall have been so taken
or seized as aforesaid, as a security or securi-
ties for the amount directed to be levied by
such execution, or so much thereof as shall not
have been otherwise levied, or raised for the
benefit of the plaintiff: and the plaintiff may
sue in the name of the defendant, or in the
name of any person in whose name the defend-
ant might have sued, for the recovery of the
sum or sums secured or made payable thereby,
when the time of payment thereof shall have
arrived.

LXVIII. *And be it enacted*, That it shall be
lawful for any party who has obtained any
unsatisfied judgment or order in any Court held
by virtue of this act, or under any of the acts
held for the recovery of small debts hereinbefore
referred to, for the payment of any debt or
damages or costs, to obtain a summons from
any Division Court within the limits of which
any other party shall then dwell, or carry on
his business, or from the Division Court where
the judgment shall have been rendered, such
summons to be in such form as shall be directed
by the rules made for regulating the practice
of the Division Courts as hereinbefore provided,
and to be served personally upon the person to
whom it is directed, requiring him to appear at
such a time as shall be directed by the said
rules, to answer such things as are received in
such summons: and if he shall appear, in pur-
suance of such summons, he may be examined
upon oath touching his estate and effects, and
the manner and circumstances under which he
contracted the debt or incurred the damages or
liability which is the subject of the action in
which judgment has been obtained against him:

and as to the means and expectations he then had, and as to the property and means he still hath, of discharging the said debt, or damages or liability, and as to the disposal he may have made of any property, and the person obtaining such summons as aforesaid, and all other witnesses whom the Judge shall think requisite, may be examined upon oath touching the inquiries authorized to be made as aforesaid: and the costs of such summonses, and of all the proceedings thereon shall be deemed costs in the cause.

LXIX. *And be it enacted,* That if a party so summoned shall not attend as required by such summons, and shall not allege a sufficient excuse for not attending, or shall if attending, refuse to be sworn or to disclose any of the things aforesaid, or if he shall not make answer touching the same to the satisfaction of such Judge, or if it shall appear to such Judge, either by the examination of the party, or by any other evidence, that such party, if a defendant, in incurring the debt or liability which is the subject of the action in which judgment has been obtained, has obtained credit from the plaintiff under false pretences, or by means of fraud or breach of trust, or has wilfully contracted such debt or liability, without having had at the same time, a reasonable expectation of being able to pay or discharge the same, or shall have made or caused to be made any gift, delivery, or transfer of any property, or shall have changed, removed or concealed the same with intent to defraud his creditors, or any of them, or if it shall appear to the satisfaction of the Judge of the said Court, that the party so summoned has then, or has had since the judgment obtained against him, sufficient means and ability to pay the debt, or damages or costs so recovered against him, either altogether, or by any instalment or instalments which the Court in which the judgment was obtained shall have ordered, and if he shall refuse or neglect to pay the same, as shall have been so ordered, or as shall be ordered, pursuant to the power hereinafter provided, it shall be lawful for such Judge, if he shall think fit, to order that such party may be committed to the common gaol of the district for any period not exceeding two months.

LXX. *And be it enacted,* That it shall be lawful for the Judge of any Court before whom such summons shall be heard, if he shall think fit, whether or not he shall make any order for the committal of the defendant, to rescind or alter any order that shall have been previously made against any defendant so summoned before him, for the payment by instalments or otherwise, of any debt or damages recovered, and to make any further or other order, either for the payment of the whole of such debt or damages and costs forthwith, by any instal-

ments or in any other manner, as such Judge may think reasonable and just.

LXXI. *And be it enacted,* That in every case where the defendant in any suit brought into any Division Court shall have been personally served with the summons to appear, or shall personally appear at the trial of the same, the Judge, at the hearing of the cause or at any adjournment thereof, if judgment shall be given against the defendant, shall have the same power and authority of examining the defendant and the plaintiff, and other parties, touching the several things hereinbefore mentioned, and of committing the defendant to prison, and of making an order, as he might have and exercise under the provisions hereinbefore contained, in case the plaintiff had obtained a summons for that purpose, after the judgment obtained, as hereinbefore mentioned.

LXXII. *And be it enacted,* That whenever any order of commitment shall have been made as aforesaid, the Clerk of the said Court shall issue under the seal of the Court a warrant of commitment directed to the Bailiff of the Division Court, who by such warrant shall be empowered to take the body of the person against whom such order shall be made: and all constables other peace officers within their several jurisdictions shall aid in the execution of every such warrant: and the gaoler or keeper of every gaol mentioned in any such order shall be bound to receive and keep the defendant therein until discharged under the provisions of this act, or otherwise by due course of law; and no protection, order or certificate granted by any Court of Bankruptcy or for the relief of insolvent debtors shall be available to discharge any defendant from any commitment under such last-mentioned order.

LXXIII. *And be it enacted,* That no imprisonment under this act shall in anywise operate as a satisfaction or extinguishment of the debt or other cause of action on which a judgment has been obtained, or protect the defendant from being anew summoned and imprisoned, for any new fraud or other default rendering him liable to be imprisoned under this act, or deprive the plaintiff of any right to take out execution against the goods and chattels of the defendant, in the same manner as if such imprisonment had not taken place.

LXXIV. *And be it enacted,* that if it shall at any time appear to the satisfaction of the Judge, by the oath or affirmation of any person or otherwise, that any defendant is unable, from sickness or other sufficient cause, to pay or discharge the debt or damages recovered against him, or any instalment thereof ordered to be paid as aforesaid, it shall be lawful for the Judge in his discretion, to suspend or stay any judgment, order or execution given, made or issued in such action for such time and on such

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terms as the Judge may think fit, and so from time to time, until it shall appear by the like proof as aforesaid, that such temporary cause of disability has ceased.

LXXV. And be it enacted, That no sale of any goods which shall have been taken in execution shall be had until after the end of eight days at least next following the day on which such goods shall have been taken, unless upon the request in writing under the hand of the party whose goods shall have been taken ; and the Bailiff, after taking goods and chattels into his custody by virtue of a writ of execution, shall endorse thereon the date of the seizure ; and shall immediately give public notice by advertisement signed by himself, and put up at three of the most public places in the Division where such goods and chattels shall be taken, of the time and place within such Division when and where they will be exposed to sale, which notice shall describe the goods and chattels taken, and shall be so put up at least eight days before the time appointed for the sale.

LXXVI. And be it enacted, That every such seizure and sale shall be taken to be within all the provisions of an Act of the Parliament of Upper Canada, passed in the first year of her Majesty's Reign, intituled, "An Act to regulate the costs of levying distresses for small rents and penalties."

LXXVII. And be it enacted, That no Bailiff or other Officer of any Division Court shall, directly or indirectly, purchase any goods or chattels at any sale made by him under execution, and every purchase made in contravention of this enactment shall be absolutely void.

LXXVIII. And be it enacted, That no judgment or execution shall be stayed, delayed, or reversed upon, or by any writ of error, or supersedeas hereon, to be served for the reversing of any judgment given in any Court holden under the provisions of this Act.

LXXIX. And be it enacted, That in or upon every warrant of execution issued against the goods and chattels of any person whomsoever, the Clerk of the Court shall cause to be inserted or indorsed the sum of money and costs adjudged, with the sums allowed by this Act as increased costs for the execution of such warrant ; and if the party against whom such execution shall be issued, shall before an actual sale of the goods and chattels pay, or cause to be paid or tendered unto the Clerk of this Court out of which such warrant of execution was issued, or to the Bailiff holding his warrant of execution, such sum of money and costs as aforesaid, or such part thereof as the persons entitled hereto shall agree to accept in full of his debt or damages and costs, together with the fees herein directed to be paid, the execution shall be superseded, and the goods and

chattels of the said party shall be discharged and set at liberty.

LXXX. And be it enacted, That every writ of execution issued by the Clerk of any Division Court shall be dated on the day when it shall actually issue, and shall be returnable within thirty days from the date thereof, and the same to be entirely filled and shall have no blank in the date or otherwise at the time of its delivery to a Bailiff or other person, to be executed.

LXXXI. And be it enacted, That if any Bailiff shall refuse or neglect to return any writ of execution within three days after the return day thereof, or shall make a false return thereto, the party having sued out such writ may maintain an action of debt against such Bailiff and his bail or sureties in the Division Court, and upon proving his case, shall recover therein the amount for which the execution issued, with interest from the date of the judgment upon which such execution issued, or such less sum as it may be proved to the satisfaction of the Judge that the goods of the defendant may have been or were worth ; and if a judgment be obtained in such suit against the Bailiff and his bail or sureties, execution shall immediately issue thereon, anything in this Act or in any other Act or Law to the contrary notwithstanding.

LXXXII. And be it enacted, That any person imprisoned under this Act who shall have paid or satisfied the debt or demand or the instalments thereof payable, and costs remaining over at the time of the order of imprisonment being made, together with the costs of obtaining such order, and all subsequent costs, shall be discharged out of custody, upon the certificate of such payment or satisfaction, signed by the Clerk of the Court, by leave of the Judge of the Court in which the order of imprisonment was made.

LXXXIII. And be it enacted, That in every case where any defendant against whom a plaintiff has sued out a summons upon a debt or demand is or shall be about to remove his goods, chattels and effects, out of this Province, to avoid his creditors, it shall be lawful for the plaintiff to make affidavit, to be sworn before any Commissioner for taking affidavits in the Court of Queen's Bench, stating the amount of the debt due and the cause thereof, and that he has been informed, or has reason to believe, and in either case that he does verily believe that the defendant is about immediately to remove his goods, chattels and effects, out of this Province with intent and design to defraud his creditors, and which statement of the defendant being about to remove his goods, chattels and effects, with such intent and design, shall be proved upon the affidavit to be sworn in manner as aforesaid of one other person not a creditor of the said defendant, and upon the said affidavit being filed with the Clerk of the Division Court,

it shall be lawful for the said Clerk to issue a warrant of attachment under the Seal of the said Court, in such form as shall be regulated by any order to be made for regulating the practice of the said Court, directed to the Bailiff of the said Court, commanding him to attach, seize, take and safely keep all the goods and effects of the defendant until the day named in the summons for the trial of the said cause, and until the said Court shall make further order respecting the same.

LXXXIV. And be it enacted, That it shall be the duty of the said Bailiff, upon the receipt of the said warrant, to seize, take, and safely keep all the goods, chattels, and effects of the defendant, until the day named in the summons for the trial of the said suit, and until the said Court shall make further order concerning the same, and the said bailiff shall be allowed all necessary disbursements for keeping the same.

LXXXV. And be it enacted, That if any person against whose goods, chattels, and effects such warrant of attachment may have issued, or any person on his behalf shall execute to the plaintiff a bond, with good and sufficient sureties, to be approved of by the Clerk of the said Court in double the amount claimed, with a condition that the defendant will perform and fulfil the judgment of the Court, or that the sureties will pay the amount of any judgment to be obtained in the said suit, it shall be lawful for the Bailiff to restore to the defendant all such goods, chattels, and effects as shall have been seized and taken under and by virtue of such warrant; and such bond shall be in the form to be prescribed by any orders regulating the practice of the said Courts, and the defendant shall pay to the Clerk the sum of five shilling for preparing and filing the same, and the said bond shall remain in the Clerk's office, until otherwise ordered by the said Judge, who may order the same to be delivered to such party as shall be entitled thereto.

LXXXVI. And be it enacted, That it shall be lawful for the said Judge, upon the hearing or trial of any suit wherein such warrant of attachment may have issued, to hear and determine in a summary way whether such warrant of attachment were or not issued upon good and sufficient grounds, and it shall be lawful for the said Judge either to continue the same in force until the judgment be satisfied or to discharge the same; and in case the same shall be continued, the costs of obtaining and issuing the said warrant, and the execution thereof, shall be costs in the cause, and in case the same shall be discharged, it shall be lawful for the Judge to make compensation to the defendant for his damages and costs incurred by reason of such warrant of attachment, as the Judge shall think reasonable and just, and the

Judge may order the same to be set off against any judgment which the plaintiff may obtain, or the same shall be recovered in the same manner as other monies under this Act ordered to be paid are recovered; *Provided always,* if the defendant intend to contest the sufficiency of the grounds upon which the said warrant of attachment is issued, he shall give notice of such intention to the plaintiff at least three days before the hearing of the cause.

LXXXVII. And be it enacted, That the Clerk of every Court holden under this Act shall cause a note of all demands entered and summonses, and of all orders, and of all judgments and executions, and returns thereto, and of all fines, and of all other proceedings of the Court, to be fairly entered from time to time in a Book belonging to the Court, which shall be kept at the office of the Court; and such entries in the said book, or a copy thereof bearing the Seal of the Court, and purporting to be signed and certified as a true copy by the Clerk of the Court, shall at all times be admitted, in all Courts and places whatsoever, as evidence of such entries, and of the proceedings referred to by such entry or entries, and of the regularity of such proceeding without any further proof; and it shall be lawful for the Clerk to take and receive for granting such certified copy the sum of two shillings and sixpence.

LXXXVIII. And be it enacted, That the Clerks of every such Court shall in the month of June in each year make out a correct list of all sums of money belonging to suitors in the Court which shall have been paid into Court, and which shall have remained unclaimed for five years before the first day of the month of January then last, specifying the names of the parties for whom, or on whose account the same were so paid into Court; and a copy of such list shall be put up and remain during Court hours in some conspicuous part of the Court room or place of holding the Court, and at all times in the Clerk's office, and all sums of money which shall have been paid into any such Court, to the use of any suitor or suitors thereof, and which shall have remained unclaimed for the period of six years before the passing of this Act, and which are now in the hands of any Clerk, and all further sums of money which shall hereafter be paid into such Court to the use of any suitor or suitors thereof shall, if unclaimed for the period of six years after the same shall have been so paid into Court, by application as part of the general fund of the Court, and shall be carried to the account of such fund, and no person shall be entitled to claim any sum which shall have remained unclaimed for six years; but no time during which the person entitled to claim such sum shall have been an infant or femme covert, or of unsound mind, or without this Province

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shall be taken into account in estimating the said period of six years.

LXXXIX. And be it enacted, That if any person shall wilfully insult the Judge or any Juror, or any Clerk, Bailiff, or other officer of any Division Court for the time being during his sitting or attendance in Court, or in going to or returning from the Court, or shall wilfully interrupt the proceedings of the said Court, or otherwise misbehave in Court, it shall be lawful for the Bailiff or officer of the Court, with or without the assistance of any other person, by the order of the Judge, to take such offender into custody, and detain him until the rising of the Court; and the Judge shall be empowered, if he shall think fit, by warrant under his hand, and sealed with the Seal of the Court, to commit any such offender to the common Gaol of the District for any time not exceeding one calendar month, or to impose upon such offender a fine not exceeding £10 for each offence, and in default of payment thereof to commit the offender to the common gaol of the District for any time not exceeding one calendar month.

XC. And be it enacted, That if the Bailiff or officer of any Court holden under this Act shall be assaulted while in the execution of his duty, or if any rescue shall be made or attempted to be made, of any goods levied under process of the Court, or seized upon any warrant of attachment, the person so offending shall be liable to a fine not exceeding £10, to be recovered by order of the Court, or before a Justice of the Peace, as hereinafter provided; and it shall be lawful for the Bailiff of the Court, or any peace officer in any such case to take the offender into custody, (with or without warrant) and bring him before such Justice accordingly.

XCI. And be it enacted, That in case any Bailiff of any Division Court, who shall be employed to levy any execution against goods and chattels, or to seize and take any goods and chattels upon any warrant of attachment, shall by neglect, or connivance, or omission, lose the opportunity of levying any such execution, or seizing and taking such goods and chattels, then, upon complaint of the party aggrieved by reason of such neglect, connivance or omission, (and the fact alleged being proved to the satisfaction of the Court, on the oath of any creditable witness), the Judge shall order such Bailiff to pay such damages as it shall appear that the plaintiff has sustained thereby, not exceeding in any case the sum of money for which the said execution issued, and the Bailiff shall be liable hereto, and upon demand made thereof, and on his refusal so to pay and satisfy the same, payment thereof shall be enforced by such ways and means as are herein provided for enforcing a judgment recovered in the said Court-

XCII. And be it enacted, That if any Clerk, Bailiff, or officer of the Court, acting under colour or pretence of his office, or the process of the said Court, shall be charged with extortion or misconduct, or with not duly paying or accounting for any money levied or received by him under the authority of this Act, it shall be lawful for the Judge to inquire into such matter in a summary way, and for that purpose to enforce the attendance of all necessary parties, in like manner as the attendance of witnesses in any case may be enforced, and to make such order thereupon for the re-payment of any money extorted, or for the payment of any money so received or levied as aforesaid, and for the payment of such damages and costs to the party aggrieved, as the said Judge shall think just; and also if he shall think fit to impose such fine upon the Clerk, Bailiff, or officer, not exceeding £10 for each offence, as he shall deem adequate; and in default of payment of any money so ordered to be paid, payment of the same may be enforced by such ways and means as are herein provided for enforcing a judgment recovered in the said Court.

XCIII. And be it enacted, That every Clerk, Bailiff, or other officer employed in putting this Act, or any of the powers thereof, in execution, who shall wilfully and corruptly exact, take or accept any fee or reward whatsoever, other than and except such fees as are or shall be appointed and allowed respectively as aforesaid, for or on account of anything done or to be done by virtue of this Act, or on any account whatsoever relative to putting this Act into execution, shall upon proof thereof before the said Judge, be forever incapable of serving or being employed under this Act, in any office of profit or emolument, and shall also be liable for damages as herein provided.

XCIV. And be it enacted, That if any claim shall be made to or in respect of any goods or chattels taken in execution under the process of any Division Court, or in respect of the proceeds or value thereof by any person not being the person against whom such process has issued, it shall be lawful for the Clerk of the Court, upon application of the Bailiff charged with the execution of such process, as well before as after any action brought against such Bailiff, to issue a summons calling before the said Court, as well the party issuing such process, as the party making such claim, and thereupon any action which shall have been brought in any Court in respect of such claim, shall be stayed, and the Court in which such action shall have been brought, or any Judge thereof, on proof of the issue of such summons, and that the goods and chattels were so taken in execution, may order the party bringing such action to pay the costs of all proceedings had upon such action, after the issue of such summons of

the Division Court; and the Judge of the Division Court shall adjudicate upon such claim, and make such order between the parties in respect thereof; and of the costs of the proceedings, as to him shall seem fit, and such order shall be enforced in like manner as any order made in any suit brought in such Court.

XCIV. And be it enacted, That if any action shall be commenced after the passing of this Act in Her Majesty's Court of Queen's Bench or in any District Court for any cause, for which a suit might have been entered in any Court holden under this Act, and a verdict shall be found for the plaintiff in any action founded on contract for a sum not exceeding £10, and in action founded on fact for a sum not exceeding £5, the said plaintiff shall have judgment to recover such sum only, and no costs, and if a verdict shall not be found for the plaintiff the defendant shall be entitled to his costs as between attorney and client, unless in either case the Judge who shall try the cause shall certify on the back of the record that the plaintiff had a probable cause of action: in cases of action founded on contract, for the debt or damages sought to be recovered in such action to an amount exceeding £10.

XCVI. And be it enacted, That all penalties, fines and forfeitures, by this Act inflicted or authorized to be imposed, (the manner of recovering and applying whereof is not hereby otherwise particularly directed), shall upon proof before any Justice of the Peace having jurisdiction within the District, City, Town, or place where the offender shall reside or be, of the offence shall be committed, either by the confession of the party offending, or by the oath of any creditable witness, or levied, with the costs attending the summons and conviction by distress and sale of the goods and chattels of the party offending, by warrant under the hand of any such Justice; and the overplus (if any) after such penalties, fines and forfeitures, and the charges of such distress and sale are deducted, shall be returned, upon demand, unto the owner of such goods and chattels.

XCVII. And be it enacted, That if any such penalties, fines and forfeitures, respectively, shall not be paid forthwith upon conviction, it shall be lawful for such Justice to order the offender so convicted to be detained in safe custody until return can be conveniently made to such warrant of distress, unless such offender shall give sufficient security to the satisfaction of such Justice for his appearance before him on such day as shall be appointed for the return of such warrant of distress, such day not being more than eight days from the time of taking any such security, which security such Justice shall be empowered to take, by way of recognition, as otherwise to him shall seem fit.

XCVIII. And be it enacted, That if upon the return of such warrant it shall appear that no sufficient distress can be had thereupon, or in case it shall appear to the satisfaction of such Justice, either by the confession of the offender or otherwise, that he hath not within the jurisdiction of such Justice sufficient goods and chattels whereon to levy all such penalties, forfeitures, costs and charges, such Justice may at his discretion, without any warrant of distress, commit the offender to the common goal of the District, for any time not exceeding two months, unless such penalties, forfeitures and fines, and all reasonable charges attending the recovery thereof, shall be sooner paid and satisfied.

XCIX. And be it enacted, that the monies arising from any such penalties, forfeitures, and fines, aforesaid, when paid and levied, shall (if not by this Act directed to be otherwise applied in aid of the general fund thereof.

C. And be it enacted, That in all cases in which by this Act any penalty or forfeiture is made recoverable before a Justice of the Peace, it shall be lawful for such Justice to summon before him the party complained against, and on such summons to hear and determine the matter of such complaint, and on proof of the offence to convict the offender, and to adjudge him to pay the penalty or forfeiture incurred, and to proceed to recover the same, although no information in writing shall have been exhibited before him; and all such proceedings by summons without information in writing shall be as valid and effectual to all intents and purposes as if an information in writing had been exhibited.

CI. And be it enacted, That in all cases where any conviction shall be had for any offence committed against this Act, the form of conviction may be in the words, or to the effect following (that is to say.)

“Be it remembered, that on this—of— in the year of our Lord, —, A. B. is convicted before —, of Her Majesty's Justices of the Peace for the —, of having (state the case) and I, (or we) the said — do adjudge the said — to forfeit and pay for the same the sum of — or to be committed to — for the space of — given under — hand— and seal— this day and year aforesaid.”

CII. And be it enacted, That if any person against whom a judgment may have been entered up in any Division Court in any District shall remove to another District without satisfying the said judgment it shall be lawful for the party in whose favour such judgment was rendered to obtain from the Clerk of the Court where such judgment was rendered, a copy of the same, to be certified under the Seal of the said Division Court, and signed by the said Judge, to be a true copy of such judgment,

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CIV. And be it enacted, That in all cases where any conviction shall be had for any offence committed against this Act, the form of conviction may be in the words, or to the effect following (that is to say.)

CV. And be it enacted, That in all cases where any conviction shall be had for any offence committed against this Act, the form of conviction may be in the words, or to the effect following (that is to say.)

ment, and upon production thereof to the Judge of the District to which the party may have removed, and upon the same being filed in the Clerk's office of such Division Court, as the Judge shall by indorsement upon such copy direct, it shall be lawful for the plaintiff to sue out a warrant of execution upon such judgment in such Division Court, and to take all other proceedings and remedies whatsoever thereupon in such Court, against goods, chattels and effects, and against the person against whom such judgment was rendered, in like manner and as fully and effectually to all intents and purposes, as the party in whose favour the judgment was rendered, could or might have taken in the Division Court where the said judgment was rendered, and the Judge, Clerk, Bailiff, or other officer of such Court shall have and exercise all the powers and authorities of this Act upon such transcript of the judgment so filed in the Division Court, in the District to which the party has so removed, as might have been taken and exercised under this Act in the District in which the said judgment was rendered.

CIII. *And be it enacted*, That no order, verdict, or judgment, or other proceeding, made concerning any of the matters provided for by this Act, shall be quashed or vacated for want of form.

CIV. *And be it enacted*, That when any levy or distress shall be made for any sum of money to be levied by virtue of this Act, the distress itself shall not be deemed unlawful, nor the party making the same be deemed a trespasser, on account of any defect or want of form in the information, summons, conviction, warrant, receipt or other proceeding relating thereto; nor shall the party distraining be deemed a trespasser from the beginning on account of any irregularity which shall afterwards be committed by the party so distraining, but that the party aggrieved by such irregularity, shall and may recover full satisfaction for the special damage in an action on the case.

CV. *And be it enacted*, That it shall and may be lawful for any Bailiff or Clerk of the said Courts to accept and take a confession or acknowledgement of debt from the Defendant or Defendants in any suit to be brought in any Division Court, who may be desirous of making the same, and such confession or acknowledgement, shall be in writing, and witnessed by the Bailiff or Clerk at the time of the taking thereof, and upon the production of such confession or acknowledgement to the Judge, and its being proved by the oath or affidavit of the said Bailiff or Clerk, judgment may be entered thereon, and such oath or affidavit shall state that he is not, and is not to receive anything from the Plaintiff or Defendant, or any other person, for giving such acknowledgement, and that he has no interest in the demand sought to be recovered.

CVI. *And, for the protection of persons acting in the execution of this Act, be it enacted*, That all actions and prosecutions to be commenced against any person for anything done in pursuance of this Act, shall be laid and tried in the District where the fact was committed, and shall be commenced within six calendar months after the fact committed, and not afterwards or otherwise; and the Defendant in every such action or suit may plead the general issue, and this Act and the special matter in evidence in any trial to be had thereupon; and notice in writing of such action, and of the cause thereof, shall be given to the Defendant one calendar month at least before the commencement of the action; and no Plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if after action brought a sufficient sum of money shall have been paid into Court with costs, by or on behalf of the defendant.

CVII. *And be it enacted*, That if any person shall bring any suit in any of Her Majesty's superior Courts of Record in respect of any grievance committed by any Clerk, Bailiff or officer of any Court holden under this Act, under colour or pretence of the process of the said Court; and the Jury upon the trial of the action shall not find greater damages for the Plaintiff than the sum of £10; no costs shall be awarded to the Plaintiff in such action, unless the Judge certify in Court upon the back of the record, that the action was fit to be brought in such Court.

CVIII. *And be it enacted*, That when any Clerk or Bailiff of any Division Court, by himself, or jointly with any other person, is liable to be sued, or may sue any other person for a debt or demand within the jurisdiction of the Division Court, of which he shall be Clerk or Bailiff, then and in every such case such Clerk or Bailiff may sue, and shall be liable to be sued for any debt due to or by him, separately or jointly with any other person, in the adjoining Division in the same District in which the Court is held nearest to the Division of which the party is so Clerk or Bailiff, in the same manner to all intents and purposes, as if the cause of action for which any such suit shall be brought had arisen within such next adjoining Division, or the Defendant were resident therein.

CIX. *And be it enacted*, That in construing this Act, the word "person," shall be taken to comprehend a body politic or corporate, or collegiate as well as an individual; and every word importing the singular number, when necessary to give full effect to the enactments herein contained, be understood to mean several persons or things as well as one person or thing; and every word importing the masculine gender shall, where necessary be understood to mean a

female as well as a male; and that the words "Canada West," shall be taken to mean that portion of the Province formerly constituting the Province of Upper Canada.

CX. *And be it enacted*, That this Act shall come into, and shall be in force and operation, upon from and after the first day of _____ next, after the passing hereof.

SCHEDULE OF FEES.

| | Not Exceeding £2. | | Not Exceeding £5. | | Exceeding £5, and not exceeding £10. | | Exceeding £10. |
|---|----------------------|------------------|----------------------|------------------|--------------------------------------|----------------------|----------------|
| | Founded on Contract. | Founded on Fact. | Founded on Contract. | Founded on Fact. | Founded on Contract. | Founded on Contract. | |
| FEE FUND. | | | | | | | |
| Entering account, and issuing summons..... | 0s 4d | 0s 4d | 0s 6d | 0s 6d | 1s 3d | 1s 3d | 2s 6d |
| Hearing an undefended cause | 0s 6d | 1s 0d | 0s 9d | 1s 6d | 1s 3d | 2s 6d | 2s 6d |
| Hearing a defended cause..... | 1s 0d | 2s 0d | 2s 0d | 3s 6d | 3s 9d | 7s 6d | 7s 6d |
| Every order or Judgment, or application for an order (not to be charged when the defendant has given a confession of judgment)..... | 0s 3d | 0s 3d | 0s 6d | 0s 6d | 0s 9d | 0s 9d | 1s 3d |
| THE CLERK'S FEES. | | | | | | | |
| Entering every account, and issuing summons | 0s 8d | 0s 8d | 0s 9d | 0s 9d | 1s 3d | 1s 3d | 2s 6d |
| Every summons to witness | 0s 6d | 0s 6d | 0s 6d | 0s 6d | 0s 6d | 0s 6d | 0s 6d |
| Adjournment of any cause | 0s 3d | 0s 3d | 0s 6d | 0s 6d | 0s 9d | 0s 9d | 1s 3d |
| Entering and giving notice of special defence..... | 0s 6d | 0s 6d | 0s 9d | 0s 9d | 1s 3d | 1s 3d | 2s 6d |
| Entering every judgment | 0s 6d | 0s 6d | 0s 6d | 0s 6d | 0s 9d | 0s 9d | 1s 3d |
| Payment of money out of Court, and taking receipt..... | 0s 3d | 0s 3d | 0s 6d | 0s 6d | 0s 9d | 0s 9d | 1s 3d |
| Every search | 0s 6d | 0s 6d | 0s 6d | 0s 6d | 0s 6d | 0s 6d | 0s 6d |
| Taking Confession of Judgment | 0s 6d | | 0s 6d | | 0s 6d | | 1s 0d |
| Every Warrant, Attachment, or Execution | 0s 6d | 0s 6d | 1s 0d | 1s 0d | 1s 6d | 1s 6d | 2s 6d |
| For every certificate copy of Judgment to another District | 1s 3d | 1s 3d | 1s 3d | 1s 3d | 1s 3d | 1s 3d | 1s 3d |
| Supersedeas of Execution, or certificate of payment, or withdrawal of cause..... | 0s 3d | 0s 3d | 0s 6d | 0s 6d | 0s 9d | 0s 9d | 1s 3d |
| Deposit to be paid by party requiring Jury | | | 5s 0d | 5s 0d | 5s 0d | 5s 0d | 5s 0d |
| Entering and giving notice of Jury being required. | | | 0s 6d | 0s 6d | 0s 9d | 0s 9d | 1s 3d |
| Every summons for the Jury..... | | | 0s 6d | 0s 6d | 1s 3d | 1s 3d | 2s 6d |
| THE BAILIFF'S FEES. | | | | | | | |
| Service of summons or other proceeding on each person | 0s 4d | 0s 4d | 0s 6d | 0s 6d | 0s 9d | 0s 9d | 1s 0d |
| For taking Confession of Judgment, 3d. | | | | | | | |
| Affidavit of service of Summons, when served out of the Division | 0s 4d | 0s 4d | 0s 6d | 0s 6d | 0s 6d | 0s 6d | 1s 0d |
| Execution of every Warrant, Precept, or Attachment against the goods or body..... | 2s 0d | 2s 0d | 2s 0d | 2s 0d | 2s 6d | 2s 6d | 3s 9d |
| For every mile travelled more than two from the Clerk's office, to serve Summons, or execute Warrant, 4d. | | | | | | | |
| For every Jury Summoned and Sworn, 2s. 6d. | | | | | | | |
| For carrying delinquent to prison, including all expenses and assistance, per mile, 1s. | | | | | | | |

his Act shall
 d operation,
 y of

| £5, - 10. | Exceeding £10. |
|-----------------|-------------------|
| Contract. | |
| 3d | 2s 6d |
| 6d | 2s 6d |
| 6d | 7s 6d |
| 9d | 1s 3d |
| 3d | 2s 6d |
| 6d | 0s 6d |
| 9d | 1s 3d |
| 3d | 2s 6d |
| 9d | 1s 3d |
| 9d | 1s 3d |
| 6d | 0s 6d |
| | 1s 0d |
| 6d | 2s 6d |
| 3d | 1s 3d |
| s 9d | 1s 3d |
| s 0d | 5s 0d |
| s 9d | 1s 3d |
| s 3d | 2s 6d |
| s 9d | 1s 0d |
| s 6d | 1s 0d |
| s 6d | 3s 9d |

