

PUBLIC ACTS,
OF THE
PROVINCE OF UPPER CANADA;

PASSED IN THE

FOURTH SESSION OF THE ELEVENTH PARLIAMENT;

1834.

An Act to provide for the summary punishment of Petty Trespasses, and other offences.

[Passed 6th March, 1834.]

WHEREAS it is expedient that a summary power of punishing persons for common assaults and batteries, petty trespasses, and other offences mentioned in this Act, should be provided under the limitations hereinafter expressed: *Be it therefore enacted*, by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,'" and by the authority of the same, That if any person shall assault or beat any other person, it shall be lawful for any Justice of the Peace, upon complaint of the party aggrieved, to hear and determine such offence, and the offender upon conviction thereof before him, shall forfeit and pay such sum of money, not exceeding Five Pounds, as to such Justice shall seem meet.

2. Provided always, and be it further enacted by the authority aforesaid, That in case the Justice shall find the assault

or battery complained of to have been accompanied by any attempt to commit Felony, or shall be of opinion that the same is, from any other circumstance, a fit subject for a prosecution by indictment, he shall abstain from adjudicating thereupon, and shall deal with the case in all respects in the same manner as such Justice would have done if this Act had not been passed.

3. And be it further enacted by the authority aforesaid, That if any person shall wilfully or maliciously commit any damage, injury or spoil, to or upon any real or personal property whatsoever, either of a public or private nature, the committing of which damage, injury or spoil, is not made Felony by any Law in force in this Province, nor made punishable either as a Felony or otherwise by the provisions of any Act of the Parliament of this Province in relation to such particular offence, every such person, being convicted thereof before a Justice of the Peace, shall forfeit and pay such sum of money as shall appear to the Justice to be a reasonable compensation for the damage, injury or spoil, so committed, not exceeding the sum of Five Pounds; which sum of money shall, in case of private property, be paid to the party aggrieved, except when such party shall have been examined in proof of the offence; and in such case, and in all other cases of convictions under the provisions of this Act, the penalties imposed shall be applied in the manner hereinafter specified: *Provided always*, that nothing herein contained shall extend to any case where

the party trespassing acted under a fair and reasonable supposition that he had a right to do the act complained of.

4. And be it further enacted by the authority aforesaid, That every punishment and forfeiture by this Act imposed on any person maliciously committing any trespass, shall equally apply and be enforced whether the trespass shall be committed from malice conceived against the owner of the property in respect of which it shall be committed, or otherwise.

5. And be it further enacted by the authority aforesaid, That for the more effectual apprehension of all offenders against this Act, any person found committing any such trespass as aforesaid, may be apprehended without a Warrant by any Peace Officer, or the owner of the property injured, or the servant or any person authorised by him, and forthwith taken to the nearest Justice of the Peace, to be dealt with according to Law.

6. And be it further enacted by the authority aforesaid, That if any person shall wilfully disturb, interrupt or disquiet any assemblage of people, met for religious worship, by profane discourse, by rude and indecent behaviour, or by making a noise either within the place of worship or so near it as to disturb the order and solemnity of the meeting, such person shall, upon conviction thereof before any Justice of the Peace, on the oath of one or more credible witness or witnesses, forfeit and pay such a sum of money not exceeding the sum of five pounds, as the said Justice shall think fit.

7. And be it further enacted by the authority aforesaid, That in default of payment of any fine imposed under the authority of this Act, together with the costs attending the same, within the period specified for the payment thereof at the time of conviction, by the Justice of the Peace before whom such conviction may have taken place, it shall and may be lawful for such Justice of the Peace to issue his Warrant, directed to any Constable, to levy the amount of such fine and costs within a certain time to be in the said Warrant expressed; and in case no distress sufficient to satisfy the amount shall be found, it shall and may be lawful for him to commit the offender to the common Gaol of the District wherein the offence was committed,

for any term not exceeding one month, unless the fine and costs shall be sooner paid.

8. And be it further enacted by the authority aforesaid, That the prosecution for every offence punishable under this Act shall be commenced within three calendar months after the commission of the offence; and not otherwise, and the evidence of the party aggrieved shall be admitted in proof of the offence, and also the evidence of any inhabitant of the County, District Riding, or Division, in which the offence shall have been committed, notwithstanding any forfeiture or penalty incurred by the offence, may be payable to the general rate of such County, District, Riding or Division.

9. And for the more effectual prosecution of all offences punishable under this Act: Be it further enacted by the authority aforesaid, That when any person shall be charged on the oath of one or more credible witness or witnesses before any Justice of the Peace, with any offence against this Act, the Justice may summon the person charged to appear at a time and place to be named in such summons, and if he shall not appear accordingly, then (upon proof of the due service of the summons upon such person, by delivering the same to him personally) the Justice may either proceed to hear and determine the case *ex parte*, or issue his Warrant for apprehending such person and bringing him before himself or some other Justice of the Peace; or the Justice before whom the charge shall be made, may, if he shall so think fit, without any previous summons, issue such Warrant, and the Justice before whom the person charged shall appear or be brought, shall proceed to hear and determine the case.

10. And be it further enacted by the authority aforesaid, That if any Justice, upon hearing any complaint for offences against this Act, shall deem such alleged offence not to be proved, or shall find the Act complained of to have been justified, or to be of so trifling a nature as not to deserve punishment, and shall accordingly dismiss the complaint, such Justice shall, at the request of the party against whom the same shall be preferred, make out and deliver to him a Certificate under his hand, stating the fact of such dismissal; and in such case, the Justice shall order the party

preferring such complaint to pay the costs of the party against whom the same shall have been preferred: and if such costs shall not be paid immediately upon dismissal, or within such period as such Justice shall at the time of such dismissal appoint, it shall be lawful for him to issue his Warrant to levy the amount of such costs within a certain time to be in the said Warrant expressed; and in case no distress sufficient to satisfy the amount of such Warrant shall be found, to commit the party by whom such costs shall be so ordered to be paid as aforesaid, to the common Gaol of the County, District, Riding or Division where such offence shall be alleged to have been committed, there to be imprisoned for any term not exceeding ten days, unless such costs shall be sooner paid.

11. And be it further enacted by the authority aforesaid, That the Justice by whom such Certificate as aforesaid shall be given, shall draw up the same in the following form, or in words to the like effect, videlicet:—

“BE IT REMEMBERED, That on the—
 “day of—, in the year of our Lord—
 “at—, in the County of—, [or Dis-
 “trict, Riding or Division, as the case may
 “be,] A. B. of—, was brought before
 “me, C. D., one of His Majesty’s Justices
 “of the Peace for the said County, [or
 “District &c.] upon a charge preferred a-
 “gainst him by E. F., of—, [specify the
 “offence, and the time and place when and
 “where the same is alleged to have been
 “committed,] and upon investigating such
 “charge, I have dismissed the same, and
 “I order and adjudge the said E. F. to pay
 “the sum of— for costs, and in default
 “of payment thereof immediately, that
 “there be levied of the goods and chattels
 “of the said E. F., the said sum of—,
 “within—days from the date hereof;
 “and in case there shall be no goods or
 “chattels found of the said E. F., whereof
 “the amount can be made at the time afore-
 “said, then that the said E. F., be [or on
 “or before the—day of—next] im-
 “prisoned in the common Gaol of the said
 “County of—, [or District, &c.] for the
 “space of—days, unless the same shall
 “be sooner paid.

“Given under my hand, the day and
 “year first above mentioned.”

12. And be it further enacted by the au-
 thority aforesaid, That if any person a-
 gainst whom any complaint shall have been
 preferred for any offence against this Act
 shall have obtained such Certificate as a-
 foresaid, or having been convicted shall
 have paid the whole amount adjudged to
 be paid under such conviction, or shall
 have suffered the imprisonment awarded
 for the non-payment thereof, in every such
 case, such person shall be released from
 all further or other proceedings, civil or
 criminal, for the same offence: *Provided*
always, nevertheless, that nothing herein
 contained shall be construed to prevent any
 action for damages, wherein the party
 shall not have proceeded under the provi-
 sions of this Act.

13. And be it further enacted by the au-
 thority aforesaid, That if any person shall
 aid, abet, counsel, or procure the commis-
 sion of any offence punishable under this
 Act, such person shall, on being convicted
 before a Justice of the Peace, on the oath
 of one or more credible witness or witness-
 es, of having so aided, abetted, counselled,
 or procured the commission of any such
 offence as aforesaid, be liable to the same
 forfeiture and punishment to which the
 principal offender is by this Act liable.

14. And be it further enacted by the au-
 thority aforesaid, That when any person
 shall be summarily convicted before a
 Justice of the Peace of any offence against
 this Act, it shall be lawful for the Justice
 if he shall so think fit, to discharge the of-
 fender from his conviction, upon his making
 such satisfaction to the party aggrieved, for
 damages and costs, or either of them, as
 shall be ascertained by the Justice.

15. And be it further enacted by the
 authority aforesaid, That the Justice be-
 fore whom any person shall be convicted
 of any offence against this Act, may cause
 the conviction to be drawn up in the fol-
 lowing form of words, or in any other form
 of words to the same effect as the case
 shall require, videlicet:

“BE IT REMEMBERED, That on the—
 “day of—, in the year of our Lord—
 “at—, in the County of—, [or Dis-
 “trict, Riding or Division, as the case
 “may be,] A. B., of—, is convicted
 “before me, C. D., one of His Majesty’s
 “Justices of the Peace for the said County,
 “[or District, Riding or Division, as the

“ case may be,] for that he the said A. B. did, [specify the offence, and the time and place when and where the same was committed, as the case may be,] and I the said C. D. adjudged the said A. B. for his offence, to forfeit and pay immediately, or on or before the—day of —, [here state the penalty actually imposed, or the amount of the injury done, as the case may be,] and also pay the sum of—for costs, and in default of payment of the said sums, to be imprisoned in the County Gaol of the said County, [or District, Riding or Division, as the case may be,] for the space of— unless the said sums shall be sooner paid, or, [I order that the said sums shall be paid by the said A. B., on or before the —day of—,] and I direct that the said sum of—, [the penalty,] shall be paid to—of—, [Treasurer of the County or District, &c.] aforesaid, in which the said offence was committed, to be by him applied according to the provisions of this Act, or, I order that the sum of—[the sum for the amount of any injury done] shall be paid to E. F., the party aggrieved, unless he is unknown or has been examined in proof of the offence [in which case state the fact, and dispose of the whole like the penalty as before] and I order that the said sum of—for costs shall be paid to—the complainant.

“ Given under my hand and seal, the
“ day and year first above mentioned.”

16. And be it further enacted by the authority aforesaid, That nothing in this Act contained shall authorise, or be construed to authorise any Justice of the Peace to hear and determine any case of trespass under this Act, in which the title to any lands, tenements or hereditaments, or any interest therein, or accruing thereupon, shall be called in question or affected in any manner howsoever; but every such case of trespass shall be dealt with according to law, in the same manner, in all respects, as if this Act had not been passed.

17. And be it further enacted by the authority aforesaid, That any person who shall think himself aggrieved by any conviction or decision under this Act, may appeal to the next Court of General Quarter Sessions, which shall be holden not less than twelve days after the day of such con-

viction or decision, for the district wherein the cause of complaint shall have arisen; provided that such person shall give to the other party a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction or decision, and seven days at the least before such Sessions, and shall also either remain in custody until the Sessions, or enter into a recognizance with two sufficient sureties before a Justice of the Peace, conditioned personally to appear at the said Sessions and to try such appeal, and to abide the judgment of the Court thereupon, and to pay such costs as shall be by the Court awarded; and upon such notice being given, and such recognizance being entered into, the Justice before whom the same shall be entered into shall liberate such person, if in custody, and the Court at such Sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without cost to either party, as to the Court shall seem meet; and in case of the dismissal of the appeal, or the affirmation of the conviction, shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as shall be awarded, and shall if necessary, issue process for enforcing such judgment.

18. And be it further enacted by the authority aforesaid, That whenever an appeal shall be made from the decision of any Justice of the Peace under this Act, the Court of Quarter Sessions shall have power to empanel a Jury to try the matter on which such decision may have been made, and to administer to such Jury the following oath:—

“ You—do solemnly swear that you will well and truly try the matter of the complaint of C. D. against E. F. and a true verdict give according to the evidence.—So help you God.”

And the Court on the finding of such Jury shall thereupon give such judgment as the circumstances of the case may require: *Provided always*, that such Court shall not in any case adjudge the payment of a fine exceeding Five Pounds in addition to the costs, or to order the imprisonment of the person so convicted for any period exceeding one month; and all fines imposed and recovered by the judgment of such Court shall be applied and disposed of in the

same manner as other fines recovered under the provisions of this Act.

19. And be it further enacted by the authority aforesaid, That every Justice of the Peace before whom any person shall be convicted of any offence against this Act, shall transmit the conviction to the next Court of General Quarter Sessions which shall be holden for the District wherein the offence shall have been committed, there to be kept by the proper officer among the records of the Court; and upon any indictment or information against any person for a subsequent offence, a copy of such conviction, certified by the proper officer of the Court, or proved to be a true copy, shall be sufficient evidence to prove a conviction for the former offence, and the conviction shall be presumed to have been unappealed against until the contrary be shewn.

20. And be it further enacted by the authority aforesaid, That no conviction under this Act shall be quashed for want of form, and no warrant of commitment shall be held void by reason of any defect therein, provided it be alleged that the party has been convicted, and there be a good and valid conviction to sustain the same.

21. And for the protection of persons acting in the execution of this Act—Be it further enacted by the authority aforesaid, That all actions and prosecutions to be commenced against any person for any thing 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 otherwise; 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 in any such Action, the Defendant may plead the General Issue, and give this Act and the special matter in evidence at any trial to be had thereupon; and no Plaintiff shall recover in such Action, if tender of sufficient amends shall have been made before such Action brought, or if a sufficient sum of money shall have been paid into Court after such Action brought, by or on behalf of the Defendant; and if a verdict shall pass for the Defendant, or the Plaintiff shall become non-suit, or discon-

tinue any such Action, after issue joined, or if upon demurrer or otherwise, judgment shall be given against the Plaintiff, the Defendant shall recover his full costs as between Attorney and Client, and have the like remedy for the same as any Defendant hath by law in other cases; and though a verdict shall be given for the Plaintiff in any such Action, such Plaintiff shall not have costs against the Defendant, unless the Judge before whom the trial shall be had shall certify his approbation of the Action, and of the verdict obtained thereupon.

22. And be it further enacted by the authority aforesaid, That it shall be lawful for the King's Majesty to extend His Royal Mercy to any person imprisoned by virtue of this Act, although he shall be imprisoned for non-payment of money to some party other than the Crown.

23. And be it further enacted by the authority aforesaid, That all sums of money, fines, forfeitures and penalties, to be awarded and imposed by virtue of this Act, shall be paid to the Path-Master or Street Surveyor of the Division within which the offence shall have been committed; or the fine levied in aid of any commutation money to be expended for roads, or in aid of any statute labour to be performed within such Division, except when such sums of money, fines, forfeitures and penalties, are by this Act directed to be otherwise applied.

24. And be it further enacted by the authority aforesaid, That this Act shall continue and be in force for four years, and from thence to the end of the then next ensuing Session of Parliament, and no longer.

An Act to declare what Fees shall be received by Justices of the Peace for the duties therein mentioned.

[Passed 6th March, 1834.]

WHEREAS it is expedient that the Fees to be taken by Justices of the Peace, for the services hereinafter mentioned, should be ascertained and authorised by Law: *Be it therefore enacted*, by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and Assembled by virtue of and under the au-

thority of an Act passed in the Parliament of Great Britain, entitled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,'" and by the authority of the same, That from and after the passing of this Act, the following Fees, and no more, shall be taken from the parties prosecuting by Justices of the Peace in this Province, or by their Clerks, for the duties and services hereinafter mentioned, that is to say:—

For an Information and Warrant for apprehension for an assault or other misdemeanor—Three Shillings and Nine Pence.

For discharge of the Defendant—One Shilling and Three Pence.

For Information and Warrant for Surety of the Peace—Three Shillings and Nine Pence.

For discharge of the Defendant—One Shilling and Three Pence.

For every Recognizance—Two Shillings and Six Pence.

For every information, besides that of the complainant—One Shilling and Three Pence.

For Warrant of Commitment—Two Shillings and Six Pence.

2. And be it further enacted by the authority aforesaid, That the costs to be charged, in cases of convictions under penal Statutes, when the Fees are not expressly prescribed by any Statute, shall be as follows, that is to say:

For Information and Warrant of Summons—Three Shillings and Nine Pence.

For every Subpena to a witness—Six Pence.

For every Conviction, under a Penal Statute—Seven Shillings and Six Pence.

For Warrant to levy a penalty—Two Shillings and Six Pence.

For making up every Record of Conviction, when the same is required to be returned to the Sessions, or on Certiorari—Ten Shillings.

For every Certificate of dismissal of any charge under the Act providing for the summary punishment of petty trespasses and other offences—Two Shillings and Six Pence.

Provided also, nevertheless, that in such cases as admit of a summary proceeding before a single Justice of the Peace, and wherein no higher penalty than Five Pounds can be imposed, the sum of Two Shillings and Six Pence only shall be charged for the conviction, and Two Shillings and Six Pence for the Warrant to levy the penalty.

An Act to revive and continue an Act granting to His Majesty a duty on Licenses to Auctioneers, and on Goods, Wares and Merchandize, sold by Auction.

[Passed 6th March, 1834.]

WHEREAS an Act passed in the reign of King George the Fourth, entitled "An Act to continue for a limited time an Act passed in the fifty-eighth year of His late Majesty's reign, entitled 'An Act granting to His Majesty a duty on Licenses to Auctioneers, and on Goods, Wares and Merchandize, sold by auction,'" has expired, and it is expedient to revive and continue for a limited time the said Act: *Be it therefore enacted*, by the King's most excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,'" and by the authority of the same, that the said recited Act be, and the same is hereby revived and continued for four years, and from thence to the end of the then next ensuing Session of Parliament, and no longer.

An Act to revive and extend the provisions of an Act passed in the tenth year of His late Majesty's reign, entitled "An Act to authorise the detention of debtors in certain cases."

[Passed 6th March, 1834.]

WHEREAS an Act passed in the tenth year of His Majesty's reign, entitled "An Act to authorise the detention of debtors in certain cases," has ex-

pired; and whereas it is expedient to revive, continue and amend the same: *Be it therefore enacted*, by the King's most excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,'" and by the authority of the same, That the said Act be, and the same is hereby revived and continued for four years, from and after the passing of this Act, and from thence to the end of the then next ensuing Session of Parliament, and no longer.

2. And be it further enacted by the authority aforesaid, That it shall and may be lawful, and the Clerks of the several District Courts in this Province are hereby required, upon application by any Commissioner of His Majesty's Court of King's Bench, and upon payment of the usual fees by law established for the same, to furnish such Commissioner with such number of Writs of Capias ad Respondendum, as such Commissioner may so require.

3. And be it further enacted by the authority aforesaid, That it shall and may be lawful for such Commissioner to issue a Writ of Capias ad Respondendum in the same manner and with the like effect as the same may now be issued in His Majesty's Court of King's Bench, by virtue of the ninth section of an Act passed in the second year of His late Majesty's reign, entitled, "An Act to repeal part of and amend the laws now in force respecting the practice of His Majesty's Court of King's Bench in this Province."

4. And be it further enacted by the authority aforesaid, That no Commissioner shall issue any Writ of Capias ad Respondendum in any case in which he shall be employed as Attorney for the person suing out such Writ.

An Act to afford relief to persons confined on Mesne Process.

[Passed 6th March, 1834.]

WHEREAS in many cases arrests are made upon mesne process of persons not having the power of procuring bail, who are thereby kept in close confinement, and being destitute of the means of support it is expedient to afford relief. *Be it therefore enacted*, by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,'" and by the authority of the same, That from and after the passing of this Act, it shall and may be lawful for any person or persons arrested on Mesne Process issued from His Majesty's Court of King's Bench or from any of the District Courts of this Province, being in actual and close custody, to make an affidavit before any person having authority to administer the same, that he, she, or they, is or are in close custody, is or are unable to procure bail, and is or are not worth the sum of Five Pounds, and upon the production of such affidavit to the Court from whence the Writ issued, in Term time, or to any Judge thereof, in Vacation, it shall and may be lawful for such Court or Judge of such Court to make an order upon the Plaintiff or Plaintiffs in any such Suit or Action, to pay to the Defendant the weekly allowance in the same manner as if the Defendant were in custody upon final process, and upon due service of a copy of such order upon the Plaintiff or his Attorney, and in the default of the payment of such weekly allowance, such Court respectively, in Term time, or any Judge thereof in Vacation, shall issue an order to the

Sheriff of the District in which such Defendant shall be in custody, to discharge such Defendant upon filing common bail.

2. Provided always and be it further enacted by the authority aforesaid, that nothing in this Act contained shall extend to prevent any such Plaintiff or Plaintiffs from proceeding to final judgment and execution in the same manner as if the party had entered special bail, and as if this Act had not been passed; and provided also, that the Plaintiff shall be at liberty to tender interrogatories to the Defendant in like manner as if he were charged in execution, and such Defendant shall not be discharged for want of the payment of the weekly allowance, unless he shall answer such interrogatories to the satisfaction of the said Court, or to any Judge thereof in vacation.

3. And be it further enacted by the authority aforesaid, That any sum or sums of money paid by the Plaintiff or Plaintiffs in any Suit or Action towards the weekly allowance directed to be paid under the provisions of this Act, shall be taxed as part of the costs of the Suit, and be allowed to the Plaintiff in his bill, to be taxed by the proper Officer.

4. And be it further enacted by the authority aforesaid, That the Defendant shall not be entitled to a weekly allowance under this Act, for any time during which the Plaintiff shall be delayed in his proceeding in consequence of any indulgence granted to the Defendant by rule of Court or order of a Judge; nor shall any order be made for such weekly allowance unless the Defendant shall make an affidavit to be filed among the papers in the cause that he does not believe the demand of the Plaintiff to be just, and that for that cause and no other he resists payment of the same, and refuses to confess judgment for the sum sworn to.

5. And whereas it is expedient to afford further relief in respect to destitute persons arrested for small sums: Be it therefore further enacted by the authority aforesaid, that when the sum sworn to shall not exceed Ten Pounds, it shall and may be lawful for the Defendant at the expiration of thirty days after having been committed to prison, to apply to the Court from whence the Process issued, in Term time, or to a Judge thereof in Vacation, setting forth an affidavit that he is not worth the

sum for which he has been arrested, and that he hath not directly or indirectly, sold or otherwise disposed of any goods, debts, moneys, or other personal estates, in order to defraud his Creditors, or any of them, and that if upon the return of a summons or of a rule to shew cause, which may be thereupon issued, and upon answers to any interrogatories which the Plaintiff shall be at liberty to file, no good cause shall appear to the contrary, the Court or Judge shall discharge such Defendant from imprisonment upon his filing common appearance, and the Plaintiff may proceed in his action as in non-bailable actions where the Defendant has appeared. 43

An Act to extend the limits assigned to the respective Gaols in this Province, and to afford to Plaintiffs the means in some cases of more effectually compelling the payment of Debts due to them by Defendants in Execution.

[Passed March 6th, 1834.]

WHEREAS it is expedient to extend the limits of the several Gaols throughout this Province: *Be it therefore enacted*, by the King's most excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,'" and by the authority of the same, That the limits to the respective District Gaols, situate in any Town in this Province, shall be co-extensive with the limits of the several Towns in which such Gaols respectively are situate, any law to the contrary thereof in any wise notwithstanding.

2. And be it further enacted by the authority aforesaid, That the limits to those District Gaols which are not situate in any Town, shall and may be extended by the Magistrates of the District in Quarter Sessions assembled, to the distance of half a mile on each side of the several Gaols so situated.

3. And be it further enacted by the authority aforesaid, that such extension of Gaol limits hereby established or authorised to be made, shall not in any manner affect or make void any of the securities already given for the enjoyment of the present Gaol limits, but the same shall continue in force and extend to the said newly assigned limits.

4. *And whereas* it is expedient to afford to Plaintiffs more effectual means of compelling Defendants to a just application of their effects, in satisfaction of their debts, than are now provided by law: Be it therefore further enacted by the authority aforesaid, That whenever the Plaintiff in any action shall have reason to believe that the Defendant, being a Debtor in execution, and admitted to the limits before or after the passing of this Act, hath the means at his disposal or within his control of satisfying the debt for which he is in execution, or a considerable portion thereof, it shall be competent to him to apply to the Court of King's Bench in Term, or to a Judge thereof in vacation, or to the District Court, or a Judge thereof in like manner, when such execution shall have issued from a District Court, shewing his grounds for such belief upon affidavit, and if upon the return of any summons or rule to shew cause that may thereupon issue, which summons or rule shall be served personally upon the Debtor, it shall appear to the satisfaction of the Court or Judge, that the Debtor has the means at his disposal or within his control of satisfying the debt, or a considerable portion thereof, or that he had such means at the time of the service upon him of any notice by the Plaintiff of an intended application under this Act, it shall be competent to such Court or Judge, upon a view of the facts disclosed, and upon a consideration of any other matters which such Court or Judge thereof may require to have stated upon affidavit, in relation to such application, either by way of answers by either party to such interrogatories as the other party may desire, or the Court may direct, to be filed, or otherwise to make an order or rule upon the Sheriff, directing him to apprehend the Defendant, and keep him in custody within the walls of the Gaol of his District, and such Defendant shall, when committed

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upon such order, remain imprisoned in execution, in the same manner as if he had not before obtained the benefit of the limits.

5. Provided always, nevertheless, and be it further enacted by the authority aforesaid, That it shall, nevertheless, be competent to the Defendant, after he shall have been so imprisoned in close custody under this Act, to apply to the Court from which the Execution issued, or to a Judge thereof in vacation, for a Rule or Summons upon the Plaintiff, to shew cause why he should not be allowed the benefit of the Limits, upon giving the security required by law; which application shall be supported by affidavit, shewing that such Defendant has made or tendered just and reasonable satisfaction to the Plaintiff in respect to the grounds upon which he was taken from the Limits and committed to close custody; and that the Court, or Judge, upon the return of such rule or order served on the Plaintiff, or his Attorney, or otherwise, as under the circumstances such Court or Judge shall direct, or shall deem sufficient, may make a rule or order, allowing to the Defendant the benefit of the Limits, upon his giving the security required by law, if it shall appear reasonable and just so to do, under all the circumstances of the case.

6. Provided always, and be it further enacted by the authority aforesaid, That upon the occasion of such an application as last herein mentioned, the Court or Judge may require information upon affidavit, or by way of answers to interrogatories, in the same manner as herein directed in respect to any application to be made for depriving a Defendant of the benefit of the Limits: *And provided also*, that after such second admission, or any future admission of a Defendant to the limits under the authority of this Act, similar proceedings may be adopted by reason of any new facts discovered for again depriving the Defendant of the benefit of the Limits, or for again admitting him to the Limits, as the case may require.

7. And be it further enacted by the authority aforesaid, That when a Defendant in Execution, and upon the Limits, shall refuse or neglect upon demand made by the Plaintiff or his Attorney, either ver-

bally or in writing, to deliver to him within such time as shall appear reasonable under the circumstances, to the Court or Judge to whom application shall be made under this Act, an account or schedule in writing under the hand of such Defendant, and verified by his oath, of all his real and personal estate, debts and effects of every description, such refusal or neglect if not accounted for to the satisfaction of the Court or Judge, may in their or his discretion be taken as sufficient ground for making a Rule or Order as in this Act mentioned, for committing such Defendant to close custody within the gaol as aforesaid.

An Act to repeal part of and amend the Laws now in force in this Province, respecting the appointment and duties of certain Township Officers.

[Passed 6th March, 1834.]

WHEREAS much inconvenience is experienced in consequence of the Assessors of the several Towns or Townships of this Province being obliged by law to attend at the District Town of the District in which the Town or Township for which any person may have been appointed Assessor is situate, in order to deliver and to verify his assessment list on oath, to be made before the Clerk of the Peace of the District; *Be it therefore enacted*, by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled, 'An Act for making more effectual provision for the government of the Province of Quebec in North America, and to make further provision for the Government of the said Province,'" and by the authority of the same, That the third section of an Act passed in the fourth year of the reign of His late Majesty King George the Fourth, entitled, "An Act to repeal part of the second Clause of an Act passed in the thirty third year of His late Majesty's reign, entitled, 'An Act to provide for the nomination and appointment of Parish and Town Officers within this Province, and to make more effectual provision for obtaining an accurate census of the

population of this Province," be, and the same is hereby, repealed.

2. And be it further enacted by the authority aforesaid, That every Assessor shall subscribe the Assessment List by him taken, and shall make oath before the Clerk of the Peace, or some Justice of the Peace of the District. (who is hereby authorised to administer the same) that the same has been faithfully taken, by attendance at the usual place of residence of the several householders or heads of families therein named, and contains a true and correct statement of the number of inhabitants in the Township, place or places, for which the same shall have been taken, according to the best of his knowledge and belief, and shall transmit the same, so verified, to the Clerk of the Peace of the District, on or before the first General Quarter Sessions holden in each District after the first day of April in each year.

3. And be it further enacted by the authority aforesaid, That the said Assessors shall, in separate columns, return the number, sex and age, of persons insane, deaf or dumb, within the Township for which they may have been appointed Assessors.

4. And be it further enacted by the authority aforesaid, That if any person shall wilfully forswear himself under the provisions of this Act, he shall be guilty of wilful and corrupt perjury.

5. And be it further enacted by the authority aforesaid, That from and after the passing of this Act, the second clause of an Act passed in the forty-sixth year of the reign of His late Majesty George the Third, entitled, "An Act to alter and amend an Act passed in the thirty-third year of His present Majesty's Reign, entitled, 'An Act to provide for the nomination and appointment of Parish and Town Officers, and also to repeal certain parts of an Act passed in the thirty-third year of His present Majesty's Reign, entitled, 'An Act to authorise and direct the levying and collecting of Assessments and Rates in every District in this Province, and to provide for the payment of wages to the Members of the House of Assembly,'" be, and the same is hereby repealed.

6. And be it further enacted by the authority aforesaid, That when; from neglect or any other cause, any Town Meeting

shall not be holden on the first Monday in the month of January, for the purpose of choosing and nominating Parish and Town Officers, agreeable to the Act passed in the fifty-seventh year of the reign of His late Majesty George the Third, entitled, "An Act to repeal part of, and alter and amend an Act passed in the thirty-third year of His Majesty's reign, entitled, 'An Act to provide for the nomination and appointment of Parish and Town Officers within this Province,'" in any Township or united Townships, or in case any of the Parish or Town Officers are not chosen and appointed at the Town Meeting, it shall and may be lawful for the Justices of the Peace, in Quarter Sessions assembled, for the District in which such Township or united Townships are situate, or a majority of them, to nominate and appoint the said Parish or Town Officers of such Township or united Townships, until the next Town Meeting.

An Act to render the Judges of the Court of King's Bench in this Province independent of the Crown.

[Passed 6th March, 1834.]

WHEREAS it is expedient to render the Judges of the Court of King's Bench in this Province independent of the Crown: *Be it therefore enacted* by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,'" and by the authority of the same, That the Judges of His Majesty's Court of King's Bench for this Province shall hold their offices during their good behaviour, notwithstanding the Commissions which have been heretofore granted to them, or either of them, may specify that the office is to be held during the pleasure of His Majesty; and that from and after the passing of this Act, the Commissions to the Judge of the said Court shall be made to them, respectively, to hold during their good behaviour, and that the Commissions of Judges of the said Court for the time being shall be, continue, and remain in full force during their good behaviour, notwithstanding the demise of His Majesty,

or of any of His Heirs and Successors, any law, usage or practice, to the contrary thereof, in any wise notwithstanding: *Provided always*, that it may be lawful for the Governor, Lieutenant Governor, or person administering the Government of this Province, to remove any Judge or Judges of the said Court, upon the address of the Legislative Council and Assembly; and in case any Judge so removed shall think himself aggrieved thereby, it shall and may be lawful for him, within six months, to appeal to His Majesty in His Privy Council, and such amotion shall not be final until determined by His Majesty in His Privy Council.

2. And be it further enacted by the authority aforesaid, That when any Judge of the said Court shall die, or shall resign his office, or be removed in the manner authorised by this Act, it shall and may be lawful for the Governor, Lieutenant Governor, or person administering the Government of this Province, notwithstanding any thing hereinbefore contained, to appoint, by Commission under the Great Seal of the Province, some fit and proper person to hold the said office, until His Majesty's pleasure shall be made known, and that such appointment shall be held to be superseded by the issuing of a Commission under the Great Seal of this Province, in the terms first directed by this Act, to the same person, or to such other person as His Majesty shall appoint in the place of any Judge who has died, or resigned, or been removed in the manner authorised by this Act, or by the signification within the Province of the decision of His Majesty in His Privy Council, restoring to his office any Judge who may have been so removed.

An Act to repeal part of, and amend an Act passed in the fourth year of the reign of His late Majesty George the Fourth, entitled "An Act to repeal the several Statutes of this Province respecting the Elections of Members of the House of Assembly, and the qualification of Voters and Candidates at such Elections, and to reduce the provisions thereof, with some amendments, into one Act, and also to provide against fraud in obtaining qualification to vote at Elections."

[Passed 6th March, 1834.]

WHEREAS the laws now in force relating to the qualification of voters at Elections, are defective: *And whereas* there are many loyal and faithful Subjects of His Majesty residing out of His dominions, many of whom are so resident with the approbation and consent of His Majesty: *And whereas* any of the said Subjects coming to reside in this Province would be deprived of the privilege of voting at any Election of a Member to represent any Town, County or Riding, in this Province, although possessed of the necessary freehold qualification for the purpose,

until after a residence in this Province of seven years next preceding such Election: *And whereas* it is expedient to remove such disability from His Majesty's Subjects: *Be it therefore enacted* by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,'" and by the authority of the same, That the twelfth clause of an Act passed in the fourth year of the reign of His late Majesty George the Fourth, entitled "An Act to repeal the several Statutes of this Province respecting the Elections of Members of the House of Assembly, and the qualification of Voters and Candidates at such Elections, and to reduce the provisions thereof, with some amendments, into one Act, and also to provide against fraud in obtaining qualifications to vote at Elections," shall be, and the same is hereby repealed.

2. And be it further enacted by the authority aforesaid, That the fifteenth clause of the said Act passed in the fourth year of His said late Majesty's reign, be, and the same is hereby repealed.

3. And be it further enacted by the authority aforesaid, That before any Elector shall vote at any Election of a Member or Members of the House of Assembly of this Province, he shall, if required by the Returning Officer or any Candidate at such Election, in addition to the oath required by the Act of the Parliament of Great Britain passed in the thirty-first year of the reign of George the Third, entitled "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,'" take an oath in the following form, that is to say—"I, A. B., do swear, that the Estate in right of which I vote at this Election, is [here describe the Estate as the case may be] which I hold by grant from the Crown, descent, devise, marriage or conveyance, [as the case may be] and [in case such Estate shall have been derived otherwise than by grant from the Crown, descent, marriage or devise] that I have been in actual possession or in the receipt of the rents and profits thereof, to my own use, by virtue of such conveyance, above

twelve calendar months, or [as the case may be] that the conveyance to me of the same has been registered three calendar months."

An Act to amend an Act passed in the second year of the reign of His late Majesty King George the Fourth, entitled "An Act to repeal part of and amend an Act passed in the thirty-seventh year of His late Majesty's reign, entitled 'An Act for the better regulating the practice of the Law, and to extend the provisions of the same.'"

[Passed 6th March, 1834.]

WHEREAS by a Statute passed in the second year of His late Majesty's reign, entitled "An Act to repeal part of and amend an Act passed in the thirty-seventh year of His late Majesty's reign, entitled 'An Act for the better regulating the practice of the Law, and to extend the provisions of the same,'" it is among other things enacted, that no person shall be admitted by the Court of King's Bench to practice as an Attorney in this Province, unless upon an actual service, under articles for five years, with some practising Attorney in this Province; *And whereas*, such law may operate to the prejudice of His Majesty's service, if applied to His Majesty's Attorney or Solicitor General, who previous to their appointment may not have served under such articles in this Province. *Be it it therefore enacted*, by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,'" and by the authority of the same, That nothing in the third clause of the said Act passed in the second year of the reign of His Majesty King George the Fourth, shall apply to any person appointed or to be appointed by His Majesty, to be His Attorney or Solicitor General for this Province; but that such Attorney General or Solicitor General shall be and is hereby declared to be entitled, upon his application to be admitted and sworn an Attorney of His Majesty's Court of King's Bench in this Province, in the same manner as if he had served the period required by Law with some practising Attorney of the said Court.

An Act concerning the Release of Mortgages.

[Passed 6th March, 1834.]

WHEREAS it may have happened that by reason of the non-payment of the sum of money or of the non-performance of

the condition mentioned in any Mortgage, at the time therein limited for payment, or for performance of the same, the original Estate in Law may have become vested in the Mortgagee, his heirs or assigns: *And whereas*, after such Estate shall so have become vested, the money secured by such Mortgage, or the condition therein expressed, as a defeasance of the same, may have been paid or performed respectively, and the Mortgagee, his Executors, Administrators or Assigns, may have executed a Certificate of payment or performance of the condition of such Mortgage: *And whereas*, such Certificate so given does not in Law operate as a re-conveyance of the original Estate of such Mortgagor, or as a release or defeasance of such Mortgage: *Be it therefore enacted*, by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled 'An Act for making more effectual provision for the Government of the Province of Quebec in North America, and to make further provision for the Government of the said Province,'" and by the authority of the same, That any certificate by any Mortgagee, his Heirs, Executors, Administrators or Assigns, hitherto given and Registered under the provisions of an Act passed in the thirty-fifth year of the reign of His Majesty King George the Third, entitled "An Act for the public Registering of Deeds Conveyances, Wills and other incumbrances, which shall be made or may affect any lands, tenements or hereditaments, within the Province," or which may be hereafter Registered under the provisions of this Act, whether the same shall have been given, or shall hereafter be given, either before or after the time limited by such mortgage for payment or performance as aforesaid, shall be, and the same is hereby declared to be, valid and effectual in Law as a release of such mortgage, and as a reconveyance of the original estate of the Mortgagor therein mentioned: *Provided*, that such certificate, if given after the expiration of the period within which the Mortgagor had a right in equity to redeem, shall not have the effect of defeating any title other than a title remaining vested in the Mortgagee, or his Executors or Administrators.

An Act to repeal part of an Act passed in the Second year of His Majesty's Reign, entitled, "An Act respecting the time and place of sitting of the Court of King's Bench.

[Passed, 6th March, 1834.]

WHEREAS it is expedient to make perpetual an Act of the Parliament of this

Province, passed in the second year of His Majesty's reign, entitled, "An Act respecting the time and place of sitting of the Court of King's Bench;" *Be it therefore enacted*, by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,'" and by the authority of the same, that the Fifth Section of the said first enacted Act be, and the same is hereby repealed.

An Act to continue and make permanent an Act passed in the Second year of His Majesty's Reign, entitled, "An Act to impose an additional duty on licenses to vend Wines, Brandy and Spirituous Liquors.

[Passed, March 6th, 1834.]

WHEREAS an Act passed in the second year of His Majesty's reign, entitled, "An Act to impose an additional duty on Licenses to vend Wines, Brandy and Spirituous Liquors, will shortly expire; And Whereas it is expedient to continue and make permanent the same; *Be it therefore enacted*, by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,'" and by the authority of the same, that the said recited Act be, and the same is hereby continued.

An Act to facilitate the remedy by Replevin.

[Passed 6th March, 1834.]

WHEREAS it is expedient to facilitate the remedy of Replevin: *Be it therefore enacted* by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled 'An Act for making more effectual provision for the Government of the Province of Quebec, in North

America, and to make further provision for the Government of the said Province," and by the authority of the same, That any person complaining of a wrongful distress in a case in which, by the law of England, Replevin might be made, may, on filing a præcipe, obtain from the office of the Clerk of the Crown and Pleas in this Province, or from the office of any of his Deputies, a writ of Replevin, which may be in the form given in the Schedule to this Act marked A.

2. And be it further enacted by the authority aforesaid, That before the Sheriff shall proceed to replevy upon any such Writ, he shall take pledges from the Plaintiff, according to the law of England in that behalf, and the bond to be entered into for that purpose may be in the form given in the Schedule to this Act annexed marked B; and the assignment thereof to be made to the Defendant may be according to the form given in the same Schedule.

3. And be it further enacted by the authority aforesaid, That upon the Sheriff making such return of the goods distrained having been cloigned, as would warrant the issuing of a Capias in withernam by the law of England, a writ of Capias in withernam shall issue upon the filing of such return from the office of the Clerk of the Crown and Pleas in this Province, or from the office of any of his Deputies, which writ may be in the form given in the Schedule to this Act annexed marked C; and that before executing such writ, the Sheriff shall take pledges according to the law of England in that behalf.

4. And be it further enacted by the authority aforesaid, That the Sheriff may make his warrant to any Bailiff or Bailiffs, jointly and severally, to execute either of the writs aforesaid, to him directed, according to the law and custom of England in that behalf.

5. And be it further enacted by the authority aforesaid, That upon the appearance of the Defendant being entered in the office from whence any writ of Replevin or Capias in withernam shall issue, the Plaintiff may declare, and may proceed in his action of Replevin according to the law of England in that behalf.

6. And be it further enacted by the authority aforesaid, That if the Defendant shall not appear at the return of the writ, or within eight days thereafter, the Plaintiff shall cause a notice to be put upon the door of the Court House of the District in which such writ shall have issued, according to the form in the Schedule to this Act annexed marked D; and that if at the expiration of twenty-one days after the said notice shall have been put up as aforesaid, the Defendant shall not have appeared, it shall be lawful for the Plaintiff, upon filing an affidavit of the due publication

of such notice in manner aforesaid, to enter appearance for the Defendant, and to proceed thereupon as if the Defendant had appeared.

7. And be it further enacted by the authority aforesaid, That when the value of the goods distrained shall not exceed the sum of fifteen pounds, and where the title to lands shall not come in question, the writ of Replevin may issue from the District Court of any District in this Province within which the distress shall have been made, and such proceedings may be thereon had as shall be agreeable to the practice of the Court of King's Bench in this Province in actions of Replevin.

8. And be it further enacted by the authority aforesaid, That the Court of King's Bench may, by rule or rules from time to time, make such provision for rendering the remedy of Replevin easy and effectual as such Court may deem conducive to the ends of Justice, as well by regulating the practice to be observed in actions of Replevin as by prescribing or changing the forms of writs and proceedings to be used in such actions, or for advancing the remedy by Replevin; and that to that end the forms given in the several Schedules annexed to this Act, or any of them, may, by rule of the said Court, be modified and altered.

9. Provided always, and be it further enacted by the authority aforesaid, That in the absence of any provision in this Act, or in any rule of the Court of King's Bench to the contrary, the practice in England in cases of Replevin shall be pursued, so far as the same can be applied to the jurisdiction having cognizance of the case, and to the circumstances of this Province.

SCHEDULE A.

— District, } WILLIAM THE FOURTH, by
to wit: } the Grace of God, &c.

To the Sheriff of ——— Greeting :

We command you, that without delay you cause to be replevied to A. B. his cattle, goods and chattels, which C. D. hath taken and unjustly detains, as it is said, in order that the said A. B. may have his just remedy in that behalf, and that you summon the said C. D. to appear before us in our Court of King's Bench at York, on the ——— day of ——— Term, to answer to the said A. B. in a plea of taking and unjustly detaining his cattle, goods and chattels, and what you shall do in the premises make appear to us in our Court of King's Bench at York, on the day and at the place aforesaid, and have there then this writ.

Witness, the Honorable ——— Chief Justice of our said Province this ——— day of ——— &c.

SCHEDULE B.

Know all men by these Presents that we A. B. of ——— W. G. of ——— and J. S. of ——— are jointly and severally held and firmly bound to W. P. Esquire, Sheriff of the District of ———

in the sum of — of lawful money of Upper Canada, to be paid to the said Sheriff or his certain Attorney, Executors, Administrators or Assigns, for which payment to be well and truly made, we bind ourselves, and each and every of us in the whole, one and each and every of our Heirs, Executors and Administrators, firmly by these presents, sealed with our seals.

Dated this — day of — one thousand eight hundred and —

The condition of this obligation is such that if the above bounden A. B. do prosecute his suit with effect and without delay against C. D., for the taking and unjustly detaining of his cattle, goods and chattels, to wit, [here set forth the cattle or goods distrained] and do make a return of the said cattle, goods and chattels, if a return thereof shall be adjudged, that then this present obligation shall be void and of none effect, or else to be and remain in full force and virtue.

Sealed and delivered }
in the presence of }

Know all men by these presents, that I. W. P. Esquire, Sheriff of the District of — have at the request of the within named C. D. the avowant [or person making cognizance] in this cause assigned over this Replevin Bond, unto him the said C. D. pursuant to the Statute in such case made and provided.

In witness whereof I have hereunto set my hand and seal of office, this — day of — one thousand eight hundred and —

Sealed and delivered }
in presence of }

SCHEDULE C.

— District, } WILLIAM THE FOURTH, by
to wit ; } the Grace of God, &c.

To the Sheriff of — Greeting :

Whereas we lately commanded you that without delay you should cause to be replevied to A. B., his cattle, goods and chattels, to wit, &c. [setting out the cattle and goods,] which C. D. had taken and unjustly detained as it is said, according to our Writ, to you afore directed, and that you should make appear to us in our Court of King's Bench at York, on the — day of — Term, what you should do in the premises, and you at that day returned to us that the cattle, goods and chattels aforesaid, were eligned by the said C. D. out of your Bailiwick, to places to you unknown, so that you could in no wise replevy the same to the said A. B.

Therefore we command you that you take in withernam the cattle, goods and chattels o. the said C. D. in your Bailiwick, to the value of the cattle, goods and chattels, by him the said C. D. before taken, and deliver them to the said A. B. to be kept by him until the said C. D. will deliver the aforesaid cattle, goods

and chattels to the said A. B., and in what manner you shall have executed this our Writ make appear to us, on the — day of — Term, in our Court of King's Bench, that we may cause to be further done thereupon what of right, and according to the Laws of our Province of Upper Canada we shall see meet to be done. We also command you, that if the said A. B. shall make you secure of prosecuting his claims, and of returning the cattle, goods and chattels aforesaid, if a return thereof shall be adjudged, then that you put by gages and safe pledges the said C. D. that he be before us at the time last aforesaid, to answer to the said A. B. of the taking and unjustly detaining of his cattle, goods and chattels aforesaid, and have then there this Writ.

Witness —

SCHEDULE D.

Take Notice, that unless A. B. who has distrained the cattle, goods and chattels of C. D., shall enter his appearance in an action brought against him on account of the said distress, the said A. B. will on or after the — day of — being twenty-one days exclusive after this notice was put up, enter appearance for him to the said action, and proceed therein as if the said C. D. had appeared.

Dated — A. B. in person,

[Or by his Attorney] E. F.

An Act to grant further relief to Bail in certain cases, and to regulate the manner of putting in and perfecting Bail in vacation.

[Passed, 6th March, 1834.]

WHEREAS it is necessary to afford further relief to Bail in certain cases; *Be it therefore enacted*, by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,'" and by the authority of the same, that the Special Bail in any action now pending, or which may be hereafter brought in any of the Courts of this Province, may surrender their principal to the Sheriff of any of the respective Districts in which he may be resident or found, and upon the production of the copy of the Bailpiece, certified by the Clerk of the Court, in which the Bail shall have been entered, the Sheriff of any such District shall receive the Defendant into custody, and shall give a certificate under his seal of office of his being so surrendered into his custody, upon

which certificate being produced an exoneretur shall be entered upon the Bailpiece in the same manner as is now authorised by Law in other cases, and upon notice of such surrender to the Plaintiff or to his Attorney, and upon such exoneretur being so entered, the Bail in such case shall be discharged; *Provided always*, that nothing in this Act contained shall be taken to compel the Plaintiffs in any such action or suit to change the venue or to conduct his suit in any manner different from that in which he would have been compelled had the render been made in the District in which the Defendant had been arrested.

2. And be it further enacted by the authority aforesaid, That notwithstanding any thing contained in any Law to the contrary, it shall and may be lawful after the passing of this Act, for Bail to justify in vacation before a Judge of His Majesty's Court of King's Bench whether the Defendant be, or be not in actual custody, and such Judge may make his rule or order for the allowance of such Bail; *Provided always*, nevertheless, that this provision shall not take effect until after the end of the Term of sitting of the Court of King's Bench, which shall commence next after the passing of this Act, and that it shall be competent for the Court of King's Bench in the said Term, and in any Term afterwards, to make such orders or rules as to them may seem fit, respecting the manner of justifying and perfecting Bail as aforesaid, and respecting the notices to be given previous thereto, the attendance of Bail before a Commissioner or before a Judge, and the affidavits or examinations to be required, or any other matter or thing which may to them appear expedient for carrying this proviso the most justly and conveniently into effect.

3. And be it further enacted by the authority aforesaid, That in case any Defendant or Defendants in any action now pending, or which may be hereafter brought in any of the District Courts in this Province, shall be surrendered by his Bail into the custody of the Sheriff of any District other than that in which such action shall have been instituted, it shall and may be lawful for the Plaintiff or Plaintiffs in any and every such action, after obtaining and entering up judgment to procure a transcript of the Judgment Roll and proceedings, certified under the hand of the Judge of the Court wherein the same shall be obtained, and upon filing such transcript so certified as aforesaid, in the office of the Clerk of the District Court of the District wherein such Defendant or Defendants shall be so surrendered into custody, to charge the said Defendant or Defendants in execution, and take all other necessary proceedings in like manner as if the suit had been originally instituted in such District Court; *Provided always*, that nothing in

this Act contained shall be held to interfere or do away with the provision of any existing Law, for the removal of causes from inferior to superior Courts by Writ of Certiorari or otherwise.

An Act for the relief of certain Religious denominations of persons called Menonists Tunkers and Quakers.

[Passed 6th March, 1834.]

WHEREAS certain of the people called Menonists and Tunkers, subjects of His Majesty within this Province, have by their Petition set forth that they are by the present Militia laws of this Province subjected to an annual Commutation in time of War or when any Portion of the Militia are ordered out on actual service the sum of five pounds, and in time of Peace the sum of twenty shillings annually, and which they pray may be reduced and their sons being minors as well as aliens of their persuasion may likewise be relieved from such commutation, And whereas it is expedient and necessary to afford further relief according to the prayer of their petition: *Be it therefore enacted*, by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain entitled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign entitled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,'" and by the authority of the same, That the twenty-seventh section of an Act passed in the forty-eighth year of the reign of George the Third, entitled "An Act to explain, amend and reduce to one Act of Parliament the several laws now in being for the raising and training the Militia of this Province" be, and the same is hereby repealed.

2. And be it further enacted by the authority aforesaid, that the persons called Quakers, Menonists or Tunkers, shall not be compelled to serve in the Militia of this Province, but every person who shall profess to be one of the people called Quakers, Menonists or Tunkers, and who shall produce a Certificate thereof signed by the

Clerk of the meeting of the society to which he shall belong, shall be excused and exempted, from serving in the said Militia of this Province: *Provided, nevertheless,* that every such person from the age of sixteen to sixty: so claiming to be excused or exempted, shall, on or before the first day of February in each and every year after the passing of this Act, give in his name and place of residence to the Assessor or Assessors of each and every Town, Township, or place where he shall reside, and shall pay in each and every year, in time of peace, the sum of Ten Shillings, and in time of actual invasion or insurrection, or when any of the Militia of the District in which such person shall reside shall be called out on actual service, the sum of Five Pounds, which commutation money shall be in lieu and discharge of such Militia service, and shall be applied as hereinafter provided.

3. And be it further enacted by the authority aforesaid, That it shall be the duty of the Clerk of the Peace in each District in this Province, and he is hereby required, to annex a column to each and every Assessment Roll of each and every Town, Township or place in his District, and therein insert the names of every such Quaker, Menonist or Tunker, and also affix the sum of money so to be paid opposite thereunto; which sums of money it shall be the duty of each and every Collector in each and every Town, Township or place, within this Province, to collect in the same manner as he is authorised by Law to collect any ordinary assessment, and such Collector shall pay the same into the hands of the Treasurer of the District to be expended within the Township where the same shall have been levied in aid of any Road Tax or Assessment raised or levied therein.

4. And be it further enacted by the authority aforesaid, That it shall be lawful to and for the said Treasurer of the District wherein such Town, Township or place lies and he is hereby required to pay out the said monies from time to time to the order of the Road Master of the Division wherein such fine shall have been levied and to be expended on the public Roads, Highways and Bridges within such division.

5. And be it further enacted by the authority aforesaid, That it shall be the duty

of the Path Masters in every Township or place and they are hereby required to apply such sum or sums of money from time to time in the improvement of the said Highways, Roads and Bridges, throughout this Province after the manner and form and upon such place or places as they shall be according to law directed, and to render an account thereof upon oath to the Clerk of such Town, Township or place, whose duty it shall be to report the same to the Magistrates in General Quarter Sessions assembled.

6. And be it further enacted by the authority aforesaid, That no Quaker, Menonist or Tunker, from the age of sixteen to fifty who shall produce a Certificate of the Surgeon of the Regiment setting forth his inability to perform Militia service by reason of bodily infirmity or ailment such person having first obtained such Certificate shall be held liable to pay such exemption money, nor shall any Quaker, Menonist or Tunker, being an alien be held liable to pay such Commutation money any thing in this act to the contrary notwithstanding. 44

An Act to prevent the consumption of Spirituous Liquors in Shops.

[Passed, 6th March, 1834.]

WHEREAS doubts are entertained whether by Law Shopkeepers licensed to sell Wine, Brandy, Rum and other Spirituous Liquors, are prohibited from allowing the same to be consumed within their shops, notwithstanding the license granted for that purpose declares that the same shall be consumed out of the shop; and whereas it is expedient that such doubts should be set at rest; *Be it therefore enacted,* by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the parliament of Great Britain, entitled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled; 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,'" and by the authority of the same, That from and after the passing of this Act no Shopkeeper licensed to sell Wine, Brandy, Rum or other Spirituous Liquors, shall allow any Wine, Brandy, Rum or other Spirituous Liquors sold by him, to be consumed within his shop, or within the building of which such shop is part, either by the purchaser thereof

or by any other person not usually resident within the building comprising such shop.

2. And be it further enacted by the authority aforesaid, That if any Shopkeeper licensed to sell Wine, Brandy, Rum, or other Spirituous Liquors, shall allow the Wine, Brandy, Rum, or other Spirituous Liquor sold by him, or any part thereof, to be consumed within his shop, or within the building of which such shop is part, either by the purchaser thereof, or any other person not usually resident within the building comprising such shop, he, she or they shall, upon conviction thereof, before any three Justices of the Peace within the District where the offence may have been committed, upon the oath of one credible witness, other than the informer, forfeit and pay the sum of five pounds, together with costs of suit, to be recovered and applied in the same manner and form as the penalty imposed for selling Spirituous Liquors by retail without license.

3. And be it further enacted by the authority aforesaid, That if any person or persons, who shall have purchased any Wine, Brandy, Rum or other Spirituous Liquor from any shop, shall consume the same or any part thereof, or allow the same or any part thereof to be consumed in the shop or any part of the building comprising such shop, without the permission of such Shopkeeper or person in charge of such shop, then and in such case, the person so offending shall be liable to the same penalties, to be recovered and applied in the same manner as hereinbefore provided, in respect to any Shopkeeper who shall be convicted of an offence under this Act.

4. Provided always, and be it further enacted by the authority aforesaid, That if it shall appear to the Magistrates before whom any person shall be prosecuted under this Act, that such person did not intend to violate the provisions of this Act, then no penalty shall in such case be imposed.

5. And be it further enacted by the authority aforesaid, That no information or complaint shall be received under this Act, if more than six calendar months shall have elapsed from the time the offence was committed.

6. And be it further enacted by the authority aforesaid, That this Act shall be and remain in force for the space of four years, and from thence to the end of the then next ensuing Session of Parliament, and no longer.

An Act to borrow a sum of Money in Great Britain at a reduced rate of Interest, to cancel a part of the Public Debt of this Province, and for other purposes.

[Passed, 6th March, 1834.]

WHEREAS it is important to the public interests of this Province, that the debentures now outstanding and payable, as well as those which may hereafter become due,

should be redeemed, and for the purpose of constructing Canals, Harbours, Roads, and making various public improvements, it is expedient to negotiate a loan in Great Britain for those purposes, *Be it therefore enacted* by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain entitled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled, 'An Act for making more effectual provision for the Government of the Province of Quebec in North America, and to make further provision for the Government of the said Province;'" and by the authority of the same, That it shall and may be lawful for His Majesty's Receiver-General of this Province, to treat with any person or persons, or with any body politic or corporate in London or elsewhere in Great Britain, for the raising by loan on the credit of this Province, a sum not exceeding Two Hundred Thousand Pounds Sterling Money of Great Britain, or for raising by loan, so many and such sums, not less than Fifty Thousand Pounds each, of Sterling Money as aforesaid, as shall not exceed in the whole the said sum of Two Hundred Thousand Pounds; *Provided* that such loan or loans can be obtained at a rate of interest not greater than five per centum per annum, payable in London, and on condition that the principal shall be redeemed at the expiration of twenty years.

2. And be it further enacted by the authority aforesaid, That for the money so borrowed, His Majesty's Receiver-General of this Province, for the time being, shall issue Debentures in such sums not less than One Hundred Pounds Sterling, each, as may be desired by the lenders thereof, which Debentures shall be prepared and made out in such manner and form as the said Receiver General shall think most safe and convenient; *Provided always*, that every such Debenture shall be signed by the Receiver General of this Province, and shall be made payable to the order of the Inspector General of this Province, for the time being, who shall endorse the same in blank, and shall on or immediately after the first day of January and first day of July in every year, make a return to the Governor, Lieutenant Governor, or person administering the Government of this Province, of the Debentures endorsed by him under this Act.

3. And be it further enacted by the authority aforesaid, That each debenture shall express on the face of it the principal sum in Sterling Money of Great Britain, and the rate of Interest payable thereon, and the time at which such Debenture shall be redeemable.

and that a place in London shall be named by the Receiver General in the said Debenture, at which the Principal Moneys and the Interest accruing thereon shall be paid, on behalf of the Government of this Province.

4. And be it further enacted by the authority aforesaid, That all such Debentures and the Interest thereon, and all charges incident to or attending the same shall be, and are hereby charged and chargeable upon, and shall be repaid or borne out of the moneys that shall come into the hands of the Receiver General of this Province, to and for the public uses of this Province, on account of the proportion payable to this Province, of duties which already have been or hereafter may be levied and received in the Province of Lower Canada, upon goods imported into the said Province, or from any other source whatever.

5. And be it further enacted by the authority aforesaid, That the Debentures which shall be lawfully issued by the authority of this Act, which may remain undischarged and uncanceled at the period therein appointed for the payment thereof, shall and may hereafter be received and taken, and shall pass and be current to all and every the Receivers and Collectors in this Province of the Customs of any Revenue or Tax whatsoever, granted, due or payable, or which may hereafter be granted, due or payable, to His Majesty, His Heirs and Successors, under or by virtue of any Act of the Parliament of Great Britain, or of the Provincial Parliament or otherwise, and also at the office of the Receiver General of this Province, from the said Collectors and Receivers, or from any person making any payment there to His Majesty, His Heirs or Successors, upon any account or for any cause whatsoever, and that the same in the hands of such Collectors and Receivers, and in the hands of the Receiver General of this Province, shall be deemed and taken as cash, and as such shall be charged against and credited to such Collectors and Receivers, and to such Receiver General aforesaid respectively, in their accounts with each other, and with His Majesty, His Heirs and Successors.

6. And be it further enacted by the authority aforesaid, That the Interest which shall from time to time be due upon any Debenture which may be so issued, shall be allowed to all persons, bodies politic or corporate, paying the same to any Receiver or Collector of any of His Majesty's Revenues in this Province, to the respective days whereupon such Debentures shall be so paid: *Provided always*, that no interest shall run, or be paid upon or for any such Debenture, during the time such Debenture so paid shall remain in the hands of any of the said Receivers or Collectors, but for such time, the Interest on every such Debenture shall cease.

7. And to the end that it may be known for what time such Debentures bearing Interest shall from time to time remain in the hands of such Receivers or Collectors as aforesaid:—Be it further enacted by the authority aforesaid, That the person or persons who shall pay any such Debenture or Debentures, so bearing Interest to the Receivers or Collectors of any of His Majesty's Revenues or Taxes, shall, at the time of making such payment, put his or their name or names, and write thereupon, in words at length, the day of the month and year in which he, she or they so paid such Debenture bearing Interest, all which the said Collectors and Receivers respectively shall take care to see done and performed accordingly, to which respective days the said Receivers and Collectors shall be allowed again the Interest which he or they shall have allowed or paid upon such respective Debenture, upon his or their paying the same into the hands of the Receiver General aforesaid.

8. And be it further enacted by the authority aforesaid, That if any person or persons, shall forge or counterfeit any such Debenture as aforesaid which shall be issued under the authority of this Act and uncanceled, or any Stamp, indorsement or writing, thereon or therein, or tender in payment any such forged or counterfeit Debenture, or any Debentures with such counterfeit indorsement or writing thereon, or shall demand to have such counterfeit Debenture or any Debenture with such counterfeit indorsement or writing thereupon or therein exchanged for ready money, by any person or persons who shall be obliged or required to exchange the same, or by any other person or persons whomsoever, knowing the Debentures so tendered in payment or demanded to be exchanged or the Indorsement or writing thereupon or therein to be forged or counterfeited and with intent to defraud His Majesty his Heirs and Successors, or the persons appointed to pay off the same, or any of them, or any other person or persons bodies Politic or Corporate, then every such person or persons so offending being thereof lawfully convicted shall be adjudged a felon and shall be liable to the punishment provided in the twenty fifth section of an Act passed by the Parliament of this Province in the third year of His Majesty's Reign entitled "An Act to reduce the number of Cases in which Capital Punishment may be inflicted; to provide other punishment for offences which shall no longer be capital after the passing of this Act; to abolish the privilege called benefit of Clergy, and to make other alterations in certain Criminal proceedings before and after conviction."

9. And be it further enacted by the authority aforesaid, That the Receiver General of this Province for the time being shall before

each Session of the Parliament of this Province transmit to the Governor, Lieutenant Governor, or person administering the Government of this Province, a correct account of the numbers, amount and dates, of the different Debentures which he may have issued under the authority of this Act; of the amount of the Debentures redeemed by him, and the interest paid thereon respectively; and also of the amount of the said Debentures outstanding and unredeemed at the periods aforesaid; and of the expenses attending the issuing the same, and of carrying this Act into execution, to be laid before the Legislature of this Province.

10. And be it further enacted by the authority aforesaid, That the interest growing due upon the said Debentures shall and may be demandable in half-yearly periods, computing from the date thereof, and shall and may be paid on demand by or through the Receiver General of this Province for the time being, whose duty it shall be to deposit at the place specified in the said Debentures, the half-yearly interest which may from time to time become due and payable thereon; and that the Governor, Lieutenant Governor, or person administering the Government of this Province, shall, after the thirtieth day of June and the thirty-first day of December in each year, issue Warrants to the Receiver General for the payment of the amount of interest that shall have been advanced.

11. And be it further enacted by the authority aforesaid, That the Receiver General of this Province shall be at liberty to pay a sum not exceeding one per centum on the amount of such loan, to such person or persons in London as he may think proper to employ in negotiating the said loan, and paying off the interest which may from time to time become due thereon.

12. And be it further enacted by the authority aforesaid, That at any time after the said Debentures, or any of them, shall respectively become due, according to the terms thereof, it shall and may be lawful for the Governor, Lieutenant Governor or person administering the Government of this Province, to order and direct His Majesty's Receiver General for the time being, to pay off, cancel, and discharge the same, in London, according to the terms of the said loan; and if the said Debentures shall not be presented at the place named by the said Receiver General in London, within six months after the same may become due and payable, the interest shall cease, and be no further payable in respect of the time which may elapse between the expiration of the said six months and their presentment for payment.

13. And be it further enacted by the authority aforesaid, That all monies required to

be paid by the Receiver General under the authority of this Act, shall be paid by the Receiver General in discharge of such Warrant or Warrants as shall for that purpose be issued by the Governor, Lieutenant Governor or person administering the Government of this Province, and shall be accounted for to His Majesty by the said Receiver General, through the Lords Commissioners of His Majesty's Treasury for the time being, in such manner and form as His Majesty, His Heirs and Successors, shall be graciously pleased to direct.

14. And be it further enacted by the authority aforesaid, That His Majesty's Receiver General may, and he is hereby authorised, to pay off and cancel the Debentures issued under the authority of an Act passed by the Parliament of this Province in the first year of His Majesty's reign, entitled, "An Act to afford further aid to the Welland Canal Company, and to repeal part of and amend the Laws now in force relating to the said Company."

An Act to revive and continue an Act passed in the fourth year of the reign of King George the Fourth, entitled, "An Act prescribing the mode of measuring the contents of Wooden Stills; also for fixing the rate of Duty to be paid on all Stills used for the Distillation of Spirituous Liquors within this Province.

[Passed 6th March, 1834.]

WHEREAS an Act passed in the Fourth year of the reign of King George the Fourth, entitled, "An Act prescribing the mode of measuring the contents of Wooden Stills; also for fixing the rate of Duty to be paid on all Stills used for the Distillation of Spirituous Liquors within this Province," has expired, and it is expedient to revive and continue, for a limited time, the said Act: *Be it therefore enacted* by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,'" and by the authority of the same, That the said recited Act be, and the same is hereby revived and continued for four years, and from thence to the end of the then next ensuing Session of Parliament, and no longer.

An Act to attach certain Townships in the District of Newcastle to the Counties of Northumberland and Durham, respectively.

[Passed 6th March, 1834.]

WHEREAS there are several Townships in the District of Newcastle which are not attached to or included within any County of the same: *And whereas* there are many Inhabitants settled in those Townships and it is therefore desirable to annex the same to some adjoining County: *Be it therefore enacted*, by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain entitled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, entitled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America and to make further provision for the Government of the said Province,'" and by the authority of the same, That the Townships of Ennismore, Harvey, Douro, Dummer, Belmont, Burleigh, and Methuen, be annexed to and form part of the County of Northumberland, and that the Townships of Verulam, Fenelon, and Eldon, be annexed to and form part of the County of Durham.

An Act to regulate Line Fences and Water Courses, and to repeal so much of an Act passed in the thirty-third year of the reign of His late Majesty King George the Third, entitled "An Act to provide for the nomination and appointment of Parish and Town Officers within this Province," as relates to the office of Fence Viewers being discharged by Overseers of Highways and Roads.

(Passed 6th March, 1834.)

WHEREAS much difficulty and inconvenience are experienced and many disputes arise from the want of some Provincial enactment, by which each party interested in the making or repairing any division or Line Fence, may be compelled to make or repair, or pay for making and repairing a fair and just proportion of such Fence: *Be it therefore enacted* by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,'" and

and by the authority of the same, That it shall and may be lawful for the Inhabitant Household-ers of each and every Township in this Province, at their annual Town Meeting for the election of Township Officers, to choose from among the Inhabitants of the said Township, in the same manner as by Law other Township Officers are chosen; not less than three or more than eighteen fit and discreet persons to serve the office of Fence Viewers, who shall perform the duties hereinafter prescribed to Fence Viewers, and who shall take the same oath of office, and in the same manner which persons chosen to other Township Officers, are or may be by law required to do, and be liable to the same penalties for neglect or refusal to take said oath of office, to which persons chosen to other Township Offices, and neglecting or refusing to take the oath of office, are or may be by law liable.

2. And be it further enacted by the authority aforesaid, That each of the parties occupying adjoining tracts of land, shall keep up, make and repair a fair and just proportion of the division or Line Fence between their several tracts of land; and that where there shall be a dispute between the parties, as to the commencement or extent of the part of the said division or Line Fence, which either party may claim or refuse to make or repair, it shall and may be lawful for either party to submit the same to the determination and award of three Fence Viewers, which Fence Viewers are hereby authorised and required, upon being duly notified by either party in such case, to attend at the time and place stated in such notice, and after being satisfied that the other party or parties in the case have been duly notified to appear at the time and place, to proceed to examine the premises; and such Fence Viewers, or any two of them, shall determine any and every dispute in the matter aforesaid, between the said parties, and the award and determination of such Fence Viewers, or any two of them, on the matters aforesaid, shall be binding on the parties as far as concerns the making or repairing of such division or Line Fence, and from thenceforth the occupier or occupiers of the said tracts or parcels of land shall respectively make and repair, and keep in repair, that part of such division or Line Fence which shall have been assigned in such award or determination to the occupier or occupiers of such tract or parcel of land, which determination and award shall be made in writing, and signed by such Fence Viewers, or a majority of them, and filed in the Town Clerk's Office, and a copy of the same made out and given to each of the parties: *Provided always, nevertheless*, that when by reason of any material change of circumstances in respect to the improvement and occupation of adjacent lots or

parcels of land, an award which has been made under this Act shall cease in the opinion of either of the parties to be equitable between them, it shall be in the power of either to obtain another award of Fence Viewers by the same mode of proceeding as is hereinbefore directed, and that if the Fence Viewers who shall have been called upon to make such subsequent award, shall find no reason for making an alteration, the whole cost of such reference shall be borne by the party at whose instance it shall have been made.

5. And be it further enacted by the authority aforesaid, That if any person or persons who may be in the occupation of any tract or parcel of land shall neglect or refuse to make or repair (as the case may be) an equal or just proportion of the division or Line Fence between such tract or parcel of land and the adjoining tract or parcel of land, for a period of thirty days after being required by a demand in writing by the person or persons occupying such adjoining tract or parcel of land, or after the award of the Fence Viewers as aforesaid, to make or repair such equal or just proportion of the division or Line Fence; or if the party making such demand shall for such period neglect or refuse to make or repair an equal or just proportion of the division or Line Fence, it shall and may be lawful for either of the said parties, after first completing his own proportion of such Fence, to make or repair in a substantial manner, and of good sound materials, the whole or any part of the said division or Line Fence which ought to have been by the other party made or repaired, and to recover in the manner hereinafter mentioned, of the person or persons who may have neglected or refused in manner aforesaid to make or repair such proportion of the division or Line Fence, the just and full value of such proportion, not exceeding the sum of two shillings and six pence per rod, to be ascertained and determined in the manner hereinafter provided: *Provided always*, that any Fence coming within the meaning and intent of the resolution resolving what shall be considered to be a lawful Fence for that year, entered into by the inhabitant householders at their annual Township Meeting, shall be considered by all Fence Viewers to be a lawful Fence; and when the householders as aforesaid shall neglect or refuse to decide by such resolution what shall be a lawful Fence, then, and in that case, it shall be lawful for such Fence Viewers, when called upon, to exercise their own judgment, and decide what they consider to be a lawful Fence.

4. And be it further enacted by the authority aforesaid, That it shall and may be lawful for any Commissioner of the Court of Requests for the division in which such Fence may be situated, and he is hereby required,

upon the demand of any person or persons, to issue a Summons under his hand and seal, directed to three Fence Viewers (by their proper names) of the Township in which such Fence is situated, requiring them to attend on the day and at the hour therein mentioned, and at a place therein mentioned, to view such Fence, and to appraise the same; also, to issue his Summons to the person or persons so having neglected or refused to make or repair such proportion of the division or Line Fence, who shall thenceforth be considered as the Defendant or Defendants in the case, requiring him or them to appear, at the same time and place, to shew cause why the person or persons claiming payment as aforesaid, who shall thenceforth be considered as the Plaintiff or Plaintiffs in the case, should not recover the same.

5. And be it further enacted by the authority aforesaid, That such Fence Viewers, upon being personally served at least eight days previously with such Summons at the time and place therein mentioned, and after having duly examined the Fence and received evidence, which, if required by either party, or if the said Fence Viewers shall think it expedient, shall be given under oath, they, or any two of them, shall determine whether the said Plaintiff is entitled to recover any, and if any, what sum, from the said Defendant or Defendants, under the provisions of this Act; and in all cases where the commencement or extent of the part of such Division or Line Fence which each party should make or repair, has not been determined by the award of Fence Viewers as aforesaid, the said Fence Viewers, or any two of them, shall determine the same, which determination shall be final and binding on the occupiers of the said tracts or parcels of land, and have the same effect as if it had been made by three Fence Viewers in the manner aforesaid, and shall report their determination upon the matters aforesaid in writing, under their hands, to the said Commissioner of the Court of Requests by whom the said Summons shall have been issued, and shall also, in all cases where they determine that the said Plaintiff is entitled to recover any thing from the said Defendant or Defendants, state what distance of Fence they have determined that the said Defendant or Defendants should have made or repaired.

6. And be it further enacted by the authority aforesaid, That the said Fence Viewers, if they shall be required by either party, before they shall have made a report as aforesaid of their determination to the said Commissioner of the Court of Requests, shall give to such party requiring the same a true copy of their said determination.

7. And be it further enacted by the authority aforesaid, That if either of the said

parties shall desire to procure the attendance of any person to give evidence before such Fence Viewers, it shall and may be lawful for the Commissioner of the Court of Requests by whom any Summons shall have been issued as aforesaid to such Fence Viewers, to issue, upon the application of either of the said parties, a Summons to any person to attend as a witness before the said Fence Viewers at the time and place mentioned in the said Summons to the Fence Viewers, and that the said Fence Viewers, when met as aforesaid at the time and place mentioned in the Summons, shall be, and are hereby authorised, whenever it shall be desired by either party, or they shall think it proper, to administer an oath to any person, except the parties or persons interested, whose evidence they shall wish to take, which oath shall be in the following form:—

“You do solemnly swear that you will true answer make to such questions as may be asked of you by either of the Fence Viewers now here assembled, touching the matters which they are now to examine and determine—**So HELP YOU GOD.**”

And if any person giving evidence as aforesaid under oath, shall be guilty of false swearing, he shall be deemed guilty of perjury, and upon conviction thereof shall be liable to the same punishment and disabilities that persons convicted of Perjury in other cases are now by law liable.

8. And be it further enacted by the authority aforesaid, That the Commissioner of the Court of Requests, to whom the determination of the Fence Viewers shall be returned as aforesaid, shall cause the same to be copied into a book kept for that purpose by the Court of Requests for the division to which he belongs, and thereupon the said Court of Requests shall issue an execution against the goods and chattels of the said Defendant or Defendants in the same manner as if the party to whom it is due had received a Judgment in the Court of Request for the sum which the said Fence Viewers shall have determined as aforesaid he was entitled to receive, and also (if the said sum amounts to more than Two Pounds but not otherwise) for the costs he may have necessarily incurred in the recovery thereof, and when such sum shall not amount as aforesaid to more than Two Pounds then the other party shall be entitled to an Execution from said Court of Request against the goods and chattels of the Plaintiff or Plaintiffs, for the costs he may necessarily have been put to in opposing the Plaintiffs claim, the amount of the said Costs in either case to be determined by the said Court of Requests, : *Provided that* when the said sum shall amount to more than two shillings and sixpence per Rod for the length of fence which such Fence Viewers shall have determined such Defendant or Defendants

ought to have made or repaired, the said Plaintiff shall be entitled to recover and have execution for only the sum of two shillings and sixpence per Rod as aforesaid and his costs : *Provided also* that no such writ of execution shall be issued until after the expiration of forty days from the time of such determination.

9. And be it further enacted by the authority aforesaid, That all and every of such Fence Viewers shall be entitled to receive the sum of five shillings for every day they are necessarily engaged in discharging the duties imposed upon them by this Act, and so in proportion for any time less than one day, and no more, and that every witness who shall be summoned and attend as aforesaid before such Fence Viewers shall be entitled to receive two shillings and sixpence per day, and every commissioner of the Court of Requests and Bailiff shall be entitled to receive for any Service performed under this Act the same fees which they are respectively entitled to receive for similar services in the Court of Requests.

10. And be it further enacted by the authority aforesaid, That any Fence Viewers legally holding the office of Fence Viewers who shall neglect or refuse to perform the duties of his office shall forfeit for every neglect to any person who may sue for the same, a sum not exceeding forty shillings with Costs of Suit, to be recovered upon information and complaint before any one of the Justices of the Peace for the District in which such Fence Viewer was chosen, and to be levied by distress under a Warrant issued by such Justice.

11. And be it further enacted by the authority aforesaid, That when any party shall cease to improve his land or shall lay his enclosure before under improvement, in common, he shall not have a right to take away any part of the Partition Fence that to him belongs adjoining to the next enclosure that is improved or occupied : *Provided* the party occupying the lands adjoining the same will allow and pay therefor so much as the Fence Viewers, or a majority of them, shall in writing determine to be the reasonable value thereof ; and whenever any lands which have laid unimproved and in common shall be afterwards enclosed or improved, the occupier or occupiers thereof shall pay for their fair or just proportion of the division or Line Fence, standing upon the divisional line between the same land and the land of the enclosure of any other occupant or proprietor, the value thereof to be ascertained and set forth in writing by three Fence Viewers in case the parties shall not agree among themselves, and the amount of said value to be recovered according to the proportions so estimated in the same manner and form as hereinbefore provided respecting the making and keeping in repair division or Line Fences.

12. Provided always, and be it further enacted by the authority aforesaid, That in no case shall any person be authorised to take away any part of the Partition Fence that to him belongs, adjoining to the next enclosure that is improved or occupied, unless the party occupying the lands adjoining the same refuse to pay for the same as aforesaid, nor without first giving due notice to such party for at least twelve months previously to the removal of the same.

13. And be it further enacted by the authority aforesaid, That when a water Fence, or a fence running into the water, is necessary to be made, the same shall be done in equal parts, unless by the parties otherwise agreed; and in case either party shall refuse or neglect to make or maintain the share to such party belonging, similar proceedings shall or may be had as in other cases of the like kind respecting Fences out of the water, in this Act mentioned.

14. And be it further enacted by the authority aforesaid, That when Lands belonging to or occupied by different persons, and subject to be fenced and bounded upon or divided from each other by any brook, pond or creek, which of itself is not a sufficient Fence, in such case, if the parties disagree, the same may be submitted to three Fence Viewers, as heretofore provided in cases of disagreement, and if in the opinion of such Fence Viewers, such brook, river, pond or creek is not of itself a sufficient Fence, and that it is impracticable to fence at the true boundary line, they shall judge and determine how or on which side thereof the fence shall be set up and maintained, or whether partly on one side and partly on the other side, as to them shall appear just, and reduce such their determination to writing, as heretofore provided in other cases; and if either of the parties shall refuse or neglect to make up and maintain the part of the Fence, to such party belonging, according to the Fence Viewers determination, in writing as aforesaid, the same may be done and performed as is in this Act before provided in other cases, and the delinquent party shall be subject to the same costs and charges, and to be recovered in like manner.

15. And be it further enacted by the authority aforesaid, That in all cases when any party shall desire to have a Lane be-

tween his Land and any adjoining tract or parcel of Land, and shall make the Fence on one side of the said Lane on his own Land, he shall not be obliged to make or repair, or pay for making or repairing any part of the Fence on the other side of such Lane, any thing herein contained to the contrary in anywise notwithstanding.

16. And whereas it is expedient to provide for the opening of Water Courses in this Province: Be it therefore enacted by the authority aforesaid, That in all cases, when it shall be the joint interest of parties resident within this Province to open a Ditch or Water Course, for the purpose of letting off surplus water from swamps or sunken miry Lands, in order to enable the owners or occupiers of such swampy or sunken Land to cultivate or improve the same, it shall be the duty of such several parties to open a just and fair share of such Ditch or Water Course, in proportion to the several interests that such parties may have in the same; and in cases where a dispute shall or may arise, as to the part, width, depth or extent, that any party so interested ought to open or make, the same may be referred to three Fence Viewers, in the same way and manner as is heretofore by this Act provided, in cases of disputes between parties relative to Line or Division Fences; and it shall be the duty of such Fence Viewers, to whom such matters shall be referred, to divide or apportion such Ditch or Water Course among the several parties, as in the opinion of such Fence Viewers shall be a just and equitable proportion, having due regard to the interest each of the parties shall have in the opening of such Ditch or Water Course, and the Fence Viewers shall at the same time decide what length of time shall be allowed to each of the parties to open his or her share of such Ditch, and the determination or award of such Fence Viewers shall be made in the same form, and signed, and executed in the same manner, and have the same effect in regard to Ditches or Water Courses, as is provided by this Act in regard to Line or Division Fences.

17. And be it further enacted by the authority aforesaid, That when it shall appear to such Fence Viewers that the owner or occupier of any tract or parcel of Land is not sufficiently interested in the opening of such Ditch to make him a party, and at th

same time that it is necessary that such Ditch should be continued across his Land by the other party or parties, at their own expense, they may award the same in manner and form aforesaid, and upon such award, such party or parties may lawfully, and without molestation, open such Ditch or Water Course across such Land as aforesaid, at their own expense.

18. And be it further enacted by the authority aforesaid, That if any party shall neglect or refuse to open or make and keep open his share or proportion allotted or awarded to him by such Fence Viewers as aforesaid, within the time allowed by such Fence Viewers, either of the other parties may, after first completing his own share or proportion allotted to him in manner aforesaid, open the share or proportion allotted to such party neglecting or refusing to open the same, and such party so opening such other parties share, shall be entitled to recover the value thereof from the party so neglecting or refusing to open his share or proportion, in the same way and manner and form as is in this Act provided relative to Line and Division Fences.

19. And be it further enacted by the authority aforesaid, That all fines levied under the provisions of this Act shall be by the Justice or Justices of the Peace by whom the same may be imposed and collected, paid over to the Overseer or Overseers of Highways in the Division wherein such fine or fines shall have been levied, and such Overseer or Overseers are hereby authorized and required to expend the same in the same manner as other monies coming to their hands to be expended on the Highways, and shall render an account thereof within three months after expenditure thereof, to the Justices in Quarter Sessions assembled.

20. And be it further enacted by the authority aforesaid, That this Act shall be and continue in force for four years, and from thence to the end of the next ensuing Session of Parliament, and no longer.

21. And be it further enacted by the authority aforesaid, That so much of the fifth clause of an Act of the Parliament of this Province, passed in the thirty-third year of the reign of King George the Third, entitled "An Act to provide for the nomination and appointment of Parish and Town Officers within this Province," as

provides that persons chosen to be Overseers of Highways and Roads shall also serve the office of Fence Viewers, shall be and the same is hereby repealed; and that whatever duties that were before the passing of this Act directed to be performed by such Overseers of Highways and Roads, in relation to Fences, shall hereafter be performed by the persons chosen to be Fence Viewers under the authority of this Act. 46

An Act to amend the Law respecting Real Property, and to render the proceedings for recovering possession thereof, in certain cases, less difficult and expensive.

[Passed 6th March, 1834.]

WHEREAS it is expedient to amend the Law relating to real Estates, by making certain alterations in the Law of Inheritance, and respecting the conveyance of Real Property by Devise and by Deed, and in regard to Dower, and the limitation of actions and suits relating to real Property, and for simplifying the remedies for trying the rights thereto: *Be it therefore enacted*, by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, entitled, 'An Act for making more effectual provision for the Government of Quebec in North America, and to make further provision for the Government of the said Province,'" and by the authority of the same, That in every case descent shall be traced from the purchaser; and to the intent that the pedigree may never be carried farther back than the circumstances of the case and the nature of the Title shall require, the person last entitled to the land shall for the purposes of this Act be considered to have been the purchaser thereof unless it shall be proved that he inherited the same, in which case, the person from whom he inherited the same, shall be considered to have been the purchaser, unless it shall be proved that he inherited the same; and in like manner, the last person from whom the land shall be proved to have been inherited shall in every case be

considered to have been the Purchaser, unless it shall be proved that he inherited the same.

2 And be it further enacted by the authority aforesaid, That when any Land shall have been devised by any Testator, who shall die after the first day of July, one thousand eight hundred and thirty-four to the heir or to the person who shall be the heir of such Testator, such heir shall be considered to have acquired the Land as a Devisee and not by descent; and when any Land shall have been limited by any assurance, executed after the said first day of July, one thousand eight hundred and thirty four, to the person, or to the heirs of the person who shall thereby have conveyed the same Land, such person shall be considered to have acquired the same as a purchaser, by virtue of such assurance, and shall not be considered to be entitled thereto, as of his former estate or part thereof.

3 And be it further enacted by the authority aforesaid, That when any person shall have acquired any land by purchase, under a limitation to the heirs, or to the heirs of the body of any of his Ancestors, contained in an assurance, executed after the said first day of July, one thousand eight hundred and thirty four, or under a limitation to the heirs, or to the heirs of the body of any of his Ancestors, or under any limitation having the same effect, contained in a Will of any Testator who shall depart this life after the said first day of July, one thousand eight hundred and thirty-four, then and in any such cases such land shall descend, and the descent thereof shall be traced, as if the Ancestor named in such limitation had been the purchaser of such land.

4. And be it further enacted by the authority aforesaid, That no Brother or Sister shall be considered to inherit immediately from his or her Brother or Sister, but every descent from a Brother or Sister shall be traced through the Parent.

5. And be it further enacted by the authority aforesaid, That every lineal Ancestor shall be capable of being heir to any of his issue, and in every case where there shall be no issue of the purchaser, his nearest lineal ancestor shall be his heir in preference to any person who would have been entitled to inherit either by tracing his descent through such lineal ancestor, or

in consequence of there being no descendant of such lineal ancestor so that the Father shall be preferred to a Brother or Sister, and a more remote lineal ancestor to any of his issue, other than a nearer lineal ancestor or his issue.

6. And be it further enacted and declared by the authority aforesaid, That none of the maternal ancestors of the person from whom the descent is to be traced, nor any of their descendants shall be capable of inheriting until all his paternal ancestors and their descendants shall have failed, and also that no female paternal ancestor of such person, nor any of her descendants shall be capable of inheriting until all his male paternal ancestors and their descendants shall have failed, and that no female maternal ancestor of such person nor any of her descendants, shall be capable of inheriting until all his male maternal ancestors and their descendants shall have failed.

7. And be it further enacted and declared, That where there shall be a failure of male paternal ancestors of the person from whom the descent is to be traced, and their descendants, the mother of his more remote male paternal ancestor, or her descendants, shall be the heir or heirs of such person, in preference to the mother of a less remote male paternal ancestor or her descendants; and when there shall be a failure of male paternal ancestors of such person and their descendants, the mother of his more remote male maternal ancestor and her descendants, shall be the heir or heirs of such person, in preference to the mother of a less remote male maternal ancestor and her descendants.

8. And be it further enacted by the authority aforesaid, That any person related to the person from whom the descent is to be traced by the half blood, shall be capable of being his heir; and the place in which any such relation by the half blood shall stand in the order of inheritance so as to be entitled to inherit, shall be next after any relation in the same degree of the whole blood and his issue, where the common ancestor shall be a male, and next after the common ancestor when such common ancestor shall be a female, so that the brother of the half blood on the part of the father, shall inherit next after the sisters of the whole blood on the part of the father and their issue, and the brother of the half

blood on the part of the mother, shall inherit next after the mother.

9. And be it further enacted by the authority aforesaid, That when the person from whom the descent of any land is to be traced shall have had any relation who having been attainted, shall have died before such descent shall have taken place, then such attainder shall not prevent any person from inheriting such land who would have been capable of inheriting the same by tracing his descent through such relation if he had not been attainted, unless such Land shall have escheated in consequence of such attainder, before the first day of July, one thousand eight hundred and thbity four.

10. And be it further enacted by the authority aforesaid, That after the passing of this Act proof of entry by the heir after the death of the ancestor shall in no case be necessary in order to prove title in such heir, or in any person claiming by or through him.

11. And be it further enacted by the authority aforesaid, That this Act shall not extend to any descent which shall take place on the death of any person who shall die before the first day of July, one thousand eight hundred and thirty-four.

12. And be it further enacted by the authority aforesaid, That where any assurance executed before the said first day of July one thousand eight hundred and thirty-four, or the Will of any person who shall die before that day, shall contain any limitation or gift to the heir or heirs of any person under which the person or persons answering the description of heir shall be entitled to an estate by purchase, then the person or persons who would have answered such description of heir, if this Act had not been made, shall become entitled by virtue of such limitation or gift whether the person named as ancestor shall or shall not be living on or after the said first day of July one thousand eight hundred and thirty four-

13. And be it further enacted by the authority aforesaid, That where a Husband shall die beneficially entitled to any land for an interest which shall not entitle his Widow to dower out of the same at Law, and such interest, whether wholly equitable, or partly legal and partly equitable, shall be an estate of inheritance in possession, or equal to an estate of inheritance

in possession, (other than an estate in joint tenancy,) then his Widow shall be entitled in equity to dower out of the same land.

14. And be it further enacted by the authority aforesaid, That when a Husband shall have been entitled to a right of entry or action in any land, and his Widow would be entitled to dower out of the same if he had recovered possession thereof, she shall be entitled to dower out of the same, although her Husband shall not have recovered possession thereof: *Provided* that such dower be sued for or obtained within the period during which such right of entry or action might be enforced.

15. And be it further enacted by the authority aforesaid, That no Widow shall hereafter be entitled to dower ad ostium ecclesie, or dower ex assensu patris.

16. And be it further enacted by the authority aforesaid, That after the first day of July, one thousand eight hundred and thirty-four, no person shall make an entry or distress, or bring an action to recover any Land or Rent but within twenty years next after the time at which the right to make such entry or distress, or to bring such action shall have first accrued to some person through whom he claims; or if such right shall not have accrued to any person through whom he claims, then within twenty years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to the person making or bringing the same.

17. And be it further enacted by the authority aforesaid, That in the construction of this Act, the right to make an entry or distress, or bring an action to recover any Land or Rent, shall be deemed to have first accrued at such time as hereinafter is mentioned, that is to say, when the person claiming such Land or Rent, or some person through whom he claims shall, in respect of the Estate or Interest claimed, have been in possession or in the receipt of the profits of such Land, or in receipt of such Rent, and shall, while entitled thereto, have been dispossessed or have discontinued such possession or receipt, then such right shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession, or at the last time at which any such profits or Rent were or was so received; and when the person claiming such Land or

Rent shall claim the Estate or Interest of some deceased person who shall have continued in such possession or receipt, in respect of the same Estate or Interest, until the time of his death, and shall have been the last person entitled to such Estate or Interest who shall have been in such possession or receipt, then such right shall be deemed to have first accrued at the time of such death; and when the person claiming such Land, or Rent, shall claim in respect of an Estate or Interest in possession, granted, appointed, or otherwise assured by any Instrument other than a Will, to him or some person through whom he claims, by a person being in respect of the same Estate or Interest in the possession or receipt of the profits of the Land or in receipt of the Rent, and no person entitled under such Instrument shall have been in possession or receipt, then such right shall be deemed to have first accrued at the time at which the person claiming as aforesaid, or the person through whom he claims, became entitled to such possession or receipt by virtue of such Instrument; and when the Estate or Interest claimed shall have been an Estate or Interest in reversion or remainder, or other future Estate or Interest, and no person shall have obtained the possession or receipt of the profits of such Land, or the receipt of such Rent, in respect of such Estate or Interest, then such right shall be deemed to have first accrued at the time at which such Estate or Interest became an Estate or Interest in possession; and when the person claiming such Land or Rent, or the person through whom he claims shall have become entitled, by reason of any forfeiture or breach of condition, then such right shall be deemed to have first accrued when such forfeiture was incurred or such condition broken: *Provided always*, that until the person deriving title to Land in this Province as the Grantee of the Crown, or his Heirs or Assigns, or some or one of them, by themselves, their Servants or Agents, shall have taken actual possession of the Land granted, by residing thereupon or by cultivating some portion thereof, the lapse of twenty years shall not bar the right of such Grantee, or any person claiming by, under or through him, to bring an action for the recovery of such Lands, unless it can be shewn that such Grantee or person

claiming by, under or through him, while entitled to the Land, had knowledge of the same being in the actual possession of some other person not claiming to hold by, from or under the Grantee of the Crown, (such possession having been taken while the said Lot was in a state of nature,) in which case, the right to bring such action shall be deemed to have accrued from the time that such knowledge was obtained: *Provided also*, that when any right to make an entry or distress, or to bring an action to recover any Land or Rent, by reason of any forfeiture or breach of condition, shall have first accrued in respect of any Estate or Interest in reversion or remainder, and the Land or Rent shall not have been recovered by virtue of such right; the right to make an entry or distress, or bring an action to recover such Land or Rent, shall be deemed to have first accrued in respect of such Estate or Interest, at the time when the same shall have become an Estate or Interest in possession, as if no such forfeiture or breach of condition had happened: *Provided also*, that a right to make an entry or distress, or to bring an action to recover any Land or Rent, shall be deemed to have first accrued in respect of an Estate or Interest in reversion, at the time at which the same shall have become an Estate or Interest in possession, by the determination of any Estate or Estates, in respect of which such Land shall have been held or the profits thereof, or such Rent shall have been received, notwithstanding the person claiming such Land, or some person through whom he claims shall, at any time previously to the creation of the Estate or Estates which shall have determined, have been in possession or receipt of the profits of such Land, or in receipt of such Rent.

18. And be it further enacted by the authority aforesaid, That for the purposes of this Act, an Administrator claiming the Estate or Interest of the deceased person, of whose chattels he shall be appointed Administrator, shall be deemed to claim as if there had been no interval of time between the death of such deceased person and the grant of the Letters of Administration.

19. And be it further enacted by the authority aforesaid, That when any person shall be in possession or in receipt of the

profits of any Land, or in receipt of any Rent, as Tenant at Will, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress, or bring an action to recover such Land or Rent, shall be deemed to have first accrued either at the determination of such tenancy or at the expiration of one year next after the commencement of such tenancy, at which time such tenancy shall be deemed to have determined; *Provided always*, that no Mortgagee, or Cestui que Trust shall be deemed to be a Tenant at Will, within the meaning of this clause, to his Mortgagee or Trustee.

20. And be it further enacted by the authority aforesaid, That when any person shall be in possession or in receipt of the profits of any Land, or in receipt of any Rent as Tenant, from year to year or other period, without any Lease in writing, the right of the person entitled, subject thereto, or of the person through whom he claims to make an entry or distress, or to bring an action to recover such Land or Rent, shall be deemed to have first accrued, at the determination of the first of such years or other periods, or at the last time when any Rent payable in respect of such tenancy shall have been received, (which shall last happen.)

21. And be it further enacted by the authority aforesaid, That when any person shall be in possession or in receipt of the profits of any Land, or in receipt of any Rent by virtue of a Lease in writing, by which a Rent amounting to the yearly sum of Twenty Shillings or upwards shall be reserved, and the Rent reserved by such Lease shall have been received by some person wrongfully claiming to be entitled to such Land or Rent in reversion, immediately expectant on the determination of such Lease, and no payment in respect of the Rent reserved by such Lease shall afterwards have been made to the person rightfully entitled thereto, the right of the person entitled to such Land or Rent, subject to such Lease, or of the person through whom he claims to make an entry or distress, or to bring an action after the determination of such Lease, shall be deemed to have first accrued at the time at which the Rent reserved by such Lease was first so received by the person wrongfully claim-

ing as aforesaid, and no such right shall be deemed to have first accrued upon the determination of such Lease to the person rightfully entitled.

22. And be it further enacted by the authority aforesaid, That no person shall be deemed to have been in possession of any Land within the meaning of this Act, merely by reason of having made an entry thereon.

23. And be it further enacted by the authority aforesaid, That no continual or other claim upon or near any Land shall preserve any right of making an entry or distress, or of bringing an action.

24. And be it further enacted by the authority aforesaid, That when any one or more of several persons entitled to any Land or Rent, as Co-parceners, Joint Tenants, or Tenants in Common, shall have been in possession or receipt of the entirety, or more than his or their undivided share or shares of such Land, or of the profits thereof, or of such Rent for his or their own benefit, or for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the same Land or Rent, such possession or receipt shall not be deemed to have been the possession or receipt of or by such last mentioned person or persons, or any of them.

25. And be it further enacted by the authority aforesaid, That when a younger brother or other relation of the person entitled as heir to the possession, or receipt of the profits of any Land, or to the receipt of any Rent, shall enter into the possession or receipt thereof, such possession or receipt shall not be deemed to be the possession or receipt of or by the person entitled as heir.

26. *Provided always*—And be it further enacted by the authority aforesaid, That when any acknowledgment of the Title of the person entitled to any Land or Rent shall have been given to him or his Agent in writing, signed by the person in possession or in receipt of the profits of such Land, or in receipt of such Rent, then such possession or receipt, of or by the person by whom such acknowledgment shall have been given, shall be deemed according to the meaning of this Act to have been the possession or receipt of, or by the person to whom or to whose Agent such

acknowledgment shall have been given at the time of giving the same, and the right of such last mentioned person, or any person claiming through him to make an entry or distress, or bring an action to recover such Land or Rent, shall be deemed to have first accrued at, and not before the time at which such acknowledgment or the last of such acknowledgments, if more than one was given.

27. *Provided also*—And be it further enacted by the authority aforesaid, That when no such acknowledgment as aforesaid shall have been given before the passing of this Act, and the possession or receipt of the profits of the Land, or the receipt of the Rent, shall not at the time of the passing of this Act have been adverse to the right or title of the person claiming to be entitled thereto, then such person or the person claiming through him may, notwithstanding the period of twenty years hereinbefore limited shall have expired, make an entry or distress, or bring an action to recover such Land or Interest, at any time within five years next after the passing of this Act.

28. *Provided always*—And be it further enacted by the authority aforesaid, That if at the time at which the right of any person to make an entry or distress, or bring an action to recover any Land or Rent shall have first accrued as aforesaid, such person shall have been under any of the disabilities hereinafter mentioned, that is to say—infancy, coverture, idiotcy, lunacy, unsoundness of mind, or absence from this Province, then such person or the person claiming through him may, notwithstanding the period of twenty years hereinbefore limited shall have expired, make an entry or distress, or bring an action to recover such Land or Rent at any time within ten years next after the time at which the person to whom such right shall have first accrued as aforesaid, shall have ceased to be under any such disability, or shall have died, (which shall have first happened.)

29. *Provided nevertheless*—And be it further enacted by the authority aforesaid, That no entry, distress, or action, shall be made or brought by any person who at the time at which his right to make an entry or distress, or to bring an action to recover any Land or Rent shall have first accrued,

shall be under any of the disabilities hereinbefore mentioned, or by any person claiming through him, but within forty years next after the time at which such right shall have first accrued, although the person under disability at such time may have remained under one or more of such disabilities during the whole of such forty years; or although the term of ten years from the time at which he shall have ceased to be under any such disability, or have died, shall not have expired.

30. *Provided always*—And be it further enacted by the authority aforesaid, That when any person shall be under any of the disabilities hereinbefore mentioned, at the time at which his right to make an entry or distress, or to bring an action to recover any Land or Rent shall have first accrued, and shall depart this life without having ceased to be under any such disability, no time to make an entry or distress, or to bring an action to recover such Land or Rent beyond the said period of twenty years next after the right of such person to make an entry or distress, or to bring an action to recover such Land or Rent shall have first accrued, or the said period of ten years next after the time at which such person shall have died, shall be allowed by reason of any disability of any other person.

31. And be it further enacted by the authority aforesaid, That when the right of any person to make an entry or distress, or bring an action to recover any Land or Rent to which he may have been entitled for an Estate or Interest in possession, shall have been barred by the determination of the period hereinbefore limited, which shall be applicable in such case, and such person shall at any time during the said period have been entitled to any other estate, interest, right, or possibility, in reversion, remainder or otherwise, in or to the same Land or Rent; no entry, distress or action shall be made or brought by such person, or any person claiming through him, to recover such Land or Rent in respect of such other Estate, interest, right or possibility, unless in the mean time such Land or Rent shall have been recovered by some person entitled to an Estate, interest or right, which shall have been limited or taken effect after or in defeasance of such Estate or interest in possession.

32. And be it further enacted by the authority aforesaid, That after the said first day of July, one thousand eight hundred and thirty-four, no person claiming any Land or Rent in Equity shall bring any suit to recover the same but within the period during which, by virtue of the provisions hereinbefore contained he might have made an entry or distress, or brought an action to recover the same respectively, if he had been entitled at Law to such Estate, interest or right, in or to the same, as he shall claim therein in Equity.

33. *Provided always*—And be it further enacted by the authority aforesaid, That when any Land or Rent shall be vested in a Trustee upon any express trust, the right of the Cestui que Trust, or any person claiming through him to bring a suit against the Trustee, or any person claiming through him to recover such Land or Rent, shall be deemed to have first accrued, according to the meaning of this Act, at and not before the time at which such Land or Rent shall have been conveyed to a purchaser for a valuable consideration, and shall then be deemed to have accrued only as against such purchaser, and any person claiming through him.

34. And be it further enacted by the authority aforesaid, That in every case of a concealed fraud, the right of any person to bring a suit in Equity, for the recovery of any Land or Rent, of which he, or any person through whom he claims, may have been deprived by such fraud, shall be deemed to have first accrued at, and not before the time at which such fraud shall or with reasonable diligence might have been first known or discovered: *Provided*, that nothing in this clause contained shall enable any owner of Lands or Rents to have a suit in Equity for the recovery of such Lands or Rents, or for setting aside any conveyance of such Lands or Rents, on account of fraud against any bona fide purchaser for valuable consideration, who has not assisted in the commission of such fraud, and who, at the time that he made the purchase did not know, and had no reason to believe that any such fraud had been committed.

35. *Provided always*—And be it further enacted by the authority aforesaid, That nothing in this Act contained shall be deemed to interfere with any Rule or Jurisdic-

tion of Courts of Equity in refusing relief on the ground of acquiescence or otherwise, to any person whose right to bring a suit may not be barred by virtue of this Act.

36. And be it further enacted by the authority aforesaid, That when a Mortgagee shall have obtained the possession or receipt of the profits of any Land, or the receipt of any Rent comprised in his Mortgage, the Mortgagor, or any person claiming through him, shall not bring a suit to redeem the Mortgage but within twenty years next after the time at which the Mortgagee obtained such possession or receipt, unless in the mean time an acknowledgment of the title of the Mortgagor, or of his right of redemption, shall have been given to the Mortgagor, or some person claiming his Estate, or to the Agent of such Mortgagor or person, in writing, signed by the Mortgagee or the person claiming through him; and in such case, no such suit shall be brought but within twenty years next after the time at which such acknowledgment, or the last of such acknowledgments, if more than one was given; and when there shall be more than one Mortgagor, or more than one person claiming through the Mortgagor or Mortgagors, such acknowledgment, if given to any of such Mortgagors or persons, or his or their Agent, shall be as effectual as if the same had been given to all such Mortgagors or persons; but when there shall be more than one Mortgagee, or more than one person claiming the Estate or Interest of the Mortgagee or Mortgagees, such acknowledgment, signed by one or more of such Mortgagees or persons, shall be effectual only as against the party or parties signing as aforesaid, and the person or persons claiming any part of the Mortgage money, or Land or Rent, by, from or under him or them, and any person or persons entitled to any Estate or Estates, Interest or Interests, to take effect after or in defeasance of his or their Estate or Estates, Interest or Interests, and shall not operate to give to the Mortgagor or Mortgagors a right to redeem the Mortgage as against the person or persons entitled to any other undivided or divided part of the money or Land or Rent; and when such of the Mortgagees or persons aforesaid as shall have given such acknowledgment shall be

entitled to a divided part of the Land or Rent comprised in the Mortgage, or some Estate or Interest therein, and not to any ascertained part of the Mortgage money, the Mortgagor or Mortgagors shall be entitled to redeem the same divided part of the Land or Rent, on payment, with interest, of the part of the Mortgage money which shall bear the same proportion to the whole of the Mortgage money as the value of such divided part of the Land or Rent shall bear to the value of the whole of the Land or Rent comprised in the Mortgage.

37. And be it further enacted by the authority aforesaid, That at the determination of the period limited by this Act to any person for making an entry or distress, or bringing an action or suit, the right and title of such person to the Land or Rent, for the recovery whereof such entry, distress, action or suit, respectively might have been made or brought within such period, shall be extinguished.

38. And be it further enacted by the authority aforesaid, That the receipt of the Rent payable by any Tenant from year to year, or other Lessee, shall, as against such Lessee, or any person claiming under him, but subject to the Lessee, be deemed to be the receipt of the profits of the Land for the purposes of this Act.

39. And be it further enacted by the authority aforesaid, That no writ of right patent, writ of right quia dominus remisit curiam, writ of right close, writ of right de rationabili parte, writ of right upon disclaimer, writ of right of ward, writ of Cessavit, quod permitat, formedon in descender, remainder, or in reverter, writ of Assize of novel disseisin, nuisance, or mort d'ancestor, writ of entry sur disseisin in the quibus, in the per, in the per and cui, or in the post, writ of entry sur intrusion, writ of entry sur alienation, dum fuit non compos mentis, dum fuit infra etatem, dum fuit in prisona, ad communem legem, in casu proviso, in consimili casu, cui in vita, sur cui in vita, cui ante divortium, or sur cui ante divortium, writ of entry sur abatement, writ of entry quare ejecit infra terminum, or ad terminum qui praeteriit, or causa matrimonii praelocuti, writ of aiel, besaiel, tresaiel, cosinage, or nuper obiit, writ of waste, writ of partition, except such as is or shall be authorised by any

Statute of this Province; writ of disseisin, writ of quod ei deforceat, writ of covenant real, writ of warrantia chartae, writ of curia claudenda, and no other action, real or mixed, except a writ of dower, or writ of dower unde nihil habet, or an ejectment; and no plaint in the nature of any such writ or action, except a plaint for dower, shall be brought after the first day of July, one thousand eight hundred and thirty-five.

40. *Provided always*—And be it further enacted by the authority aforesaid, That when on the said first day of July, one thousand eight hundred and thirty-five, any person who shall not have a right of entry to any Land, shall be entitled to maintain any such writ or action as aforesaid, in respect of such Land, such writ or action may be brought at any time before the first day of January, one thousand eight hundred and thirty-six, in case the same might have been brought if this Act had not been made, notwithstanding the period of twenty years hereinbefore limited shall have expired.

41. *Provided also*—And be it further enacted by the authority aforesaid, That when on the said first day of January, one thousand eight hundred and thirty-six, any person whose right of entry to any Land shall have been taken away, by any descent cast, discontinuance or warranty, might maintain any such writ or action as aforesaid, in respect of such Land, such writ or action may be brought after the said first day of January, one thousand eight hundred and thirty-six, but only within the period during which, by virtue of the provisions of this Act, an entry might have been made upon the same Land, by the person bringing such writ or action, if his right of entry had not been so taken away.

42. And be it further enacted by the authority aforesaid, That no descent cast, discontinuance or warranty, which may happen or be made after the said first day of July, one thousand eight hundred and thirty-four, shall toll or defeat any right of entry or action for the recovery of Land.

43. And be it further enacted by the authority aforesaid, That after the said first day of July, one thousand eight hundred and thirty-four, no action or suit or other proceeding shall be brought to recover any sum of money secured by any Mortgage, Judgment or Lien, or otherwise, charged upon or payable out of any Land or Rent at Law or in Equity, or any

Legacy, but within twenty years next after a present right to receive the same shall have accrued to some person capable of giving a discharge for or release of the same, unless in the mean time some part of the principal money, or some interest thereon shall have been paid, or some acknowledgment of the right thereto shall have been given in writing, signed by the person by whom the same shall be payable, or his Agent, to the person entitled thereto, or his Agent, and in such case no such action or suit or proceeding shall be brought, but within twenty years after such payment or acknowledgment, or the last of such payments or acknowledgments, if more than one was given: *Provided always*, that in respect to persons now entitled to an equity of redemption or to any legacy, the right to bring an action or to pursue a remedy for the same shall not be deemed to be extinguished or barred by lapse of time until the expiration of five years from the time that an equitable jurisdiction shall be established in this Province, and in the exercise of its powers: *Provided* that shall happen within ten years from the passing of this Act.

44. And be it further enacted by the authority aforesaid, That after the said first day of July, one thousand eight hundred and thirty-four, no arrears of dower, nor any damages on account of such arrears, shall be recovered or obtained by any action or suit for a longer period than six years next before the commencement of such action or suit.

45. And be it further enacted by the authority aforesaid, That after the said first day of July, one thousand eight hundred and thirty-four, no arrears of Rent or of Interest, in respect of any sum of money charged upon or payable out of any Land or Rent, or in respect of any Legacy, or any damages in respect of such arrears of Rent or Interest, shall be recovered by any distress, action or suit, but within six years next after the same respectively shall have become due, or next after an acknowledgment of the same in writing shall have been given to the person entitled thereto, or his Agent, signed by the person by whom the same was payable, or his Agent: *Provided nevertheless*, that where any prior Mortgagee or other Incumbrancer shall have been in possession of any Land, or in the receipt of the profits thereof, within one year next before an action or suit shall be brought by any person entitled to a subsequent mortgage or other incumbrance on the same Land, the person entitled to such subsequent mortgage or incumbrance may recover in such action or suit the arrears of interest which shall have become due during the whole time that such prior Mortgagee or Incumbrancer was in such possession or receipt as aforesaid, although such time may have exceeded the said term of six years.

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46. And be it further enacted by the authority aforesaid, That any Corporation aggregate in this Province, capable of taking and conveying Land, shall be deemed to have been and shall be deemed to be capable of taking and conveying Land by deed of bargain and sale, in like manner as any person in his natural capacity, subject nevertheless to any general limitations or restrictions as to holding or conveying Real Estate, which may be applicable to such Corporation.

47. And be it further enacted by the authority aforesaid, That after the passing of this Act, a deed of bargain and sale of Land in this Province shall not be held to require enrollment or to require registration to supply the place of enrollment, for the mere purpose of rendering such bargain and sale a valid and effectual conveyance for passing the Land thereby intended to be bargained and sold:— *Provided always, nevertheless*, that the necessity of registering such deed of bargain and sale in the Register of the County in which the Land is situated, in order to guard against a subsequent purchaser of the same Lands obtaining title by prior registry, shall continue as before the passing of this Act.

48. And be it further enacted by the authority aforesaid, That whenever by any Letters Patent, Assurance or Will, made and executed after the first day of July, one thousand eight hundred and thirty-four, Land shall be granted, conveyed or devised to two or more persons other than Executors or Trustees, in fee simple, or for any less Estate, it shall be considered that such persons take as Tenants in Common, and not as Joint Tenants, unless an intention sufficiently appears on the face of such Letters Patent, Assurance or Will, that they shall take as Joint Tenants.

49. And be it further enacted by the authority aforesaid, That when the Will of any person who shall die after the passing of this Act shall contain a devise, in any form of words, of all such real Estate as the Testator shall die seized or possessed of, or of any part or proportion thereof, such Will shall be valid and effectual to pass any Land that may have been or may be acquired by the Devisor after the making of such Will, in the same manner as if the title thereto had been acquired before the making thereof.

50. And be it further enacted by the authority aforesaid, That whenever Land is or shall be devised in a Will made by any person who shall die after the passing of this Act, it shall be considered that the Devisor intended to devise all such Estate as he was seized of in the same Land, whether fee simple or otherwise, unless it shall appear on the face of such Will that he intended to devise only an Estate for life, or other Estate less than he was seized of

at the time of making the Will containing such devise.

51. *And whereas* by the adoption in this Province of the Law of England, it is made necessary that a Will of Real Estate shall be executed in the presence of three Witnesses, which provision there is reason to believe operates in many instances injuriously in this Province, by reason that Lands are held in small portions by persons of all conditions and degrees of intelligence, many of whom, not aware of this positive provision of the Law, are only careful to provide two Witnesses, as is customary with respect to Sealed Instruments in general, and in all such cases the intentions of the Testator fail of their effect, frequently to the great injury of families:— *Whereas*, on the other hand, it is doubtful whether any intended fraud is in fact prevented by requiring an attestation by three Witnesses: Be it therefore enacted by the authority aforesaid, That any Will affecting Land executed after the passing of this Act, in the presence of and attested by two or more Witnesses, shall have the same validity and effect as if executed in the presence of and attested by three Witnesses, any former Law to the contrary notwithstanding; and that it shall be sufficient if such Witnesses subscribe their names in presence of each other, although their names may not be subscribed in presence of the Testator.

52. *And whereas* Plaintiffs in Actions of Ejectment brought against persons who are merely intruders, are subject to be defeated in the recovery of Land to which they have just claim, as purchasers or heirs, on account of some want of technical form in their title, or some imperfection not affecting the merits of their case, and of which it is desirable that mere strangers to the title, having no claim or color of legal claim to the possession, should not be encouraged or permitted to take advantage: Be it therefore enacted by the authority aforesaid, That it shall and may be lawful for the Lessor of the Plaintiff, or his Attorney, in any Action of Ejectment hereafter to be brought, to serve a notice upon the Defendant in such Ejectment, in these words:—

“ Take notice, that I claim the premises for
 “ which this action is brought, as the bona fide
 “ purchaser thereof, from A. B.—or as Heir-
 “ at-Law of A. B. of—, (or otherwise as the
 “ case may be,) and that you will be required
 “ to shew upon the trial of this cause, what
 “ legal right you have to the possession of the
 “ premises,”

or a notice in any other form of words to the same effect, and that if upon the trial of such Ejectment to be afterwards had, the evidence of title given by the Lessor of the Plaintiff shall shew to the satisfaction of the Court and

Jury that he is entitled in justice to be regarded as the proprietor of the Land, or is entitled to the immediate possession thereof for any term of years, but that he cannot shew a perfect legal title by reason of some want of legal form in any Instrument produced, or by reason of the defective registration of any Will or Instrument produced, or from any cause not within the power of the Lessor of the Plaintiff to remedy by using due diligence, it shall be competent to the Jury, under the direction of of the Court, to find a verdict for the Plaintiff, unless the Defendant or his Counsel, upon being required by the other party so to do, shall give such evidence of title as shall shew that he is the person legally entitled, or does bona fide claim to be the person legally entitled to the Land, by reason of the defect in the title of the Lessor of the Plaintiff, or that he holds or does bona fide claim to hold under the person so entitled: *Provided always, nevertheless*, that when a verdict shall be rendered under the authority of this provision, it shall be indorsed as given under this Act, and it shall be stated in the postea, and entry of the judgment to have been so given, and in any action which may thereafter be brought for the mesne profits, such judgment in ejectment shall not be evidence to entitle the Plaintiff to recover.

53. *And whereas* the wrong committed by Tenants, in holding over vexatiously and without color of right, after their term has expired, requires a more speedy and less expensive remedy than is now provided by Law:— Be it therefore enacted by the authority aforesaid, That it shall and may be lawful for any Landlord, or the Agent of any Landlord, whose Tenant shall, after the expiration of his term, (whether the same was created by writing or parol,) wrongfully refuse, upon demand made in writing, to go out of possession of the Land demised to him, to apply to the Court of King's Bench in Term, or to a Judge thereof in vacation, setting forth on Affidavit the terms of the demise, if by parol, and annexing a copy of the Instrument containing such demise, if the same were in writing, and also a copy of the demand made for the delivering up possession, and stating also the refusal of the Tenant to go out of possession, and the reason given for such refusal, (if any were given,) adding such explanation in regard to the ground of refusal as the truth of the case may require; and if upon such Affidavit it shall appear to the Court or Judge, that such Tenant does wrongfully hold over, without color of right, it shall be lawful for such Court or Judge to order a Writ to issue in the name of the King, and tested in the name of the Chief Justice or senior Puisne Judge of such Court, on the day that the same shall actually issue, directed to such person as the Court or

Judge shall appoint, and commanding him to issue his Precept to the Sheriff of the District in which the Land is situated, for the summoning of a Jury of twelve men to come before the Commissioner at a day and place by such Commissioner to be named, to inquire and say upon their oaths whether such person complained of was Tenant to the Complainant for a term which has expired, and whether he does wrongfully refuse to go out of possession, having no right or color of right to continue in possession, or how otherwise; which Writ shall be made returnable whensoever the same shall be duly executed before any one of the Judges of the said Court; and that notice in writing of the time and place of holding such inquisition shall be served upon the Tenant, or left at his place of abode, at least three days before the day appointed, to which notice shall be annexed a copy of the Affidavit on which the Writ was obtained, and of the papers attached thereto, and that the Commissioner shall have power to administer an Oath to the persons summoned on such Jury, well and truly to try, and a true verdict to give upon the matters and things in the said Writ contained, according to the evidence; and shall also have power to administer an Oath to the Witnesses produced by either party; and that the Jurors shall, under their hands, either with or without their Seals, indorse their finding upon the back of the Writ, or return the same upon a paper attached thereto by such Commissioner, and if it shall appear to the Court, or any Judge thereof, upon the return of the said Writ made by the said Commissioner, and upon a consideration of all the evidence, which shall also be certified and returned by such Commissioner, to be filed with such commission and the proceedings thereupon in the Office of the Clerk of the Crown and Pleas, that the case is clearly one coming within the true intent and meaning of this Act, then it shall be lawful for such Court or Judge to issue a Precept to the Sheriff, in the King's name, commanding him forthwith to place the Landlord in possession of the premises in question.

54. And be it further enacted by the authority aforesaid, That when such Precept shall have been made by a Judge, the Court shall have power, on motion before the end of the second term after such Precept shall have been issued, to examine into the proceedings, and, if they shall find cause, to set aside the same, and to issue their Precept to the Sheriff, if it be necessary, commanding him to restore the Tenant to his possession, in order that the question of right, if any appear, may be tried as heretofore by Ejectment.

55. And be it further enacted by the authority aforesaid, That the Judges of the Court of King's Bench, in term time or in va-

cation, shall have power to devise, and from time to time to alter and amend the form of the Writ, Inquisition and Return, and of the Precepts to be issued under the authority of this Act, and to make such orders respecting costs as to them may seem just, and to issue a Writ to the Sheriff, commanding him to levy such costs of the goods and chattels, or to issue an Attachment for the non-payment thereof against the Landlord or Tenant, or person described as Landlord or Tenant, as to them shall seem just.

56. And be it further enacted by the authority aforesaid, That before any Commissioner shall hold an Inquisition under this Act, he shall take the following Oath before some one of the Justices of the Peace in and for the District in which the Inquisition shall be holden, which Oath shall be indorsed on the said Writ, that is to say:—

“I, A. B. do solemnly swear, that I will impartially, and to the best of my judgment discharge my duty as Commissioner under “this Writ.—So help me God.”

57. And be it further enacted by the authority aforesaid, That if any Witness sworn and examined before a Commissioner holding an Inquisition under this Act shall wilfully swear falsely, he shall, on conviction thereof, be liable to the penalties of wilful and corrupt perjury and that if any person upon being required by notice from such Commissioner to attend as a Witness upon the Inquisition, shall refuse or wilfully omit to attend, he shall be liable to be committed upon the Warrant of such Commissioner to the Common Gaol of the District for a time not exceeding one calendar month.

58. And be it further enacted by the authority aforesaid, That the remedy afforded under this Act shall not be construed to take away or interfere with any other remedy, action or right of action, which a landlord might have or bring, under the Laws in force before the passing of this Act.

59. And be it further enacted by the authority aforesaid, That the words and expressions in this Act mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this Act, except where the nature of the provision or the context of the Act shall exclude such construction, be interpreted as follows, that is to say, the word “Land” shall extend to Messuages, and all other hereditaments whether corporeal or incorporeal and to money to be laid out in the purchase of Land, (and to chattels and other personal property transmissible to heirs,) and also to any share of the same hereditaments and properties or any of them, and to any Estate of inheritance, or Estate for any life or lives, or other Estate transmissible to heirs and to any possibility, right or title of entry or action, and any other interest capable of being inherited,

and whether the same Estates, possibilities, rights, titles and interests, or any of them, shall be in possession, reversion, remainder, or contingency; and the words "the purchaser" shall mean the person who last acquired the Land otherwise than by descent or than by any partition, by the effect of which the Land shall have become part of or descendible, in the same manner as other Land acquired by descent; and the word "descent" shall mean the title to inherit Land by reason of consanguinity, as well where the heir shall be an ancestor or collateral relation, as where he shall be a child or other issue; and the expression "descendants" of any ancestor, shall extend to all persons who must trace their descent through such ancestor; and the expression "the person last entitled to the Land" shall extend to the last person who had a right thereto, whether he did or did not obtain the possession or the receipt of the rents and profits thereof; and the word "Assurance" shall mean any Deed or Instrument (other than a Will) by which any Land shall be conveyed or transferred at Law or in Equity; and the word "Rent" shall extend to all annuities and periodical sums of money charged upon or payable out of any Land; and the "person through

whom another person is said to claim," shall mean any person by, through, or under, or by the Act of whom the person so claiming became entitled to the Estate or Interest claimed as heir, issue, in tail, tenant by the courtesy of England, tenant in dower, successor, special or general occupant, executor, administrator, legatee, husband, assignee, appointee, devisee, or otherwise; and every word importing the singular number only, shall extend and be applied to several persons or things, as well as one person, or thing; and every word importing the masculine gender only, shall extend and be applied to a female, as well as a male.

60. And be it further enacted by the authority aforesaid, That this Act shall not have operation retrospectively, so as by force of any of its provisions to render any title valid, which in regard to any particular Estate has been adjudged, or may in any suit now depending be adjudged invalid, on account of any defect imperfection, matter or thing which is by this Act altered, supplied or remedied; but that in every such case the Law, in regard to any such defect, imperfection, matter or thing, shall as applied to such title, be deemed and taken to be as if this Act had not been passed.