

ACTS
REGULATING THE
JUDICATURE
OF
LOWER CANADA

12th VICTORIA,
Caps. 37, 38, 39, 40, 41, 42, 43, 44, & 45.



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1849.



ANNO DUODECIMO
VICTORIÆ REGINÆ.

CAP. XXXVII.

An Act to establish a Court having jurisdiction
in Appeals and Criminal Matters, for Lower-
Canada.

[30th May, 1849.]

WHEREAS it is expedient to alter and reform Preamble.
the judicial system of Lower-Canada, which
hath been found in some respects inadequate to the
due administration of justice in that division of the
Province, and for that purpose, among other things,
to establish therein a Court having jurisdiction in
Appeals and Criminal Matters: Be it therefore
enacted by the Queen's Most Excellent Majesty,
by and with the advice and consent of the Legislative
Council and of the Legislative Assembly of the Pro-
vince of Canada, constituted and assembled by virtue
of and under the authority of an Act passed in the
Parliament of the United Kingdom of Great Britain
and Ireland, and intituled, *An Act to re-unite the
Provinces of Upper and Lower-Canada, and for the
Government of Canada*, and it is hereby enacted by
the authority of the same, That the Act passed in the
seventh year of Her Majesty's Reign, and intituled,
*An Act for the establishment of a better Court of
Appeals in Lower-Canada*, shall be and is hereby
repealed; but all Acts and provisions of law thereby
repealed shall nevertheless remain repealed. Act 7 Vict. c.
18, repealed. Proviso.

Court of
Queen's
Bench estab-
lished.

Four Judges.

Who may be
appointed a
Judge.

Proviso as to
the name of
the Court.

Act 7 Viet. c.
15, to apply to
the Judges of
the Court, &c.

Residence of
the said
Judges.

Appellate
jurisdiction of
the Court.

II. And be it enacted, That there shall be and there is hereby established in and for Lower-Canada a Court of Record to be called "The Court of Queen's Bench," and to consist of four Judges, that is to say, of a Chief Justice and three Puisné Judges, to be appointed from time to time by Her Majesty, Her Heirs or Successors, by Letters Patent under the Great Seal of this Province; but no person shall be appointed to be such Chief Justice or Puisné Judge, unless at the time of his appointment he shall have been a Justice of one of the several Courts of Queen's Bench in Lower-Canada, or a Judge of the Superior Court, or a Circuit Judge, or shall be an Advocate of at least ten years' standing at the Bar of Lower-Canada: Provided always, that the said Court shall be called "The Court of Queen's Bench," or "The Court of King's Bench," according as the Sovereign then reigning shall be a Queen or a King.

III. And be it enacted, That the Act passed in the seventh year of Her Majesty's Reign, and intituled, *An Act to render the Judges of the Courts of King's Bench in that part of this Province heretofore Lower-Canada, independent of the Crown*, shall apply to the Judges of the Court hereby established, as if they had been expressly mentioned in the said Act; and that no such Judge shall sit in the Executive or Legislative Council, or in the Legislative Assembly, or hold any other place of profit under the Crown.

IV. And be it enacted, That the Judges of the said Court shall respectively reside either at Quebec or at Montreal, and that at least one of them shall reside at each of the said places.

V. And be it enacted, That the said Court, and the Judges thereof, shall have, hold and exercise an appellate civil jurisdiction and also the jurisdiction of a Court of Error, within and throughout Lower-

Canada, with full power and authority to take cognizance of, hear, try and determine in due course of law, all causes, matters and things appealed or to be appealed, removed or to be removed, by Writ of Appeal or of Error, from all and every the Courts and jurisdictions wherefrom an Appeal or Writ of Error by law lies or is allowed, or hereafter may by law lie or be allowed, unless such Appeal or Writ of Error is expressly directed to be to some other Court.

VI. And be it enacted, That all and every the powers, authorities and jurisdictions which immediately before the coming into force of the Act herein first above cited and repealed, were by law required to be exercised, or might be exercised by and were vested in the Provincial Court of Appeals abolished by the said Act, and by or in the several Judges or Members thereof, or any of them, as well in Court as out of Court, in Term as out of Term or in Vacation, shall, in so far as the same may not be inconsistent with the provisions of this Act or of any other Act of this Session, become and be vested in the Court hereby established, and shall and may be as effectually exercised by the said Court, and the Judges thereof severally and respectively, in Court or out of Court, in Term or out of Term, or in Vacation, as the same might have been exercised and enjoyed by the said Provincial Court of Appeals abolished by the said Act, and the several Judges or Members thereof, or any of them, in Court or out of Court, in Term or out of Term or in Vacation, if neither the said Act nor this Act had ever been passed.

Certain powers vested in the Court and Judges.

VII. And be it enacted, That in the Court hereby established, the Chief Justice thereof shall preside, or if he be absent, then the Puisné Judge thereof, entitled by his commission to precedence in the Court.

Who shall preside in the Court.

VIII. And be it enacted, That two Terms of the said Court in Appeal and Error shall be held in each

Number of Terms.

Proviso. year in the City of Quebec, and two in the City of Montreal; but at either of the said Cities, any case in Appeal or Error may be heard or determined, whatever be the place from which the same shall have been appealed or removed.

Times and places of holding the Terms. IX. And be it enacted, That the said Terms shall be held in the City of Quebec, from the seventh to the eighteenth of January, and from the first to the twelfth of July, both days in each case inclusive; and in the City of Montreal, from the first to the twelfth of March, and from the first to the twelfth of October, both days in each case inclusive; but the Court may, on the last juridical day of any Term, adjourn, for the purpose of rendering judgments only, to any day thereafter, on and after which day it may again adjourn for the like purpose; and such adjournment may be to any day during the Criminal Term or subsequent thereto.

Power to adjourn.

Quorum fixed : its powers. X. And be it enacted, That any three Judges of the said Court shall form a Quorum thereof in Appeal and Error, and may hold the Court and exercise all the powers and authority thereof; and any judgment or order concurred in by any majority of a Quorum of the Court shall have the same force and effect as if concurred in by all the Judges present; excepting always, that no judgment appealed from shall be reversed or altered unless such reversal or alteration be concurred in by at least three Judges of the said Court; but any two Judges thereof, another or the others being present, may affirm any such judgment, with costs against the appealing party.

Provision as to the reversal or affirmation of judgments.

As to judges having been Members of the Court appealed from. XI. And be it enacted, That no Judge of the said Court shall be disqualified from sitting in any case, by the mere fact of his having been a Judge of the Court whose judgment is in question, while such case was there pending, unless he shall have sat in the

case at the rendering of final judgment, or, if the appeal be brought before final judgment from some interlocutory judgment, then unless he shall have sat in the case at the rendering of such interlocutory judgment.

XII. And be it enacted, That there shall be appointed from time to time a Clerk of the said Court, who shall be the Clerk thereof for all matters depending upon its jurisdiction as a Court of Appeal and Error, and shall be known as the "Clerk of Appeals;" and the said Clerk shall reside either in the City of Quebec or in the City of Montreal, and shall by an Instrument under his hand and seal appoint a Deputy who shall reside in that one of the said Cities in which the said Clerk shall not himself reside: and such Deputy is hereby empowered to perform any duty of the Clerk of Appeals, and shall continue to perform all the duties of that office, in case of the death, dismissal, suspension from office or resignation of the said Clerk, until the appointment of his successor in the said office; and the Instrument by which such Deputy Clerk shall have been appointed shall be entered at full length in the Register of the Court; but it shall be at all times lawful for the said Clerk to remove such Deputy and appoint another.

Clerk of Appeals to be appointed.

Where to reside.

May appoint a Deputy.

Powers and duties of such Deputy, &c.

XIII. And be it enacted, That no Clerk or Deputy Clerk of Appeals shall, while he remains such, practise as an Advocate, Proctor, Solicitor, Attorney or Counsel in Lower-Canada.

Clerk or Deputy not to practise as attorney, &c.

XIV. And be it enacted, That all Writs and Process to be issued from and out of the said Court in the exercise of its jurisdiction as a Court of Appeal and Error, shall be distinguished as being so issued, and shall run in the name of Her Majesty, Her Heirs or Successors, and shall be sealed with the

Form of Writs and Process.

Seal of the said Court, and signed by the Clerk thereof or his Deputy, whose duty it shall be to make out and prepare the same; and they shall not be tested in the name of any Judge, but the words "in witness whereof we have caused the Seal of Our said Court to be hereunto affixed," shall be instead of such *teste*; Provided always, that no such Writ or Process shall be deemed void or voidable by reason of its having a wrong seal or no seal thereon, and every such Writ and Process may be either in the English or in the French language; any law, usage or custom to the contrary notwithstanding.

Proviso as to
the Seal.
Language.

Judges *ad hoc*
may be ap-
pointed in
certain cases.

XV. And be it enacted, That whenever two or more of the Judges of the said Court shall be lawfully recused or disqualified, or rendered incompetent, either by reason of interest or otherwise to sit in the said Court in any cause cognizable thereby, or shall be suspended from office, or absent from the Province with the permission of the Governor, so as to leave the said Court without a *Quorum* to take cognizance of such cause, it shall be the duty of the Clerk of Appeals, when duly required so to do in writing by any of the parties, to report the fact under his Hand, and the Seal of the Court, to the Governor, who may thereupon, by an Instrument under his Hand and Seal, appoint *ad hoc* a like number of persons to sit in the said Court in the place and stead of the Judges so recused, or disqualified, or rendered incompetent, or suspended, or absent, for the purpose of hearing and determining such cause as aforesaid, and of doing all such judicial Acts therein as may be required before or after the determination thereof; taking such persons in his discretion either from among the Judges of the Superior Court, or the Circuit Judges, or from among the Members of the Bar of Lower-Canada of at least ten years' standing: and the persons so appointed to act as Judges *ad*

Who may be
appointed.

hoc, shall, when acting as such, have the same powers and authority in and with respect to the said cause, as the Judges so recused, disqualified, or rendered incompetent, or suspended, or absent, would otherwise have had; and in case they or any of them shall die, resign, or be recused, disqualified or otherwise rendered incompetent, so as to leave the Court without a Quorum to take cognizance of the cause with reference to which they were appointed, other Judges *ad hoc* may be appointed in their stead in like manner and with like effect.

Powers of
Judges *ad
hoc*.

Others may be
appointed in
certain cases.

XVI. And be it enacted, That all and every the Laws, which immediately before the coming into force of the Act hereinbefore cited and repealed, were in force in Lower-Canada, to govern and direct the proceedings and practice of the Provincial Court of Appeals abolished by the said Act, in so far as they are not repealed or varied by this Act or by any other Act of this Session, or inconsistent with the provisions of such Act or of this Act, shall continue to be in force and shall apply to and be observed in and by the Court hereby established, in the same manner as they would have applied to and been observed in and by the said Provincial Court of Appeals, if neither the said Act nor this Act had been passed.

What laws
shall apply to
the Court.

XVII. And be it enacted, That the said Court, shall and may (and it shall be the duty of the Court so to do within one year from the time when this Act shall come fully into effect,) make and establish a Tariff of Fees for the Officers of the said Court and the Counsel, Advocates and Attornies practising therein, and also such Rules of Practice as shall be requisite for regulating the due conduct of the causes, matters and business before the said Court or the Judges thereof, or any of them, and in Term or out of Term, and all Process and Proceedings therein or thereunto relating; which Tariff of Fees and Rules

The Court to
make a Tariff
of fees and
Rules of
practice
within one
year;

And may repeal or alter them.

Proviso.

What Tariff and Rules shall apply until others are so made.

of Practice the said Court shall have full power and authority to repeal, alter and amend from time to time: Provided always, that no such Rule of Practice shall be contrary to or inconsistent with this Act, or any other Act or Law in force in Lower-Canada, otherwise the same shall be null and void: And provided also, that until such Tariff of Fees and Rules of Practice shall be made and duly established by the said Court, the Tariff of Fees and Rules of Practice in force immediately before the coming of this Act into full effect, with regard to the "Court of Appeals for Lower-Canada," established by the Act hereinbefore cited and repealed, shall continue to be in force and shall apply to the Court hereby established and the proceedings therein, subject to such amendments and alterations as shall be from time to time made therein by the said Court.

Final Judgments to be *motivés*, &c.

XVIII. And be it enacted, That all final judgments rendered by the said Court shall contain a summary statement of the points of fact and law, and the reasons upon which such judgments shall be founded, and the names of the Judges who shall have concurred therein or entered their dissent therefrom.

In what cases and on what conditions an appeal shall lie to the Queen in Council.

XIX. And be it enacted, That an appeal shall lie from the judgments of the said Court, to Her Majesty, Her Heirs and Successors, in Her or their Privy Council in that part of the United Kingdom of Great Britain and Ireland called England, in all, each and every of the cases in and with respect to which an appeal, immediately before the commencement of the Act hereinbefore cited and repealed, would lie from the judgments of the Provincial Court of Appeals thereby abolished, to Her Majesty in Her Privy Council, upon the terms and conditions, and in the manner and form, and under and subject to the restrictions, rules and regulations established with regard to Appeals from the said Provincial Court of Appeals to Her Majesty in Her Privy Council.

XX. And be it enacted, That all and every the Records, Registers, Documents and proceedings of the said Provincial Court of Appeals and of the Court of Appeals for Lower-Canada, shall *forthforth after this Act shall come fully into effect, be transmitted into and make part of the Records, Registers, Documents and proceedings of the Court hereby established.

Certain records, &c., to be transmitted into the Court.
*Sic.

XXI. And be it enacted, That no judgments, Order, Rule or Act of the said Provincial Court of Appeals, or of the said Court of Appeals for Lower-Canada, legally pronounced, given, had or done before this Act shall come fully into effect, shall be hereby avoided, but shall remain in full force and virtue as if this Act had not been passed ; nor shall any Cause, Appeal, Writ of Error or Proceeding depending in the said Court of Appeals for Lower-Canada be abated, discontinued or annulled, but the same shall in their then present condition, be respectively transferred to and subsist and depend in the Court hereby established, to all intents and purposes as if they had respectively been commenced, brought or recorded in the said last mentioned Court, which shall have full power and authority to proceed accordingly in and upon all such Causes, Appeals, Writs of Error and Proceedings, to judgment and execution, and to make such Rules and Orders respecting the same as the said Court of Appeals for Lower-Canada might but for this Act have made, or as the Court hereby established, is hereby empowered to make in Causes, Appeals, Writs of Error and Proceedings commenced in and depending before the said last mentioned Court.

Judgments, &c., of former Court not to be avoided.

Proceedings in former Court to be continued in the Court hereby established.

XXII. And be it enacted, That every Writ, Rule, Process or Order, which shall have been made returnable into the said Court of Appeals for Lower-Canada, or by or under which any thing shall have

As to the return of Process issued before this Act shall be in force.

been ordered or ought to be done in or before the said Court, on any day subsequent to the time when this Act shall come fully into effect, shall be returnable into the Court hereby established, or the thing so required to be done shall be done in or before the same, (as the case may be,) on that juridical day in Term which shall be next after the day on which such Writ, Rule, Process or Order shall have been made returnable, or on which such thing shall have been ordered to be done: Provided always, that after the passing of this Act, but before it shall come fully into effect, it shall be lawful for the said Court of Appeals for Lower-Canada, to make any Writ, Rule or Process returnable into the Court hereby established, or to order any thing to be done in or before the same, or before any Judge or Officer thereof by his name of office, on any day after this Act shall come fully into effect, in the same manner as if the said Court were one and the same with the said Court of Appeals for Lower-Canada, and the name and the times of holding the terms thereof were alone altered.

Proviso: the present Court may make process returnable before the Court of Q. B., &c.

Certain sections to apply to the appeal side of the Court only.

XXIII. And be it enacted, That the eighteen next preceding Sections of this Act, shall apply to the Court hereby established in the exercise of its jurisdiction and functions as a Court of Appeal and Error only, or the "Appeal Side" of the said Court.

The Court to have original criminal jurisdiction in Lower-Canada.

XXIV. And whereas by an Act of this Session, to come fully into effect at the same time with this Act, the several Courts of Queen's Bench in Lower-Canada will be abolished: Be it therefore enacted, That the Court of Queen's Bench hereby established, and the Judges thereof, shall have original criminal jurisdiction throughout Lower-Canada and in the several Districts thereof, in like manner as the several Courts of Queen's Bench in Lower-Canada now have, and may exercise original criminal jurisdiction within

their respective Districts, with full power and authority to take cognizance of, hear, try and determine, in due course of law, all pleas of the Crown, treasons, murders, felonies and misdemeanors, crimes and criminal offences whatsoever, heretofore had, done or committed, or hereafter to be had, done or committed, or whereof cognizance may lawfully be taken within Lower-Canada, save and except such as are cognizable only by the jurisdiction of the Admiralty. Exception.

XXV. And be it enacted, That all and every the powers, authorities and jurisdictions in pleas of the Crown, crimes and criminal offences, of what kind or nature soever, which by law are required to be exercised, and may or might be exercised by and are vested in the several Courts of Queen's Bench in the several Districts of Lower-Canada, as now constituted, or any or either of them, and by the several Justices of the said Courts or any or either of them, as well in term as out of term, or in vacation, shall from and after the time when this Act shall come fully into effect, become and be vested in the Court hereby established, and shall and may be as effectually exercised by the said Court, and the Judges thereof severally and respectively, as the same may now be exercised and enjoyed by the said several Courts of Queen's Bench, or any or either of them, and the several Justices thereof, or any or either of them, excepting always such powers, authorities and jurisdictions as may, by any Act of this Session, be vested in the Superior Court for Lower-Canada; and provided always, that no cause, matter or thing shall be removed into the Court hereby established, from any other Court or jurisdiction, except cases pending before any Court of General or Quarter Sessions of the Peace, in which a Trial by Jury is by law allowed, which cases may be removed into the Court hereby established, by *certiorari*, in the same manner (except in Court and Judges to have the powers of the present Court and Judges of Q. B. in criminal matters.

Exception.

Proviso as to the removal of cases from other Courts.

Proviso as to
the District of
Gaspé.

so far as it may be otherwise provided by any Act of this Session) as they may now be removed into the proper Court of Queen's Bench: and provided also, that nothing in this Act shall be construed to interfere with the exercise of the powers, authorities and jurisdiction in criminal matters vested by an Act of this Session in the Superior Court, when sitting in the District of Gaspé.

What laws
shall apply to
the Court in
the Crown
side.

XXVI. And be it enacted, That all and every the laws of Lower-Canada, which immediately before the time when this Act shall come fully into effect, shall be in force to govern and direct the proceedings and practice of the several Courts of Queen's Bench in Lower-Canada, in the exercise of their powers, authorities and jurisdictions in pleas of the Crown, crimes and criminal offences, or the Sheriffs or other Officers of, or the Jurors, Witnesses or other parties, attending the same, and which are not repealed or varied by this Act, or by any other Act of this Session, or inconsistent with the provisions of such Act or of this Act, shall continue to be in force and shall apply to and be observed in and by the Court hereby established, and the Sheriffs or other Officers of, and Jurors attending the same, in the same manner as they would have applied to, and been observed in and by the said several Courts of Queen's Bench, and the Sheriffs or other Officers thereof, or the Jurors, Witnesses or other parties attending the same, if this Act had not been passed.

Judges to be
Justices of the
Peace, &c.

XXVII. And be it enacted, That the Judges of the Court hereby established shall severally and respectively be, and they are hereby appointed to be, Justices and Conservators of the Peace and Coroners in and throughout Lower-Canada.

Form of Writs
and Process.

XXVIII. And be it enacted, That all Writs and Process of the said Court, issued in the exercise of

its jurisdiction in criminal matters, shall be distinguished as being so issued, and shall be signed by the Clerk of the Crown in and for the District in which they shall issue, and shall run and be sealed and attested in the manner hereinbefore provided with regard to the Writs and Process thereof issued in the exercise of its jurisdiction as a Court of Appeal and Error.

XXIX. And be it enacted, That there shall be appointed, from time to time, a Clerk of the Crown, in and for each of the Districts where terms or sittings of the said Court shall be held for the exercise of its jurisdiction in criminal matters, who shall be the Clerk of the said Court, in and for such District, with regard to all matters dependent upon its jurisdiction in such matters ; and each such Clerk of the Crown, may, by an Instrument under his hand and seal, appoint a Deputy, who is hereby empowered to perform any duty of such Clerk of the Crown, and shall continue to perform all the duties of that office, in case of the death, dismissal, suspension from office or resignation of such Clerk of the Crown, until the appointment of his successor in the said office ; and the Instrument by which such Deputy Clerk is appointed, shall be entered at full length in the Register of the Court ; but it shall be at all times lawful for such Clerk of the Crown to remove such Deputy, and to appoint another.

A Clerk of the Crown to be appointed in each District.

A Deputy may be appointed ; his powers.

May be removed.

XXX. And be it enacted, That nothing herein contained shall prevent any Prothonotary of the Superior Court, or any Clerk of the Circuit Court, from being appointed Clerk of the Crown, in and for any District ; but no Clerk of the Crown shall, while he remains such, practise as an Advocate, Proctor, Solicitor, Attorney or Counsel, in Lower-Canada.

Prothonotary of Superior Court may be Clerk of the Crown.

Two terms to be held yearly in each District, except Gaspé.

Exception as to Ottawa and Kamouraska.

Proviso as to cases pending when any new District is proclaimed.

XXXI. And be it enacted, That two terms or sittings of the Court hereby established, in the exercise of its jurisdiction in criminal matters, shall be held in each year, in and for each and every of the Districts into which Lower-Canada is now or may be hereafter divided, other than the District of Gaspé; except that in the District of Ottawa and the District of Kamouraska respectively, no such term shall be held until the Governor shall by proclamation have declared, that a proper Gaol and Court House have been erected in such District, until which time the District of Ottawa shall for all the purposes of this Act, be held to form part of the District of Montreal, and the District of Kamouraska to form part of the District of Quebec; and provided also, that notwithstanding any such proclamation as aforesaid, all cases, proceedings, matters and things theretofore commenced, or pending before the said Court, or where the offender shall, before the said proclamation, have been committed for trial to the Gaol at Quebec or Montreal, or bound to appear at some Term of the Court to be held at either of the said Cities, shall be proceeded with, heard, tried and determined by the said Court, sitting at Quebec or at Montreal, (as the case may be,) as if the said proclamation had not issued; but all other cases arising in the new District, shall be heard, tried and determined therein.

Quorum of the Court, and powers of Quorum.

XXXII. And be it enacted, That such Terms or Sittings of the said Court in the exercise of its criminal jurisdiction, shall respectively be held by any one or more Judges of the said Court; and any one or more of them shall, at such Terms or Sittings, form a quorum, and may exercise all the powers and jurisdiction of the Court.

Judges of the Superior Court may hold the Court of Q.

XXXIII. And be it enacted, That if at any time during any such Term or Sitting of the said Court, there shall not be a Judge thereof present and able

to hold the same, any Judge or Judges of the Superior Court, may sit in and hold the Court hereby established, as if he was or they were a Judge or Judges thereof; but it shall always be the duty of the Judges of the said Court, or some of them, to hold the said Court, unless prevented by circumstances beyond their control, and it shall not be the duty of any of the Judges of the Superior Court so to do, except in the case above provided for.

B. for criminal matters in certain cases.

XXXIV. And be it enacted, That the said Terms or Sittings of the Court hereby established, in the exercise of its jurisdiction in criminal matters, as aforesaid, shall respectively commence :

Times and places of holding the Terms.

At Quebec, for the District of Quebec, on the twentieth of January and on the fourteenth of July :
 at Montreal, for the District of Montreal, on the fourteenth of March and on the fourteenth of October :
 at Three-Rivers, for the District of Three-Rivers, on the second of February and on the eleventh of September :
 at Sherbrooke, for the District of St. Francis, on the twelfth of February and on the first of September :
 at Aylmer, for the District of Ottawa, on such two days, respectively, in each year as the Governor shall for that purpose appoint in and by his proclamation declaring that a proper Gaol and Court House have been erected and completed in the said District :
 at Kamouraska, for the District of Kamouraska, on such two days, respectively, in each year, as the Governor shall for that purpose appoint in and by his proclamation declaring that a proper Gaol and Court House have been erected and completed in the said District :
 and if any of the said days be a Sunday or Holy-day, the Term or Sitting shall commence on the next juridical day thereafter.

At Quebec.

At Montreal.

At Three-Rivers.

At Sherbrooke.

At Aylmer.

At Kamouraska.

As to Holy-days.

XXXV. And be it enacted, That the said Terms or Sittings shall respectively continue and be holden until the said Court shall declare the same closed,

Term to continue until the business be closed.

which shall not be done until the Court shall be of opinion that there remains no trial, matter or proceeding to be had or done by or before it, which cannot more conveniently remain over until the then next Term; and the Court shall have full power, if be deemed advisable, or if the attendance of the Judge or Judges holding the same, shall be required at any other place or Court, to adjourn from day to day, or to any day before the first day of the then next Term.

Court may adjourn to any day before the next term.

Extraordinary terms may be held under Proclamation.

XXXVI. And be it enacted, That the Governor may, at any time and from time to time, by Proclamation, direct an extraordinary Term of the said Court to be held in and for any District, and to commence on the day to be named for that purpose in such Proclamation, which shall be issued at least thirty days before such day; and to such extraordinary Term all the provisions of this Act and of the law, with regard to the ordinary Terms of the said Court, shall apply.

Transmission of Records, &c., from former Courts.

XXXVII. And be it enacted, That all and every the Records, Registers, muniments and judicial and other proceedings and documents of the several Courts of Queen's Bench in and for the several Districts of Lower-Canada, except the District of Gaspé, in criminal matters, and appertaining to the original Criminal jurisdiction of the said Courts, or to any case removed thereto from any Court of Quarter Sessions or General Sessions of the Peace, and in which a trial by Jury is by law allowed, shall forthwith after the time when this Act shall come fully into effect, be transmitted into and make part of the Records, Registers, muniments, judicial and other proceedings and documents of the Court hereby established, in the Districts and at the places in and at which said Court of Queen's Bench are now respectively established and held; that is to say, the

Records, Registers, muniments, judicial and other proceedings of the present Court of Queen's Bench for the District of Montreal, shall be transmitted into the Court hereby established, and shall be kept in the Office of the Clerk of the Crown for the said District, at the City of Montreal; and the Records, Registers, muniments, judicial and other proceedings of the present Court of Queen's Bench for the District of Quebec, shall be transmitted into the Court hereby established, and shall be kept in the Office of the Clerk of the Crown for the said District, at the City of Quebec; and the Records, Registers, muniments, and judicial or other proceedings of the present Court of Queen's Bench for the District of Three-Rivers, shall be transmitted into the Court hereby established, and shall be kept in the Office of the Clerk of the Crown for the said District, at the Town of Three-Rivers; and the Records, Registers, muniments, judicial or other proceedings of the present Court of Queen's Bench for the District of Saint Francis, shall be transmitted into the Court hereby established, and shall be kept in the Office of the Clerk of the Crown for the said District, at the Town of Sherbrooke.

To what places such Records, &c., shall be respectively transmitted.

XXXVIII. And be it enacted, That no Judgment, Order, Rule, or Act of the said Courts of Queen's Bench in the several Districts of Lower-Canada, respectively, in criminal matters, and appertaining to the criminal jurisdiction of the said Courts, legally pronounced, given, had or done before the time when this Act shall come fully into effect, shall be hereby avoided, but shall remain in full force and effect; nor shall any indictment, information, suit or proceeding depending in the said Courts of Queen's Bench respectively, be abated, discontinued or annulled, but the same shall be transferred in their then present condition respectively, to, and shall subsist

Judgments, &c., of former courts not to be avoided.

Suits and proceedings to be continued in the Court hereby established.

and depend in the Court hereby established on the Crown side thereof, severally and respectively to all intents and purposes as if they had been respectively commenced, brought, found, presented or recorded in the said Court; and the said Court shall have full power and authority to proceed accordingly on and in all such indictments, informations, suits and proceedings, to judgment and execution, and to make such rules and orders respecting the same, as the said Courts of Queen's Bench, might have made, or as the Court hereby established is hereby empowered to make in cases, suits and proceedings commenced in or depending before the said Court.

When Process
issued out of
former Courts
shall be re-
turnable after
this Act shall
be in force.

Proviso : the
present Courts
may make

XXXIX. And be it enacted, That every Writ or Process, Recognizance or other Document, which is or shall be returnable into any of the several Courts of Queen's Bench as now constituted, (except as aforesaid the Court of Queen's Bench for the District of Gaspé) in the exercise of their jurisdiction in criminal matters, or by which any party shall be bound to appear or attend at any such Court of Queen's Bench, or any thing shall have been ordered to be done in or before any such Court, in the exercise of its jurisdiction aforesaid, on any day subsequent to the time when this Act shall come fully into effect, shall be returned into the Court hereby established, on the Crown side, and shall be held and considered to be returnable, or such party shall be held to appear or attend, or such thing shall be done, in or before the said Court, on that juridical day in term, which shall be next after the day on which such Writ, Process, Recognizance or Document shall have been made returnable, or on which such party shall have been bound to appear or attend, or on which such thing shall have been ordered to be done : Provided always, that after the passing of this Act, but before it shall come fully into effect, it shall

be lawful for the said several Courts of Queen's Bench respectively, to make any Writ or Process returnable into the Court hereby established, or to order any thing to be done in or before the same, or any Judge or Officer thereof by his name of office, or for any Judge or Justice of the Peace, to bind over any party to appear before the said Court, on any day after this Act shall come fully into effect, in the same manner as if the said Court were, as regards its jurisdiction in criminal matters, one and the same with the said several Courts of Queen's Bench, respectively, and the times of holding the terms of such Courts of Queen's Bench were alone altered.

Process, &c.,
returnable be-
fore the Court
hereby estab-
lished.

XL. And be it enacted, That the sixteen next preceding sections of this Act shall apply to the Court hereby established in the exercise of its functions as a Court of Criminal Jurisdiction only, or the "Crown Side" of the said Court.

Certain sec-
tions to apply
only to the
Crown side of
the Court.

XLI. And be it enacted, That all and every the powers and authorities which immediately before the time when this Act shall come fully into effect, shall be by law vested in the several Courts of Queen's Bench in the several Districts of Lower-Canada, and in the Chief Justices and the Justices thereof respectively, relating in any manner or way to the Writ of Habeas Corpus, as well in criminal as in civil cases, and to the awarding or issuing or return thereof, and to the hearing and determining in due course of law, of any question, issue or matter thence arising or incident thereto, shall be and the same are hereby vested in the said Court hereby established (concurrently with the other Courts and Judges in whom like powers may by any Act of this Session be vested) and in each and every of the Judges of the said Court respectively, as well in term as in vacation; which said Judges shall respectively be subject and liable to the same penalty, for denying in vaca-

Habeas Corpus
powers vested
in the Court
and Judges.

Penalty for
refusing the
writ in vaca-
tion.

tion time any Writ or Writs of Habeas Corpus, as is by law provided for the denial of a Writ of Habeas Corpus in vacation time by any Judge or Justice ; and the said penalty shall be recovered from the Judges of the Court hereby established, respectively, in the like cases and circumstances, and in the same manner as is by law provided, with respect to any Judge or Justice.

Rights of the
Crown saved.

XLII. And be it enacted, That nothing in this Act shall be construed to prevent the issuing of any General or Special Commission of Oyer and Terminer or of General Gaol Delivery, for any District, City or place, or to derogate from, abridge or affect any right or prerogative of the Crown not herein expressly mentioned.

Repeal of former Acts, &c., inconsistent herewith.

XLIII. And be it enacted, That all Acts or Enactments or Provisions of Law inconsistent with this Act shall be and are hereby repealed.

Interpretation Act to apply.

XLIV. And be it enacted, That the Interpretation Act shall apply to this Act.

Commencement of this Act, &c.

XLV. And be it enacted, That the foregoing sections of this Act shall come into force and effect, upon, from and after the day which shall be appointed for that purpose in any Proclamation to be issued by the Governor of this Province, by and with the advice of the Executive Council thereof, and not before, except in so far as it may be herein otherwise provided : and upon, from and after the said day, any Judge or Officer then appointed under this Act, shall and may perform all or any of the duties or functions of this office although the Court hereby established may not have met or sat.

C A P. XXXVIII.

An Act to amend the Laws relative to the Courts
of Original Civil Jurisdiction in Lower-Canada.

[30th May, 1849.]

WHEREAS it hath become expedient to reform Preamble.
the Judicature of Lower-Canada, and by
an Act of this present Session, provision hath been
made for the establishment of a Court of Appellate
and Criminal Jurisdiction for that part of this Province,
and it is necessary to remodel the several
Courts of Original Civil Jurisdiction: Be it therefore
enacted by the Queen's Most Excellent Majesty,
by and with the advice and consent of the Legislative
Council and of the Legislative Assembly of the Province
of Canada, constituted and assembled by virtue
of and under the authority of an Act passed in the
Parliament of the United Kingdom of Great Britain
and Ireland, intituled, *An Act to re-unite the Provinces
of Upper and Lower-Canada, and for the Government
of Canada*, and it is hereby enacted by the authority
of the same, That the Act passed in the seventh year
of Her Majesty's Reign, and intituled, *An Act to repeal
certain Acts and Ordinances therein mentioned, and to
make better provision for the Administration of Justice
in Lower-Canada*,—Acts 7 V. c. 16, and 9 V. c. 29, repealed.
and the Act passed in the ninth year of Her Majesty's
Reign, and intituled, *An Act to amend the Law
relative to the Administration of Justice in Lower-Canada*,—
and all other Acts and Provisions of Law General repeal
inconsistent with this Act, shall be and are hereby
repealed: except that neither the repeal of the Acts Exception.
above cited and repealed, nor any thing herein con-

Proviso :
Laws repealed
by the Acts
hereby re-
pealed not to
revive.

tained, shall extend to abolish the Circuit Court at any place or the office of any Circuit Judge, except as it is hereinafter provided ; And provided always, that the repeal of the said Acts shall not be construed to revive any Act or Provision of Law thereby repealed, all which shall nevertheless remain repealed, and the Courts and Jurisdictions thereby abolished shall remain abolished.

Present Courts
of Queen's
Bench, &c.,
abolished.

II. And be it enacted, That the several Courts of Queen's Bench or King's Bench in and for the several Districts in Lower-Canada, and the offices of Resident Judge of the District of Three-Rivers, and of Provincial Judge of the District of St. Francis, shall be and the said Courts and Offices are hereby abolished.

Superior Court
established.

III. And be it enacted, That there shall be and there is hereby established, in and for Lower-Canada, a Court of Record of Civil Jurisdiction for Lower-Canada, to be called the " Superior Court ;" which Court shall consist of ten Judges, that is to say, of a Chief Justice and nine Puisné Judges, to be appointed from time to time by Her Majesty, Her Heirs and Successors, by Letters Patent under the Great Seal of this Province ; and four of the said Judges shall reside at the City of Montreal, four at the City of Quebec, one in the Town of Three-Rivers, and one in the Town of Sherbrooke.

How constitu-
ted.

Residence of
the Judges.

Who may be
appointed a
Judge.

IV. And be it enacted, That no person shall be appointed a Judge of the said Superior Court, unless he shall immediately before his appointment be a Justice of one of the said several Courts of Queen's Bench, or a Circuit or District Judge, or an Advocate of at least ten years' standing at the Bar of Lower-Canada.

Provisions of
the Judges' in-
dependence

V. And be it enacted, That all the provisions of the Act passed in the seventh year of Her Majesty's

Reign, and intituled, *An Act to render the Judges of the Courts of King's Bench, in that part of this Province heretofore Lower-Canada, independent of the Crown*, shall apply to the Judges of the said Superior Court as fully as if they had been specially named therein; and that no such Judge shall sit in the Executive Council or in the Legislative Council, or in the Legislative Assembly, or hold any other place of profit under the Crown, so long as he shall be such Judge.

Act 7 V. c. 15,
to apply.

VI. And be it enacted, That the said Superior Court shall have Original Civil Jurisdiction throughout Lower-Canada, with full power and authority to take cognizance of, hear, try and determine in the first instance and in due course of law, all civil pleas, causes and matters whatsoever, as well those in which the Crown may be a party, as all others, excepting those purely of Admiralty jurisdiction, which shall be and remain subject to that jurisdiction, and excepting also those over which original jurisdiction is hereinafter given to the Circuit Court.

General jurisdiction of the
S. Court.

Exception.

VII. And be it enacted, That excepting the Court of Queen's Bench, established as aforesaid, by an Act of this Session, all Courts and Magistrates, and all other persons, and bodies politic and corporate within Lower-Canada, shall be subject to the superintending and reforming power, order and control of the said Superior Court and of the Judges thereof, in such sort, manner and form as Courts and Magistrates and other persons, and bodies politic and corporate, in Lower-Canada, shall immediately before the time when this Act shall come fully into effect, be subject to the superintending and reforming power, order and control of the several Courts of Queen's Bench, and of the Judges thereof, in term and in vacation; and such superintending and reforming power and control are hereby vested in and assigned

Superintending and reforming power over other Courts, &c.

As to appeals
and evocations
to former
Courts of Q.
B.

to the said Superior Court, and the Judges thereof:
and all appeals and evocations from any inferior
Court or jurisdiction which immediately before the
said time shall lie to any one of the said several
Courts of Queen's Bench, or the Judges thereof, shall
thereafter lie to the said Superior Court, or the
Judges thereof, unless it be otherwise provided by
this Act or by some Act of this Session.

Powers of Q.
B. in civil
matters trans-
ferred to S.
Court.

VIII. And be it enacted, That all and every the
powers, authorities and jurisdictions in pleas, causes,
matters and things of a civil and not criminal nature,
of what kind soever, which immediately before the
time when this Act shall come fully into effect, shall
be by law vested in and required to be exercised by
the several Courts of Queen's Bench in the several
Districts of Lower-Canada as then constituted, or any
or either of them, and in and by the several Justices
of the said Courts, or any or either of them, as well
in term as in vacation, (excepting always such of the
said powers, authorities and jurisdictions as shall by
this Act or any other Act of this Session be vested in
any other Court), shall from and after the time when
this Act shall come fully into effect, become and be
vested in the said Superior Court hereby established,
and shall and may be as fully and effectually exer-
cised by the said Superior Court, and the Judges
thereof severally and respectively, as well in term as
in vacation, as the same might have been exercised
and enjoyed by the said Courts of Queen's Bench,
and any or either of them, and the several Justices
thereof or any or either of them, in term or in vaca-
tion, if this Act had not been passed.

Exception.

What laws
shall govern
the exercise of
the powers of
the Court.

IX. And be it enacted, That all and singular the
laws which shall be in force in Lower-Canada imme-
diately before the time when this Act shall come
fully into effect, to govern and direct the proceedings
and practice of the several Courts of Queen's Bench

in the several Districts of Lower-Canada, in the exercise of those jurisdictions and powers of the said Courts which are hereby transferred to and vested in the Superior Court, and which are not repealed or varied by this Act, or inconsistent with the provisions thereof, shall continue to be in force and be observed in and by the said Superior Court, in the exercise of the jurisdictions and powers aforesaid.

X. And be it enacted, That for the purposes of the administration of Justice, Lower-Canada shall continue to be divided, as it now is, into the Districts of Quebec, Montreal, Three-Rivers, St. Francis, and Gaspé, the boundaries whereof shall remain as they now are: except that the Counties of Kamouraska and Rimouski shall together form a new District by the name of the *District of Kamouraska*, upon, from and after the day to be appointed for that purpose in any Proclamation to be issued by the Governor, appointing such day, and declaring that a proper Gaol and Court House for the said new District have been erected at Kamouraska, in the said District: And that the County of Ottawa shall form a new District, by the name of the *District of Ottawa*, upon, from and after the day to be appointed for that purpose in any Proclamation to be issued by the Governor appointing such day, and declaring that a proper Gaol and Court House for the said District have been erected at Aylmer, in the said District, and the tract of land forming such new District shall thereafter cease to form part of the District of Quebec or of Montreal, as the case may be.

Districts to remain as they now are.

Exception.

Two new Districts to be formed when certain conditions are complied with.

District of Kamouraska.

District of Ottawa.

XI. Provided always, and be it enacted, That notwithstanding any such Proclamation as aforesaid, all suits, actions and proceedings in or before the said Superior Court, or any other Court, civil or criminal, commenced before the day appointed in such Proclamation as that upon, from and after which either of

Proviso as to suits, &c., pending when either of the new Districts is formed.

the said new Districts is to be established, shall, as shall also all matters and proceedings incident or relative thereto, or dependent thereon, be continued, completed, dealt with and considered as if the new District established by such Proclamation had not been detached from the District of Quebec or of Montreal, as the case may be.

Sheriffs and Prothonotaries to be appointed in the new Districts when formed.

Proviso : such Officers need not be re-appointed for the old Districts by reason of this Act.

But they shall be the Officers of the S. Court generally, and not merely of the Judges sitting in one District.

XII. And be it enacted, That after the issuing of the said Proclamation with regard to either of the said new Districts, a Sheriff may be appointed for such new District, and shall have in and with regard to the same, like powers and duties, and shall be subject to like liabilities, with the Sheriff of any other District ; and a Prothonotary of the Superior Court may be appointed in and for such new District, and shall have in and with regard to the same like powers and duties, and shall be subject to like liabilities with the Prothonotary of the said Court in any other District : but nothing in this Act contained shall make it necessary that a Sheriff or a Prothonotary of the said Court be appointed in any one of the present Districts, merely by reason of the passing of this Act, but the Sheriff of each such District shall remain the Sheriff thereof, and the Prothonotary of the present Court of Queen's Bench therein shall be and remain and be called the Prothonotary of the Superior Court for such District, without any new appointment, until such Sheriff or Prothonotary shall die, resign or be removed from office, in which case a successor shall be appointed ; but each such Sheriff or Prothonotary shall be the Officer of the Superior Court generally, and not merely of the Judges sitting or acting in his District, and shall accordingly obey the lawful orders of the said Court and of the Judges thereof in whatever District such orders be made, provided any thing be required to be done under it by such Sheriff or Prothonotary in his District : And

any Prothonotary of the Superior Court whether appointed before or after this Act shall come into effect, may from time to time appoint by an Instrument under his hand and seal, a Deputy who shall have power to perform all the duties of the office in case of the absence or sickness of such Prothonotary, and such Instrument shall be entered at full length in the Register of the Court: And in and for each new District when so constituted by proclamation, a Clerk of the Crown, Clerk of the Peace, Coroner, Gaoler, and other proper Officers shall be appointed, as in the other Districts, and shall have like powers, duties and liabilities with Officers of the same name in other Districts: And General and Special Sessions of the Peace shall be held therein, the said General Sessions being held at such times as shall be appointed by the Governor, in and by the Proclamation aforesaid, in like manner and with like powers and duties as in other Districts; and the Justices of the Peace for the District from which the new District shall be detached then resident in such new District, shall, without any other Commission, be Justices of the Peace for such new District, but shall cease to be so for the remainder of the District from which it shall be detached.

Prothonotaries
may appoint
Deputies.

Certain other
Officers to be
appointed in
the new Dis-
tricts.

Sessions of the
Peace to be
held therein.

Who shall
hold such ses-
sions.

XIII. And be it enacted, That each of the Circuit Judges when in the District of Gaspé, shall be held to be a Judge of the Superior Court, but in so far only as relates to Terms orittings of the Court in the District of Gaspé, and to judicial acts to be done in the said District; and that each of the Circuit Judges for Lower-Canada, when in the District of Ottawa when Terms of the Superior Court shall be held therein, or in the District of Kamouraska when Terms of the Superior Court shall be held therein, shall at all times, except during any Term of the Superior Court in such District, have and exercise all the powers vested in any one Judge of the said Superior Court, and which might be exercised by him out

Circuit Judges
when in Gaspé,
to be Judges
of S. Court,
for certain
purposes.

And to have
certain powers,
out of Term in
Kamouraska
and Ottawa.

Proviso as to the effect out of such Districts of their judicial acts therein.

of Term in such District: Provided always, that the limitations made in this section shall not impair or derogate from the effect, out of the said Districts, respectively, of any process, judgment, order or judicial act issued, rendered, made or done in the said Districts, respectively, by the Superior Court in the District of Gaspé, or by the said Circuit Judges or of any of them in any of the said Districts, as Judges or as exercising the powers of Judges, of the Superior Court, but such effect shall be governed by the general provisions of this Act in similar cases.

Where the Terms of the S. Court shall be held.

In what district any action in the S. Court may be commenced.

XIV. And be it enacted, That terms and Sittings of the Superior Court, and of the Judges thereof, shall be held at the places hereinafter mentioned, in each of the Districts into which Lower-Canada is or may be divided: And all actions, suits, or proceedings may be commenced at the place where the terms of the said Court are held in any District, provided the cause of such actions, suits or proceedings respectively, shall have arisen within such District, or the defendant or one of the defendants, or the party or one of the parties, to whom the original Writ, Order or Process shall be addressed, shall be domiciled or served personally with such Writ, Order or Process within such District, and that all the Defendants or parties aforesaid, be legally served with Process, and not otherwise, except where any of the said Defendants or parties shall be summoned by advertisement as hereinafter mentioned.

Who shall hold the Court.

Quorum.

Equal division.

XV. And be it enacted, That the terms of the Superior Court in each of the said Districts, shall be held by not more than three nor less than two of the Judges of the said Court; and in term any two of the said Judges shall form a Quorum, and may exercise all or any of the powers of the Court, but if they be divided in opinion on any matter, such matter shall stand over for future decision; and in the said Court,

the Chief Justice shall preside, or if he be not present, Who shall preside. then the Puisné Judge entitled by his Commission to precedence in the Court.

XVI. And be it enacted, That Terms of the Superior Court shall be held at the times hereinafter mentioned in each and every year, and at the places also hereinafter mentioned, that is to say : Times of holding the Terms of the S. Court.

At the City of Montreal, in and for the District of Montreal, from the first to the twentieth of April; and from the first to the twentieth of September; and from the first to the twentieth of December; At Montreal.

At the City of Quebec, in and for the District of Quebec, from the first to the twentieth of April; and from the first to the twentieth of September; and from the first to the twentieth of December; At Quebec.

At the Town of Three-Rivers, in and for the District of Three-Rivers, from the twelfth to the twenty-fifth of February; from the first to the fourteenth of June; and from the first to the fourteenth of November; At Three-Rivers.

At the Town of Sherbrooke, in and for the District of St. Francis, from the twentieth to the thirty-first of January; and from the sixteenth to the twenty-seventh of July; At Sherbrooke.

At Percé and New Carlisle, in and for the District of Gaspé, viz., at Percé, from the twenty-first to the thirtieth of August, inclusively, and at New Carlisle; from the fourth to the thirteenth of September, inclusively, but the sittings at the two places forming only one Term; In Gaspé.

And the days from and to which any Term is herein directed to be held, shall in all cases be both included in such Term; Days to be reckoned inclusively.

At Kamouraska, in and for the District of Kamouraska, commencing on such two days respectively as In District of Kamouraska.

shall be appointed by the Governor in the Proclamation hereinbefore mentioned to be in that behalf issued, and on the nine days next after such two days respectively, or such of them as shall be juridical days ;

In District of
Ottawa.

At Aylmer, in and for the District of Ottawa, commencing on such two days respectively as shall be appointed by the Governor in the Proclamation hereinbefore mentioned to be in that behalf issued, and on the nine days next after such two days respectively, or such of them as shall be juridical days :

Proviso : the
Court may pro-
long any
Term.

Provided always, that the Court shall have full power to continue any Term, in any of the said seven Districts, beyond the time herein fixed for its continuance, by any Order to be made for that purpose during such Term : And provided also, that it shall be the duty of the Judges of the Superior Court residing at Quebec, ordinarily to assist in holding the Terms of the said Court in the District of Gaspé, but this shall not prevent any other Judges from so doing if circumstances shall require it.

What Judges
shall ordinari-
ly go to hold
the Court in
Gaspé.

Weekly sit-
tings of the
Court at Que-
bec and Mont-
real for certain
purposes.

XVII. And be it enacted, That in the Districts of Montreal and Quebec, out of Term, upon the first two juridical days in each week, in every month except August, the Court or any Quorum thereof, may hold sittings for the purpose of giving judgment in cases theretofore heard and taken *en délibéré*, and of hearing and giving judgment in cases by default or *ex-parte*, including cases of application for judgment of confirmation of title to immoveables, where there shall be no opposition or the oppositions shall be admitted by all parties, and of hearing and giving judgment in any case appealed, evoked or removed from any Circuit Court, or brought in the Superior Court, (as hereinafter provided,) because a Circuit Judge is a party thereto, but of which, from its nature

or the amount in dispute, the Circuit Court would otherwise have cognizance, and may, in any case, hear and give judgment upon all issues of law raised upon demurrers or pleadings, and all motions, rules and incidental matters; but with the consent of all parties, any case may be heard upon the merits and determined at such sittings.

Any case may be heard by consent of parties..

XVIII. And be it enacted, That the Superior Court shall, as aforesaid, take cognizance of all suits or actions (those purely of Admiralty jurisdiction excepted) which shall not be cognizable in the Circuit Court hereinafter mentioned, or which shall be evoked or otherwise removed from the said Circuit Court, or from any other Court or Jurisdiction, into the said Superior Court, and of such suits or actions only, unless in any case it be otherwise provided by this Act, and excepting always such suits, actions or proceedings as shall be pending in Superior Term in any one of the several Courts of Queen's Bench immediately before the time when this Act shall come fully into effect, and which shall be transferred to and shall subsist, depend and be continued in the Superior Court at the same place, as hereinafter directed.

Jurisdiction of S. Court confined to certain cases.

Exception as to suits, &c., pending in Q. B. and transferred to S. Court.

XIX. And be it enacted, That all Writs and Process to be issued out of the Superior Court shall run in the name of Her Majesty, Her Heirs or Successors, and shall be sealed with the Seal of the said Court, and signed by the Prothonotary for the District in which they shall issue, whose duty it shall be to make out and prepare the same; and they shall not be tested in the name of any Judge, but the words "in witness whereof we have caused the Seal of our said Court to be hereunto affixed," shall be instead of such *teste*: Provided always, that no such Writ or Process shall be deemed void or voidable by reason of its having a wrong seal or no seal thereon; And

Form and style of Writs and Process.

Not to be tested in the name of a Judge.

Language.

Proviso as to seal.

every such Writ or Process may be either in the English or in the French language, any law, custom or usage to the contrary notwithstanding: and if any affidavit be required before the issuing of any such Writ or Process, the Prothonotary shall have full power to receive such affidavit, and to administer the necessary oath: Provided also, that this shall not be construed to prevent any Judge of the Court from receiving such affidavit and administering such oath if he shall think fit.

Requisite affidavits to be received by the Prothonotary.

Proviso.

To whom writs of summons shall be addressed.

Exception.

Further exception—as to writs to be executed out of the District.

Copies how certified when served by a Bailiff.

Return of writs, &c., issued before the commence-

XX. And be it enacted, That all Writs of Summons issuing out of the Superior Court, except Writs of *Capias ad Respondendum*, *Saisie-Arrêt* before judgment, *Saisie-Gagerie*, or *Saisie-Revendication*, shall be directed to and executed and returned by any of the Bailiffs of the said Court appointed for the District in which the Writ shall issue, any law or custom to the contrary notwithstanding; but where any such Writ shall be to be executed, wholly or in part, in any District other than that in which it shall issue, then, whether it be a Writ of Summons, or a Writ of *Capias ad Respondendum*, *Saisie-Arrêt* before judgment, *Saisie-Gagerie*, or *Saisie-Revendication* it shall (except those cases in regard to which other provision is hereinafter made) continue to be directed to and executed and returned by the Sheriff of the District in which it is to be executed, as heretofore; and when any such Writ of Summons shall be directed to any Bailiff of the Court as aforesaid, the copies of the same to be served upon the parties according to Law, shall be certified as true copies, either by the Prothonotary of the said Court, for the District in which they shall have issued, or by the Attorney of the party suing out such Writ.

XXI. And be it enacted, That every Writ or Process issued before this Act shall come fully into effect, which shall have been made returnable into

any one of the several Courts of Queen's Bench, in the exercise of any of those jurisdictions or powers hereby transferred to and vested in the Superior Court, on any Juridical day subsequent to the time when this Act shall come fully into effect, shall be returned on the said day into the Office of the Prothonotary of the Superior Court, at the place where it shall have been made returnable, and shall then have the same and no other effect as if it had been issued from the Superior Court, and had been made returnable on such day and at such place.

ment of this Act.

XXII. And be it enacted, That every day not being a Sunday or Holy-day, shall be deemed a juridical day, for all the purposes of this Act, and shall be a return day for all Writs, Process and proceedings required to be returned into the Superior Court.

What shall be return days.

XXIII. And be it enacted, That it shall not be necessary that any Defendant summoned to appear before the Superior Court, shall appear or be called in open Court, but the Writ of Summons shall be returned into the Prothonotary's Office, on the day on which it shall be returnable, and the Defendant may on that day or on the next following juridical day, file his appearance personally or by attorney, in the Office of the Prothonotary of the Court, at any time during office hours, and if he shall not file his appearance as aforesaid, he shall not thereafter be allowed to appear (except by express permission as hereinafter mentioned), and his default shall, on the juridical day next but one after the return day, be recorded, and the Court shall proceed to hear, try and determine the suit or action in due course of law: and every such Writ of Summons shall be served at least ten days (of which neither the day of service nor the day of the return shall be reckoned as one) before the day fixed for the return thereof, if there be not more than five leagues from the place of service

Defendant not to be called in Court, &c.

Appearance how filed.

Default.

Delay between service and return.

Proviso as to
service on de-
fendant's ap-
pearing in per-
son.

of the Writ to the place where the Defendant shall be summoned to appear; and if there be more than five leagues, then there shall be an additional delay of one day for every additional five leagues: Provided, nevertheless, that every Defendant or other party in or to any suit or action who shall appear in person shall be considered as having, for all the purposes of such suit or action and of all proceedings incident thereto or consequent thereon by such appearance, elected his legal domicile at the Office of the Prothonotary of the Court in which such suit or action shall have been instituted; and all notices and all services of papers or documents in such suit or action which should otherwise be given or made by one attorney *ad litem*, to or upon another, shall be considered as having been legally given or made at such Prothonotary's Office.

How Defend-
ant in default
may be allowed
to appear.

XXIV. And be it enacted, That notwithstanding any such default to appear, the Defendant may, at any time before judgment, be allowed by the Superior Court, or by any one Judge thereof, to appear, on a special application of which the Plaintiff shall have had one clear day's notice, and for good cause shewn to the satisfaction of such Judge.

Delay for
pleading and
between plea-
dings.

Demand of
plea and fore-
closure.

XXV. And be it enacted, That whether the appearance be filed in term or in vacation, the Defendant shall be allowed eight clear days from his appearance to plead to the Declaration, and the Plaintiff shall have a like delay to answer, and there shall be a like delay between each further pleading allowed by law; and if at the expiration of the delay allowed for any pleading, the same shall not be filed, the opposite party may demand the same, and if it be not filed on or before the third juridical day after such demand, may foreclose the party by whom it ought to have been filed; and the filing of the return of service of such demand shall be sufficient to autho-

rize the Prothonotary, upon application in writing for *Acte* of foreclosure, to grant and record the same without further notice or formality: Provided always, that the party foreclosed shall nevertheless be entitled to at least one clear day's notice of the inscription of the cause for *enquête* or hearing, before such *enquête* shall be commenced or the cause shall be heard.

Proviso: right of party foreclosed to notice.

XXVI. And be it enacted, That the delay for pleading may in any case be enlarged by the Superior Court, or by any one Judge thereof, on special application of which notice shall be given to the opposite party at least one clear day before it is made; and that any party may file any pleading within the time hereby allowed for filing the same.

Delay for pleading may be enlarged. Pleading within the delay.

XXVII. And be it enacted, That the *enquêtes* in causes cognizable in the Superior Court shall be taken before a single Judge, or before more than one Judge of the said Court, or before any Circuit Judge as *Commissaire Enquêteur* of the Superior Court, and as well in Term as in Vacation, subject to the provisions hereinafter made; and that for that purpose it shall be lawful for the Judges of the Superior Court to assign one room or more than one room in each Court House, in which the Court is held, for the taking of such *enquêtes* therein, and to fix the number of Clerks or Writers whom the Prothonotary of the Court shall employ for taking such *enquêtes*, accordingly as the case may require.

How and where *enquêtes* may be taken.

XXVIII. And be it enacted, That each and every Circuit Judge shall be a *Commissaire Enquêteur* of the Superior Court, and shall have all the powers of a single Judge thereof with regard to the taking of *enquêtes*; but it shall not be the duty of such Circuit Judge to act as *Commissaire Enquêteur* when any Judge of the Superior Court is present at the place where the *enquête* is to be taken, and not incapacitated from acting by sickness or otherwise.

Circuit Judges to be *Commissaires Enquêteurs*.

Proviso: to act as such only in certain cases.

Enquête days
at Quebec,
Montreal,
Three-Rivers
and St. Fran-
cis.

In other Dis-
tricts.

Court or Judge
may order
enquêtes, &c.,
to be taken in
any District.

How any wit-
ness or party
may be exami-
ned in such
other District.

XXIX. And be it enacted, That in the Districts of Montreal, Quebec, Three-Rivers, and St. Francis, every juridical day out of Term, except every day in the month of August and the days on which the Circuit Court shall sit at the same place, shall be an *enquête* day; as shall also every day in Term which shall have been appointed by the Court for that purpose: and that in each of the other Districts every juridical day in vacation, (except every day in the month of August), on which a Circuit Judge or *Commissaire Enquêteur* shall be present at the place where the Superior Court is held, and every day in Term or out of Term which shall be appointed by the said Court for that purpose, shall be an *enquête* day.

XXX. And be it enacted, That the Superior Court, or any Judge thereof, may, in its discretion, order the *enquête* in any case, or the examination of any witness or witnesses, or of any party to the cause, or other person required to be examined in such case, to be taken at any place where Terms of the Superior Court are held, or at any place where sittings of the Circuit Court are held, before any Judge of the Superior Court or *Commissaire Enquêteur* thereof; and this provision shall extend to *Faits et Articles*, *Serment décisoire*, or other Oath which may be legally required of any party; and the examination may, in the discretion of the Court, be had in the usual manner as if the witness or party examined had appeared at the place where the case is pending, or upon written interrogatories and cross interrogatories; and the Court may, in its discretion, order the record or any portion thereof to be transmitted to the place where the *enquête* or examination is to be taken, but no Commission or formality other than the order of the Court shall be requisite, and such order (and the other documents if any) shall be transmitted to the

Prothonotary of the Superior Court or Clerk of the Circuit Court, as the case may be, at the place where the *enquête* or examination is to be had, and such Prothonotary or Clerk may thereupon issue the proper process to compel the attendance of any witness or party to be examined in the case, at the place named in such order and on any *enquête* day at such place, or on any day (to be appointed by the *Commissaire Enquêteur*) on which a *Commissaire Enquêteur* will be present at such place.

XXXI. And be it enacted, That nothing in the next preceding section shall be construed to prevent the said Superior Court, or any Judge thereof, from issuing any *Commission Rogatoire*, or Commission in the nature of a *Commission Rogatoire*, addressed to any Commissioner or Commissioners at any place out of Lower-Canada, or at any place within Lower-Canada, if from the circumstances of the case the Court, or such Judge, shall think the ends of Justice will be better attained by such Commission than by such order as in the next preceding section is mentioned.

Not to prevent the issuing of *Commissions Rogatoires*, &c.

XXXII. Provided always, and be it enacted, That the Superior Court shall have original cognizance of, hear, try and determine, in due course of law, any suit or action in which a Writ of *Capias ad Respondendum*, shall be sued out, or in which a trial by Jury may by law be had, and the plaintiff shall in and by his declaration therein filed, declare his choice and option to have a trial by Jury, although the sum of money, or the value of the thing demanded, in such suit or action, shall not exceed, or shall be under fifty pounds, currency : Provided always, that such declaration of the choice and option of the plaintiff to have a trial by Jury, or the declaration of such choice and option by the Defendant, in his Evocation, as hereinafter provided, shall bind all parties to pro-

Court to have jurisdiction in certain special cases : *Capias ad Respondendum*.

Jury cases.

Proviso as to option of a Jury trial.

Costs.

Cases where a Circuit Judge or Judge of Q. B. residing at Three-Rivers or St. Francis is or shall become a party.

ceed accordingly, whenever the suit or action shall be ready for such trial ; nor shall any other mode of trial be allowed therein, except by consent of all the parties ; and saving always the discretionary power of the Court over the costs in any case it may deem to have been vexatiously or unnecessarily brought in or removed into the Superior Court, instead of being brought or left to be determined in the Circuit Court by which it would have been cognizable : Provided also, that the Superior Court shall have original cognizance of any suit or action to which the Judge residing in the Town of Three-Rivers, or the Judge residing in the Town of Sherbrooke, or any Circuit Judge shall be a party, and which, from its nature, or the amount, or value of the thing demanded, would have been otherwise cognizable by the Circuit Court, but such suit or action shall be heard, tried and determined, at any sitting of the Superior Court in term or in vacation, according to the course and practice of the Circuit Court, and with like costs ; and any suit or action to which such Judge, residing in the town of Three-Rivers or in the town of Sherbrooke, or a Circuit Judge shall become a party to any intervention, opposition, *demande en garantie*, or otherwise, shall be at once removed into the Superior Court, in the same District.

Jury trials may be had in vacation.

XXXIII. And be it enacted, That the Judges of the Superior Court, or any one of them, shall be and they are hereby authorized in all cases of trial by jury in civil matters, to try the issues of fact, and to receive the verdicts of juries in vacation, on such days as the Court shall have appointed for that purpose ; any law to the contrary notwithstanding.

Jury trial may be ordered to be had in any District.

XXXIV. And be it enacted, That the Superior Court may, in its discretion, order the trial by jury in any civil case to be had in any district ; and if such trial be ordered to be had in a district other than that

in which the cause is pending, the record in the cause and the order for the trial shall be sent to the Prothonotary of the Court for the District in which the trial is ordered to be had; and thereupon all proceedings to trial and verdict shall be had in such district, as if the cause were pending there, and the verdict shall then be returned, with the record, to the Prothonotary of the District wherein the cause is pending, for judgment and all ulterior proceedings.

Proceedings in
such case.

XXXV. And be it enacted, That when and so soon as lists of jurors shall have been made out, and the requisite provisions of law in that behalf enacted, it shall be lawful for the Superior Court to order any trial by jury in a civil case to be had at any Circuit Court; and the Judge presiding at such trial shall receive the verdict of the jury and return the same into the Superior Court, to be by the said Court proceeded upon according to law.

Jury trials may
be had at Circuit
Courts,
when proper
provisions
shall be made

XXXVI. And be it enacted, That each final judgment, and each interlocutory judgment from which an appeal may lie, rendered by the Superior Court, as well in any suit or action by default or *ex-parte* which shall be dismissed, as in any suit or action where issue shall have been joined, shall contain a summary statement of the points of fact and law, and the reasons upon which such judgment shall be founded, and the names of the Judges who shall have concurred therein or entered their dissent therefrom.

Judgments
which may be
appealed from
to be motives

XXXVII. And be it enacted, That an Appeal and Writ of Error shall lie to the Court of Queen's Bench established by an Act of this Session, from the judgments of the Superior Court (whether rendered in any cause commenced in the said Court, in the first instance, or brought into it by appeal, evocation, removal from some other Court, or transmission from some former Court,) in every case in which, from its nature or the amount in dispute, an Appeal or Writ

In what case
an appeal shall
lie from Judg-
ments of the
S. Court.

7 V. c. 18.

of Error by Law lay, immediately before the coming into force and effect of the Act passed in the seventh year of Her Majesty's Reign, and intituled, *An Act for the establishment of a better Court of Appeals in Lower-Canada*, from the judgments of the Courts of King's Bench in and for the several Districts of Lower-Canada, to the Provincial Court of Appeals, upon the same terms and conditions, and under and subject to the same restrictions, limitations, rules and regulations as were then established and obtained in Appeals from the said Courts of King's Bench to the said Provincial Court of Appeals.

Transmission
of certain
records, &c., of
the present
Courts of Q.
B. into the S.
Court.

Place to which
they shall be
transmitted.

Montreal.

Quebec.

XXXVIII. And be it enacted, That all and every the Records, Registers, Muniments and judicial or other proceedings of the Courts of Queen's Bench in the several Districts of Lower-Canada (except only such as by any Act of this Session are directed to be transmitted into the Court of Queen's Bench established, as aforesaid, by an Act of this Session, and such as are by this Act directed to be transmitted into the Circuit Court,) shall forthwith, after this Act shall come fully into effect, be transmitted into and make part of the Records, Registers, Muniments, and judicial or other proceedings of the Superior Court hereby established, in the Districts and at the places in and at which the said several Courts of Queen's Bench are now respectively established and held; that is to say, the Records, Registers, Muniments, judicial and other proceedings of the said Court of Queen's Bench for the District of Montreal, shall be transmitted into the said Superior Court, and shall be kept in the Office of the Prothonotary thereof for the said District, at the City of Montreal; and the Records, Registers, Muniments, judicial and other proceedings of the said Court of Queen's Bench for the District of Quebec, shall be transmitted into the said Superior Court, and shall be kept in the Office of the Prothonotary thereof for the said District, at

the City of Quebec; and the Records, Registers, ^{Three-Rivers.} Muniments, and judicial or other proceedings of the said Court of Queen's Bench for the District of Three-Rivers, shall be transmitted into the said Superior Court, and shall be kept in the office of the Prothonotary thereof for the said District, at the Town of Three-Rivers; and the Records, Registers, Muni- ^{Sherbrooke.} ments, judicial or other proceedings of the said Court of Queen's Bench for the District of St. Francis, shall be transmitted into the said Superior Court, and shall be kept in the Office of the Prothonotary thereof for the said District, at the Town of Sherbrooke; and the ^{Gaspé.} Records, Registers, Muniments, judicial and other proceedings of the said Court of Queen's Bench for the District of Gaspé, shall be transmitted into the said Superior Court, and shall be kept in the Office of the Prothonotary thereof for the said District, at Percé and at New Carlisle, respectively, that is to say, those which before the passing of this Act, would be kept at Percé, shall be kept in the Office of the said Prothonotary there, and those which before the same time, would be kept at New Carlisle, shall be kept in the Office of the said Prothonotary there.

XXXIX. And be it enacted, That no judgment, ^{Actions, &c.,} order, rule or act of the said several Courts of Queen's ^{in the present} Bench respectively, legally pronounced, given, had ^{Courts of Q.} or done before this Act shall come fully into effect, ^{B. to be con-} shall be hereby avoided, but shall remain in full force ^{tinued in the} and virtue as if this Act had not been passed; nor shall ^{S. Court.} any action, information, suit, cause or proceeding depending in the said Courts respectively, be abated, discontinued or annulled, but the same shall (except such as are by this Act or any other Act of this Session, directed to be transferred to and to subsist in some Court other than the Superior Court), be transferred in their then present condition respectively to and subsist and depend in the said Superior Court, in the

several and respective Districts in which they shall be subsisting and depending when this Act shall come fully into effect, as if they had respectively been commenced, brought or recorded in the said Superior Court, and in such District as aforesaid, and whatever be the amount or value in dispute, and other and further proceedings shall be therein had in the said Superior Court to judgment and execution, or subsequent thereto, as might have been had in the said several Courts of Queen's Bench respectively, or in the said Superior Court in cases or proceedings commenced and depending before that Court.

Records, &c.,
of the present
Courts of Q.
B. in Inferior
Term, to be
transmitted
into the Cir-
cuit Court at
the same place.

Montreal.

Quebec.

Three-Rivers.

XL. And be it enacted, That all and every the Records, Registers, Muniments and judicial or other proceedings of the Courts of Queen's Bench in the several Districts of Lower-Canada, in the Inferior Terms of the said Courts respectively, shall forthwith, after this Act shall come fully into effect, be transmitted into and make part of the Records, Registers, Muniments, and judicial or other proceedings of the Circuit Court, in the Circuits and at the places in and at which the said Courts of Queen's Bench are now respectively established and held; that is to say, the Records, Registers, Muniments, judicial and other proceedings of the said Court of Queen's Bench for the District of Montreal, in the Inferior Term of the said Court, shall be transmitted into the said Circuit Court, and shall be kept in the Office of the Clerk thereof for the Montreal Circuit, at the City of Montreal; and the Records, Registers, Muniments, judicial and other proceedings of the said Court of Queen's Bench for the District of Quebec, in the Inferior Term of the said Court, shall be transmitted into the said Circuit Court, and shall be kept in the Office of the Clerk thereof for the Quebec Circuit, at the City of Quebec; and the Records, Registers, Muniments, and judicial or other

proceedings of the said Court of Queen's Bench for the District of Three-Rivers, in the Inferior Term of the said Court, shall be transmitted into the said Circuit Court, and shall be kept in the Office of the Clerk thereof for the Three-Rivers Circuit, at the Town of Three-Rivers; and the Records, Registers, Muni-
 Sherbrooke.
 ments, judicial or other proceedings of the said Court of Queen's Bench for the District of St. Francis, in the Inferior Term of the said Court, shall be transmitted into the said Circuit Court, and shall be kept in the Office of the Clerk thereof for the Sherbrooke Circuit, at the Town of Sherbrooke.

XLI. And be it enacted, That no judgment, order, rule or act of the said Courts of Queen's Bench respectively, in Inferior Term, legally pronounced, given, had or done before this Act shall come fully into effect, shall be hereby avoided, but shall remain in full force and virtue as if this Act had not been passed; nor shall any action, information, suit, cause or proceeding depending in the said Courts respectively in Inferior Term, be abated, discontinued or annulled, but the same shall be transferred in their then present condition respectively to and subsist and depend in the said Circuit Court, in the several and respective Circuits in and into which the Records and other proceedings therein, are hereinbefore directed to be transmitted and kept, when this Act shall come fully into effect, as if they had respectively been commenced, brought or recorded in the said Circuit Court, and in such Circuit as aforesaid, and other and further proceedings shall be therein had in the said Circuit Court to judgment and execution, or subsequent thereto, as might have been had in the said several Courts of Queen's Bench respectively, in Inferior Term, or in the said Circuit Court in cases or proceedings commenced and depending before the said Court: and the provisions of this and of the next
 Actions, &c.,
 in the Inferior
 Terms, to be
 continued in
 the Circuit
 Court held at
 the same place.
 This section to

apply to
judgments of
the former
Courts of K.
Bench.

11 V. c. 4.

preceding section shall apply to the judgments of the several Courts of King's Bench, mentioned in the Act passed in the eleventh year of Her Majesty's Reign, and intituled, *An Act to render executory certain Judgments rendered by the late Courts of King's Bench for Lower-Canada*, and to the Records and proceedings in the said Courts of King's Bench in Inferior Term.

Circuit Court
established for
Lower-Canada.

Circuit Court
at any place
not to be
deemed a new
Court, &c.

XLII. And be it enacted, That a Court of Record, to be called the Circuit Court, and having jurisdiction throughout Lower-Canada, shall continue to be holden every year in each of the Circuits in Lower-Canada, hereinafter mentioned, by one of the Judges of the Superior Court, or by one of the Circuit Judges; Provided always, that nothing in this Act contained shall be construed to make the Circuit Court to be held under it at any place a new Court, or to abate or discontinue any suit, action or proceeding pending therein, but the Circuit Court to be holden under this Act shall be held to be to all intents and purposes, one and the same with the Circuit Court holden at the same place under the Acts hereby repealed, notwithstanding any change hereby made in its name, constitution or jurisdiction, or in the times at which it is to be held.

District Judges
in Gaspé to be
hereafter called
Circuit Judges.

XLIII. And be it enacted, That the District Judges for the District of Gaspé shall from and after the time when this Act shall come fully into effect, and without any new Commission, be and be called Circuit Judges, and not District Judges, and that they and the other Circuit Judges theretofore appointed in and for the other Districts, shall by virtue of this Act, and without any new Commission, and until they shall respectively resign, be removed or suspended from office, be Circuit Judges for Lower-Canada, as shall also, each and every Circuit Judge thereafter appointed; and the Circuit Judges for Lower-Canada,

Circuit Judges

whether appointed before or after the time when this Act shall come fully into effect, shall each respectively have full power to act as such in any part of Lower-Canada, but the Districts and places in and at which they shall respectively reside, and in which they shall ordinarily act, shall be from time to time appointed by the Governor, but this shall not prevent their acting in other places or Districts whenever circumstances shall require them so to do: provided that at least one of the said Circuit Judges shall reside at New Carlisle, in the District of Gaspé, and at least one of them at Percé, in the said District, and at least one of them at Aylmer, in the District of Ottawa, after the Proclamation establishing the said District shall have issued, and at least one of them at Kamouraska, in the District of Kamouraska, after the Proclamation establishing the said District shall have issued, and at least one of them at Chicoutimi, in the Circuit of Saguenay, and the others shall respectively reside at the City of Montreal, or at the City of Quebec: And the total number of the said Circuit Judges in office at any one time shall not be more than nine.

to be so for all
Lower-Canada.

Where the
Circuit Judges
shall reside.

Their number
limited to nine

XLIV. And be it enacted, That whenever any of the Circuit Judges appointed before or after the time when this Act shall come fully into effect, shall die, resign or be removed, or suspended from office, or whenever, from any cause, the number of Circuit Judges shall be or become less than the number fixed in and by the next preceding section, and it shall be deemed expedient to fill the vacancy thus existing, it shall be lawful for the Governor of this Province, by an Instrument under the Great Seal thereof, to appoint a proper person to be a Circuit Judge for Lower-Canada; and all such Circuit Judges, appointed before or after the passing of this Act, shall be *ex officio* Justices of the Peace, and shall act as Chairmen of the General or Quarter Sessions

How vacancies
shall be filled.

Circuit Judges
to be Chairmen
of Quarter
Sessions.

Other duties may be assigned to them. Proviso: not to act as advocates, &c.

in and for the several Districts in Lower-Canada, and for the Chicoutimi Circuit, when such Sessions shall be held therein; and the said Circuit Judges shall also have such powers and duties as are herein-after assigned to them, or as may be assigned to them by any other Act of the Legislature: Provided always, that no such Circuit Judge shall act as Advocate, Attorney, or Counsel in Lower-Canada.

Proviso: Sessions not to be incompetent by their absence.

Act 6 V. c. 3, not to apply to them.

XLV. Provided always, and be it enacted, That nothing in this Act shall be construed to render any Court of General or Quarter Sessions incompetent by reason of the absence of any Circuit Judge, who, if present, would be the Chairman of the Court: And provided also, that the provisions of the Act passed in the sixth year of Her Majesty's Reign, and intituled, *An Act for the Qualification of Justices of the Peace*, shall not extend to any Circuit Judge; any thing in the said Act to the contrary notwithstanding.

Who may be appointed a Circuit Judge.

XLVI. And be it enacted, That no person shall be appointed a Circuit Judge unless he be an Advocate of at least five years' standing at the bar of Lower Canada.

Cases in which the Circuit Court shall have jurisdiction.

Proceedings to be summary in cases up to £15 and in good conscience up to £6. 5s.

XLVII. And be it enacted, That the Circuit Court shall have cognizance of and shall hear, try and determine all Civil Suits or Actions, as well those where the Crown may be a party as others (those purely of Admiralty jurisdiction excepted) wherein the sum of money or the value of the thing demanded shall not exceed Fifty pounds currency, and wherein no Writ of *Capias ad Respondendum* shall be sued out; and if the said sum or value shall not exceed Fifteen pounds currency, the Suit or Action shall be heard, tried and determined in a summary manner; and if the said sum or value shall not exceed Six pounds Five shillings currency, then the said Suit or Action shall be determined according to equity and good conscience; Provided always, that if any such

Proviso.

Suit or Action shall relate to any title to lands or tenements, or to any sum of money payable to Her Majesty, or to any fee of office, duty or rent, revenue, annual rents or such like matters or things where the rights in future may be bound, or shall be a suit or action in which a trial by jury may by law be had and in which the defendant shall in and by his evocation declare his choice and option to have a trial by jury, it shall be lawful for the party defendant, before making his defence to the merits of any such suit or action, to evoke the same, and by such evocation to require that the said suit or action be removed and carried for hearing, trial and judgment, to and in the Superior Court in the same District; and every such evocation shall be filed and entered of record, and the said suit or action shall thereupon be removed into the said Superior Court, which shall, at any sitting thereof, in or out of Term, proceed to hear and determine in a summary way whether the said evocation be well founded; and if it should maintain the said evocation and adjudge the same to be well founded, proceedings shall thereupon be had in the said Superior Court to trial and judgment and execution according to the rules of proceeding in the said Court, as if the said suit or action had been originally instituted therein; and if the said evocation should be overruled, the said suit or action shall be remitted to the Circuit Court there to be heard, tried and finally determined.

Certain actions evocable by defendant in certain cases to the S. Court.

Proceedings on evocation.

If maintained.

If overruled.

XLVIII. And be it enacted, That if in any suit or action which might be so evoked as aforesaid, the defendant shall not evoke the same, but shall make any plea or defence by which the plaintiff's title to any lands or tenements shall be disputed or called in question, or by which, if maintained, his rights in future would be impaired or injuriously affected, it shall then be lawful for the plaintiff to evoke such suit or action in the same manner and with the same

Evocation by plaintiff on defendant's plea.

effect as the defendant might have done, and such evocation and the suit or action so evoked shall be subject to the provisions herein made as to suits or actions evoked by the defendant.

In what Circuit actions, &c., may be commenced.

XLIX. And be it enacted, That all actions, suits, or proceedings may be commenced at the place where the terms of the Circuit Court are held in any Circuit, provided the cause of such suits, actions or proceeding respectively, shall have arisen within such Circuit, or the defendant or one of the defendants, or the party or one of the parties, to whom the original Writ, Order or Process shall be addressed, shall be domiciled or served personally with such Writ, Order or Process within such Circuit, and that all the defendants or parties aforesaid be legally served with Process and not otherwise, except where any of the said defendants or parties shall be summoned by advertisement as hereinafter mentioned: Provided always, that the Process may in such cases be served out of the limits of the Circuit, but in the District in which such Circuit is situate, by any Bailiff of the Superior Court appointed in and for such District.

Process by which actions &c., shall be commenced.

L. And be it enacted, That in any suit or action to be brought in the Circuit Court, the first Process to be issued for bringing the defendant before the said Court, to answer the *demande* made in such suit or action, shall be a Writ of Summons, in which the Plaintiff's cause of action shall be briefly stated, unless there shall be attached to such Writ of Summons a Declaration setting forth the cause of action, in which case it shall be sufficient that in the Writ of Summons reference be made to the Declaration for the cause of action; and such Writ of Summons may be in the form contained in the Schedule A, to this Act subjoined, and shall be served at least five days (of which neither the day of service nor the day of

Form of Writ of Summons.

Delay between service and return.

return shall be reckoned as one) before the day fixed for the return thereof, if there be not more than five leagues from the place of service to the place where the Court shall be held; and if, in any such case, there be more than five leagues, then there shall be an additional delay of one day for every additional five leagues; and such Writ of Summons shall be directed to and executed by any Bailiff of the Superior Court appointed in and for the District in which the same shall have been issued, any law or custom to the contrary notwithstanding; and the copies of the Writ of Summons and of the declaration, if any there be, to be served upon parties according to law, shall be certified as true copies, either by the Clerk of the Circuit Court, or by the Attorney of the Plaintiff: Provided always, that in all cases cognizable by the Circuit Court, where such Writ of Summons may by law be executed in any District other than the District in which the same shall have issued, such Writ of Summons shall be directly addressed to the Sheriff of such other District, and shall be executed and returned by such Sheriff to the Circuit Court at the place from which it shall have issued, according to the exigency of such Writ and to law.

By whom service shall be made.

Copies how certified.

Provido as to Process to be executed out of the District.

LI. And be it enacted, That all Writs and Process issuing out of the Circuit Court, shall run in the name of Her Majesty, Her Heirs or Successors, and shall be sealed with the Seal of the Court, and signed by the Clerk whose duty it shall be to prepare the same, and shall not be tested in the name of any Judge, but the words "in witness whereof we have caused the Seal of our said Court to be hereunto affixed" shall be instead of such *teste*, and all such Writs and Process may be either in the English or in the French language; any law, usage or custom to the contrary notwithstanding.

Style and form of Writs and Process.

Return of
Process issued
before the
commence-
ment of this
Act.

In appealable
cases.

In non-ap-
pealable cases.

Effect.

Appeal to the
Superior Court
in certain
cases.

LII. And be it enacted, That every Writ or Process issued before this Act shall come fully into effect, which shall have been made returnable into any one of the several Courts of Queen's Bench, in the Inferior Term thereof, or into any Circuit Court, on any day subsequent to the time when this Act shall come fully into effect, shall be returned on that day into the office of the Clerk of the Circuit Court, at the place where it shall have been made returnable, unless it shall have issued in a non-appealable case, and such day shall happen not to be a return day in such cases, and it shall then be returned into the said Court at the said place, on that juridical day which shall be next after the day on which such Writ or Process shall have been made returnable, and in either case it shall then have the same effect, and no other, as if it had been issued from the Circuit Court, and had been made returnable on such day and at such place.

LIII. And be it enacted, That from any Judgment rendered by the Circuit Court, in any suit or action in which the sum of money or the value of the thing demanded shall exceed fifteen pounds currency, if such judgment be rendered after this Act shall come fully into effect, or in which the sum of money or value of the thing demanded shall exceed ten pounds currency, if such judgment shall have been rendered in any suit or action brought before the said time, or which shall relate to any titles to lands or tenements, or to any sum of money payable to Her Majesty, fee of office, duty or rent revenue, annual rents, or such like matters or things, where the rights in future may be bound, an appeal shall lie to the Superior Court in the District within which the suit or action shall have been originally instituted; which said Court shall proceed to hear and adjudge on such appeal as to law may appertain, and in the manner hereinafter provided.

LIV. And be it enacted, That the party appealing from any judgment rendered as aforesaid by the Circuit Court, shall within fifteen days after the rendering of the judgment to be appealed from (but without being bound to give previous notice thereof to the adverse party) give good and sufficient security, by sureties who shall justify their sufficiency to the satisfaction of the person before whom it shall be given as hereinafter provided, that he will effectually prosecute the said appeal and answer the condemnation and also pay such costs and damages as shall be awarded by the Superior Court if the judgment appealed from should be affirmed; and such security shall be given either before any Judge of the Superior Court or the Prothonotary thereof, and the bond shall then be deposited and remain of record in the Office of the latter, or it shall be given before any Circuit Judge, when at the place where the said judgment appealed from shall have been rendered, or before the Clerk of the Circuit Court at such place, and the bond shall then be deposited, and remain of record in the office of the latter; and any one surety, being a proprietor of real property of the value of fifty pounds currency, over and above all incumbrances payable out of or affecting the same, shall suffice to render such security valid; and the said Judges, Prothonotaries, or Clerks, are hereby respectively authorized to administer all oaths required by law in such cases from the persons so becoming sureties, and to put to them all necessary enquiries and questions: Provided always, that if the party appealing shall, within the same delay of fifteen days after the rendering of the judgment, agree and declare in writing at the Office of the Prothonotary of the Superior Court, or at the Office of the Clerk of the Circuit Court appealed from, that he does not object to the judgment being carried into effect according to law, or shall pay into the hands of either of the

Mode of bringing appeals.

Security.

Before whom and how given.

Who may be surety.

Justification.

Proviso: if the appellant allows the judgment to be executed, or paid in the amount of the judgment,

Proviso: effect
of reversal of
judgment in
the cases last
mentioned.

said Prothonotaries or Clerks, the amount, in capital, interest and costs, of the said judgment, and shall, at the same time, declare in writing his intention to appeal, (which amount, when so paid, the respondent shall be entitled to have and receive from the said Prothonotary or Clerk) then, and in that case, the party so appealing, in lieu of the security above required, shall give security only for such costs and damages as shall be awarded by the Superior Court, in case the appeal be dismissed; and provided also, that when only such last mentioned security shall have been given, the respondent, if the judgment appealed from be reversed, shall not be bound to return to the appellant more than the amount of money so paid by the latter into the hands of the Prothonotary or Clerk, with the legal interest thereon from the day of the payment of the same to the said Prothonotary or Clerk—or more than the sum levied under the execution sued out upon such judgment, with the legal interest upon such sum from the day of its being so levied,—or more than the restitution of the real property whereof the respondent shall have been put in possession by virtue of the said judgment, and the net value of the produce and revenues thereof, to be computed from the day the respondent shall have been put in possession of such real property, until perfect restitution is made,—with the costs of such appellant, as well in the Court appealed to as in the Court below, but without any damages, in any of the said cases, against the respondent by reason of the said Judgment or of the said execution; any law, custom or usage to the contrary notwithstanding.

Appeals to be
determined
summarily.

Petition, no-
tices, &c.

LV. And for the purpose of obviating delay and expense in the prosecution of appeals from judgments rendered by the Circuit Court—Be it enacted, That such appeals shall be prosecuted and proceedings thereon had in a summary manner, by petition of

the appellant to the Superior Court setting forth succinctly the grounds of appeal, and praying for the reversal of the judgment appealed from, and the rendering of such judgment as by the Court below ought to have been rendered; a copy of which petition, with a notice of the time at which it is to be presented to the Superior Court, shall be served on the adverse party personally, or at domicile, or on his Attorney *ad litem*, within twenty-five days from the rendering of the judgment appealed from; and such petition shall be so presented at some Weekly Sitting or Term (whichever shall first happen) of the Superior Court, next succeeding the rendering of the judgment, if there shall be an interval of thirty days between the rendering of such judgment and such sitting or term, and if there shall not be such an interval, then on the first juridical day of the sitting or term next succeeding the expiration of the thirty days next after the rendering of such Judgment: Provided always, that neither the day of the rendering of the judgment appealed from, nor the day of the presenting of the said petition to the Superior Court, shall be considered as forming part of the said interval of thirty days; And provided also, that a true copy of the appeal bond given by the party appealing, certified as such by the Prothonotary or Clerk in whose Office it shall have been deposited, shall be annexed to the original of the petition presented to the Superior Court, and that a copy or copies of the same, certified as such by the party appealing, or his Attorney, shall be served, with the petition and notice hereinbefore mentioned, upon the party respondent.

Service of
copy of Peti-
tion.

When to be
presented.

Proviso: mode
of computing
the delay.

Proviso: copy
of the appeal-
bond to accom-
pany the
Petition.

LVI. And be it enacted, That within the same delay of twenty-five days after the rendering of the judgment appealed from as aforesaid, the party appealing shall also cause a copy of the said petition and notice

Proceedings
for causing the
record to be
transmitted to
the Superior
Court.

only, to be served upon the Clerk in the Office and custody of whom the record in the suit or action in which the judgment is appealed from shall be, with a certificate from the Prothonotary of the Superior Court, that security in appeal has been given, if the appeal-bond shall not be deposited in the Office of the Court appealed from ; and thereupon it shall be the duty of the said Clerk of the last mentioned Court without waiting for the presenting of the said petition to the Superior Court, forthwith to certify under his hand and the Seal of the Court, to the Superior Court, and to cause to be transmitted to the said Court (to be filed among the Records thereof) the judgment, record, evidence, and proceedings to which such appeal shall relate ; and after the transmission of the said judgment, record, evidence and proceedings, and the filing of the said petition of appeal by and on the part of the appellant as aforesaid, the appeal shall, without any further formality, be summarily heard, and judgment thereon rendered by the said Court, as to Law and Justice may appertain ; Provided always, that if the judgment appealed from shall have been rendered, by any Judge of the Superior Court holding the Circuit Court, such Judge shall not sit on the hearing and judgment of the cause upon such appeal ; and if the Superior Court be equally divided on the question whether the judgment appealed from ought or ought not to be affirmed, it shall stand and be affirmed ; And provided also, that any appellant who shall neglect to cause a copy of such petition and notice of appeal to be served as aforesaid or who after having caused the same to be served, shall neglect to prosecute effectually the said appeal in the manner hereinbefore prescribed, shall be considered to have abandoned the said appeal, and upon the application of the respondent, the Court appealed to shall declare all right and claim founded on such appeal to be forfeited, and shall grant costs to

Transmission of the record.

Subsequent proceedings.

Proviso : judge appealed from not to sit.

Equal division.

Appeal to be deemed abandoned in certain cases.

the respondent, and order the record (if transmitted) to be remitted to the Court below.

LVII. And be it enacted, That if the Defendant in any non-appealable suit or action instituted in the Circuit Court, shall not appear personally or by his Attorney, on the day fixed for the return of the Writ of Summons, his default shall be recorded; and in any such case it shall not be necessary that the defendant be called on the third day, or at any other time thereafter, nor shall he be entitled to appear at any other time, and have the said default taken off, unless express permission be given to him by the Court, any law, usage or custom to the contrary notwithstanding; and after the default shall have been so recorded, it shall be lawful for the Court, after due proof of the service of the Writ of Summons, in a summary manner, to receive evidence and hear the Plaintiff in support of his *demande* in such suit or action, and thereupon to make and render such judgment as Law and Justice may require; and if the said Defendant should appear on the said day, either personally or by his Attorney and the Plaintiff should not appear either personally or by his Attorney, or appearing should not prosecute his suit or action, the same shall be dismissed, with costs to the Defendant against the Plaintiff; and if the Plaintiff in any such suit or action should establish his demand, he shall be entitled to recover the sum of money or thing by him demanded, and costs against the Defendant.

Defaults in non-appealable cases.

Proceedings after default.

Plaintiff not appearing.

Plaintiff establishing his demand.

LVIII. And be it enacted, That in non-appealable cases, the pleadings after the declaration shall be oral or in writing, at the option of the Defendant, unless the Court shall expressly order the same to be in writing; and if the Defendant choose to plead in writing, he shall file his plea upon appearing, unless further delay be granted to him by the Court, but if he be ordered to plead in writing he shall have such

Pleadings in non-appealable cases.

*Articulation de
faits by de-
fendant in such
cases.*

delay as the Court shall allow him by such order, and in either case no answer in writing by the Plaintiff shall be necessary, unless expressly ordered by the Court; and if the Defendant do not plead in writing, he shall, on appearing, be called upon by the Court to state orally or in writing what facts (if any) alleged in the Plaintiff's declaration he is willing to admit, and his admission shall be recorded, and if he refuses or neglects to make such statement, he shall be deemed to have denied them all, and shall be liable for the costs of the proof thereof, as hereinafter provided in other cases; and if the Plaintiff be ordered to answer in writing he shall have such delay to answer as the Court shall allow him by such order

In appealable cases delay for pleading, &c. to be as in S. Court.

LIX. And be it enacted, That in appealable cases the pleadings shall be in writing and the delay for pleading, answering and replying shall be the same as in the Superior Court.

Oral evidence in non-appealable cases.

In appealable cases, to be in writing.

What shall be *enquête* days.

LX. And be it enacted, That in any non-appealable suit or action in the Circuit Court, it shall not be necessary to reduce to writing the depositions of the witnesses, but such witnesses shall be examined *vivâ voce*, in open Court, nor shall it be necessary that any notes of the evidence be taken by the Judge, any law custom or usage to the contrary notwithstanding; but in any appealable suit or action, that is in any suit or action in which, by this Act, an appeal may lie to the Superior Court, the evidence shall be reduced to writing in the same manner as in the Superior Court; and every day on which a Judge of the Superior Court or a Circuit Judge shall be present at the place where the Court is held in any Circuit, shall be an *enquête* day for causes pending in such Circuit, but the taking of any *enquête* shall not prevent the Judge from proceeding with the dispatch of any other business before him or before the Court: Provided always, that by consent of all the

parties to any appealable suit or action, the evidence therein may be taken orally as in non-appealable cases: And provided also, that the *enquêtes* in cases pending before the Circuit Court may always be taken by and before any Judge of the Superior Court, and it shall be the duty of any such Judge when presiding at *enquêtes* in cases pending in the Superior Court, to preside at the *enquêtes* in cases pending in the Circuit Court which are to be taken on the same day and at the same place, and he shall and may preside at both at the same time: nor shall his having presided at the *enquête* in any case in the Circuit Court, or his having given any decision with regard to the evidence therein while so presiding, disqualify him from sitting in the Superior Court on any appeal brought thereto in such case.

Proviso: oral evidence by consent in any case.

Proviso: Judge of S. C. to take *enquêtes* in C. Court in certain cases.

Proviso as to appeals in such cases.

LXI. And be it enacted, That the Judge holding any Circuit Court, shall as well in Court as out of Court or in vacation have like power to order the *enquête* in any suit or action to be taken, or any witness or party to be examined, before a Judge of the said Court in any other Circuit on any day to be appointed by such Judge, and to order the transmission of the record or of any portion thereof to such other Circuit, as is hereinbefore vested in the Superior Court or any Judge thereof, and such order shall be obeyed accordingly by the Clerk of the Court for the Circuit in which such *enquête* is to be taken or such witness or party is to be examined; and the provisions hereinbefore made in similar cases with reference to the Superior Court or to any Judge thereof, by the Thirtieth section or by the Thirty-first section of this Act, shall apply to the cases mentioned in this section.

Enquêtes, &c., may be ordered to be taken in any other Circuit.

Provisions of Sect. 30, 31, to apply in such cases.

LXII. Provided always, and be it enacted, That no person shall be bound to attend the Circuit Court as a witness in any suit or action pending therein,

Distance from which witnesses may be compelled to attend.

unless he be resident within fifteen leagues of the place at which he shall be summoned to attend or within the Circuit in which such place shall be.

Circuit Court
may issue
certain Writs.

Who may re-
ceive affidavits
for obtaining
Writs.

Proviso.

Proviso:
Certain Writs
may be issued
by the Clerks
of the Court
and made re-
turnable in C.
Court.

LXIII. And be it enacted, That the Circuit Court shall have power and authority in causes and matters cognizable therein, to issue Writs of *saisie-arrêt* before or after judgment, *saisie-gagerie*, and *saisie-revendication*, to be made returnable in the said Court, in the same and in like cases and circumstances in which such Writs might immediately before the time when this Act shall come fully into effect, lawfully be issued from and be made returnable in any of Her Majesty's Courts of civil jurisdiction in Lower-Canada, and under and subject to the rules of law in such cases provided; and that in all cases where such Writs shall be issued out of the said Circuit Court, it shall and may be lawful for the Clerks of the said Court respectively, to take and receive the necessary oath, affidavit or proof, in such cases by law required, and thereupon to issue, without the *fiat* of a Judge, any of the above mentioned Writs, in like manner as if the same had been granted or awarded by a Judge of the proper Court; Provided always, that nothing herein contained shall prevent any Judge of the Superior Court, or Circuit Judge, from granting or awarding any such Writ as aforesaid, in cases where he could otherwise do so according to law: and provided always, that in all cases in which a Writ of *Capias ad Respondendum*, or a Writ of *Saisie-Arrêt* before Judgment in an action cognizable by the Superior Court, may by law be issued, the Clerks of the Circuit Court respectively shall have the same power and authority as are vested in the Prothonotaries of the Superior Court respectively, to receive the requisite affidavit, and to issue such last mentioned Writ of *Capias ad Respondendum*, or of *Saisie-Arrêt* before Judgment, and to

make the same returnable in the Superior Court in the District in which the same shall have issued ; and the Writs last mentioned shall, in any such case, be addressed directly, either to the Sheriff of the said District, or to any Bailiff of the Superior Court, appointed for the same and by them respectively executed and returned ; and when such Writ shall be so addressed to any such Bailiff, such Bailiff shall without delay proceed to execute the same, without any previous Warrant from the Sheriff, and shall deliver the Writ, with a report of his proceedings thereon to the Sheriff, to whom he shall also deliver the body, or the goods attached, as the case may be, to be dealt with according to law, and by whom the Writ and the proceedings thereon shall then be returned to the Superior Court : Provided always, that in such case, the Sheriff shall not be responsible for any act done by the Bailiff, until the Officer last named shall have complied with the foregoing requirements ; and in every such case service of the declaration in the cause may be made in the same manner and within the same delay as if the Writ had been issued by the Prothonotary of the Superior Court, and addressed to and executed by the Sheriff : Provided always, that in all cases where any such Writ of Attachment against the body or goods shall be issued by any Clerk of the Circuit Court, and made returnable in the Superior Court, the defendant shall be entitled to the same relief on giving security or otherwise to the Sheriff, and in default shall be committed to the common Gaol of the District, in like manner as if such Writ had been issued by the Prothonotary of the Superior Court.

Such Writs to whom to be addressed.

If to a Bailiff.

Report to Sheriff.

Proviso : When the responsibility of the Sheriff shall commence, &c.

Proviso : Defendant to have the usual relief by Bail, &c.

LXIV. And be it enacted, That all powers vested in the Superior Court or in the Judges or Officers of such Court, respectively, in any suit or action pending in the said Court, with regard to the summoning of

Certain powers vested in the Circuit Court, Judges and Officers, as in other Courts in like matters.

Defendants *en garantie*—the admission of parties to intervene—the summoning of witnesses and the adduction of evidence—the production of papers and other things in the possession of any witness or party—the examination of any witness or party, and the oaths to be deferred, referred or required of them—the issuing of any *Commission Rogatoire* or Commission in the nature of a *Commission Rogatoire*—the examination of any witness sick or about to leave Lower-Canada—the enforcing of the attendance of witnesses duly summoned, and the punishment of such as shall disobey any Writ of *Subpœna*—the imprisonment (*contrainte par corps*) of any defendant or party resisting or fraudulently endeavouring to evade the execution of any Writ against his goods or chattels,—or with regard to other matters relative to or connected with the conduct of such suit or action, and the proceedings therein, shall be and all such powers are hereby vested in the Circuit Court, and the Judges by whom the same is to be held, and in the Officers of the said Court, respectively, and may be exercised by them (in so far as such powers and the provisions of law thereunto relating shall not be repugnant to or inconsistent with the provisions of this Act,) as fully and effectually, and under the same provisions and conditions of law, as if the several Acts, Ordinances and Laws conferring the said powers were herein recited and re-enacted, and in such manner as shall be most conformable to and consistent with the other enactments of this Act.

Provision
when the
Judge holding
the Circuit
Court shall be
recused, or in-
competent.

LXV. And be it enacted, That whenever any Judge holding the Circuit Court at any place, shall be lawfully recused in any suit or action, or shall be disqualified or rendered incompetent either by reason of interest, relationship or otherwise, from taking cognizance of the same, such Judge shall immediately upon such recusation being made, cause

an entry thereof, or of the reasons of such disqualification or incompetence to be made on the record, and shall thereupon order that the record and proceedings in such suit or action be removed to the Superior Court in the District in which the said suit or action shall have been brought, there to be heard, tried, and finally determined, in the case of such disqualification or incompetence as above mentioned, at any Term or Sitting of the said Court, but according to the course and practice of the Circuit Court; but in the case of a recusation, the Superior Court shall at any such Term or Sitting, first proceed in a summary manner to determine whether such recusation be well founded, and if it should maintain the said recusation and adjudge the same to be well founded, proceedings shall thereupon be had to trial, judgment and execution, according to the course and practice of the Circuit Court; and if the Superior Court should dismiss the said recusation, the said suit or action shall be remitted to the Circuit Court in the Circuit in which it shall have been originally brought; and when, in any case of recusation, disqualification, or incompetence as aforesaid, an order shall have been made for the removal of the suit or action, as above required, the Clerk of the Circuit Court shall make an entry of such order in the Register thereof, and thereupon it shall be his duty forthwith to certify under his hand and the seal of the Court to the Superior Court in the proper District, and to cause to be transmitted to the said Court, the record and proceedings in the cause, which shall then be filed among the records of the said Court, and there shall continue to remain, even after judgment, as if the suit or action had been originally instituted in the said Court, except only in cases where a recusation shall have been made and dismissed as aforesaid, in which case the said record and proceedings shall be remitted as hereinbefore directed.

Recusation
how tried.

If maintained.

If dismissed.

Removal of the
suit, &c.

Remittal if
dismissed.

Amount of
judgment
may be levied
by instalments.
Provide as to
total delay.

LXVI. And be it enacted, That the Circuit Court may, if the Judge holding the same shall think proper, order the sum for which judgment may have been given to be levied by instalments; Provided the delay allowed for the payment of the last instalment shall not exceed the space of three months from the day of the judgment; and provided also, that in default of payment of any one such instalment at the time it shall become due, execution may issue in satisfaction of the judgment, as if such delay had not been granted.

What shall be
a sufficient
certificate of
costs in the
Circuit Court.

LXVII. And be it enacted, That the certificate of the Clerk of the Circuit Court, that the costs in any suit or action or proceeding in such Court, amount to a sum named in such certificate (the sum allowed to witnesses having been previously approved by a Judge or Circuit Judge, as the case may be) shall be sufficient proof of the amount of such costs, provided a detailed bill or account of the same, signed by the said Clerk, be annexed to such certificate, and execution may issue accordingly for such costs, without any other or further taxation thereof; nor shall it be necessary that any Writ of Execution issuing out of the Circuit Court be signed or endorsed by any Judge; any law, usage or custom to the contrary notwithstanding.

Fees to be as
per Tariff.

LXVIII. And be it enacted, That in all suits, actions and proceedings in the Circuit Court, the fees to be specified in the Tariff then in force under this Act for the Circuit Court, shall be deemed and taken to be the lawful fees for the discharge of the several duties therein mentioned; and no other fees or emoluments shall be received or taken upon any pretence whatever for any act done or service performed under the authority of this Act; and if any Officer or person shall receive any other or greater fee or emolument than shall be specified in the said Tariff, for any of the duties aforesaid, he shall forfeit the

No others to
be taken.

Penalty for
taking other
or greater fees.

sum of twenty pounds currency for each such offence, which penalty shall and may be recovered by civil action in the Circuit Court; and one half of such penalty shall belong to Her Majesty, Her Heirs and Successors, and the other half to the person who shall sue for the same.

Application of
penalty.

LXIX. And be it enacted, That each of the Clerks of the Circuit Court shall cause to be continually and openly posted as well in his Office as in some conspicuous place in the Hall or apartment in which the Circuit Court shall be held, a fair and legible copy of the Tariff of Fees to be made by the Superior Court, and a notice of the penalty to which any person will become liable for receiving any other or greater fee than is set forth in the said Tariff, and in default of so doing, such Clerk shall be deemed guilty of a misdemeanor, and shall be liable to be punished accordingly.

Tariff to be
posted openly.

Penalty for
neglect.

LXX. And be it enacted, That in every case where judgment shall be rendered in the Circuit Court, awarding or adjudging the payment of any sum of money, it shall and may be lawful for the Clerk of the Court, at the expiration of fifteen days after the rendering of the judgment, to issue under the Seal of the Court, a Writ of *Fieri Facias* against goods and chattels; which Writ shall be signed by him, and made returnable to the Court, and shall be directed to any of the Bailiffs of the Superior Court appointed for the District in which the judgment shall have been rendered, who is hereby authorized to levy the sum of money mentioned in such Writ, and the costs of execution, upon and from the goods and chattels of the party against whom such judgment shall have been rendered, which shall be found within the District, in the same manner, and according to the same rules and regulations of law, by and under which any Sheriff may levy money by virtue of a

Execution of
judgments of
the Circuit
Court.

To whom the
Writ shall be
addressed, &c.

No percentage to Bailiff.	Writ of <i>Fieri Facias</i> issuing out of any of Her Majesty's Courts of Civil Jurisdiction in Lower-Canada; but the said Bailiff shall not be entitled, out of the monies so levied by him, to the Commission of two and a half per cent. in such case by law allowed to Sheriffs, or to any Commission whatever;
Return of Writ.	and the said Writ, on or before the day fixed for the return thereof, shall be by the said Bailiff returned into the Circuit Court at the place where it shall have issued, with his proceedings thereon; Provided always, that for the satisfaction of any such judgment, execution shall (except in hypothecary actions) go only against the moveable property of the party condemned, in cases where the sum of money awarded by the judgment shall not exceed Ten pounds currency; and that in cases where the said sum of money so awarded shall exceed Ten pounds currency, execution shall go not only against the moveable, but also against the immoveable property of the party condemned, as it shall also in all hypothecary actions
Proviso as to cases under £10.	against the immoveable property declared by the judgment to be hypothecated for the payment of the sum for which such judgment shall have been rendered, whatever be the amount demanded or recovered in the suit; and when execution upon any such judgment shall be sued out against the immoveable property, a Writ of <i>Fieri Facias de Terris</i> shall be issued from the Circuit Court at the place where the judgment shall have been rendered, under the Seal of the said Court, and signed by the Clerk thereof, and such Writ shall be made returnable to the Superior Court in the District in which the judgment shall have been rendered, and shall be directed to the Sheriff of the said District, who is hereby authorized to levy the sum of money mentioned in such Writ, and the costs of execution, upon and from the immoveable property of the party against whom such judgment shall have been rendered, or upon and from the immoveable
Above £10.	
Hypothecary actions.	
Execution against immoveables.	
When returnable.	
To whom addressed.	

property declared by the judgment to be so hypothecated as aforesaid (as the case may be) in the manner and according to the rules and regulations of law, by and under which any Sheriff may levy money by virtue of a Writ of *Fieri Facias de Terris* issuing out of any of Her Majesty's Courts of Civil Jurisdiction in Lower-Canada; and the said Writ, on or before the day fixed for the return thereof, shall be by the said Sheriff returned into the Superior Court, with his proceedings thereupon, in the same manner as if such Writ had issued from the said Court; and all ulterior proceedings of what kind soever, consequent upon the issuing of such Writ, or necessary for the execution thereof, as well with regard to the Plaintiff and Defendant as with regard to other parties, who, according to law, may have intervened in the cause by opposition or otherwise, shall be had in the Superior Court, as effectually and in the same manner as if the cause in which such Writ shall have issued had been originally brought and determined in the said Court.

Return.

Ulterior proceedings, oppositions, &c.

LXXI. And be it enacted, That when the party against whom judgment shall have been rendered in the Circuit Court, shall not have, within the District in which such judgment shall have been rendered, sufficient goods, chattels, lands or tenements to satisfy the said judgment in capital, interest, and costs, but shall have goods, chattels, lands or tenements within any other District in Lower-Canada, an *alias* Writ *de bonis* or *de terris*, as the case may be, shall issue from the Court at the place where the judgment shall have been rendered, under the Seal of the said Court, and signed by the Clerk thereof; which *alias* Writ shall be made returnable to the Court out of which it shall issue, if it be a Writ *de bonis*, and to the Superior Court in the District in which the judgment shall have been rendered, if it be a Writ

When the property of the executee is in another District.

Writ where returnable.

de terris, and shall be directed to the Sheriff of such other District; and such *alias* Writ shall be executed in the latter District by the Sheriff thereof, as if it were a Writ of Execution issued from the Superior Court, and in the same manner and according to the same rules and regulations of law; and the said Writ shall be, by the said last mentioned Sheriff, with his proceedings thereon, duly returned into the Court from which it shall have been issued, if it be a Writ *de bonis*, or into the Superior Court in the District in which the said judgment shall have been rendered, if it be a Writ *de terris*; and in the latter case, all ulterior proceedings of what kind soever consequent upon the issuing of such Writ *de terris*, or necessary for the execution thereof, as well with regard to the plaintiff and defendant, as with regard to other parties who, in due course of law, may have intervened in the cause by opposition or otherwise, shall be had in the Court last above mentioned, as effectually and in the same manner as if the cause in which such Writ shall have issued had been originally brought and determined in such last mentioned Court: Provided always, that in all cases where execution may issue in any hypothecary action against any immoveable property declared by the judgment to be hypothecated for the payment of the money to be levied under such execution, and *délaissé* under such judgment, and situate in a District other than that in which the Writ shall issue, such Writ shall be issued, executed and returned, and the subsequent proceedings relative to the same shall be had as herein provided with regard to *alias* Writs *de terris*, without its being necessary that any other Writ should previously issue.

S. Court may call up the record in cases where lands are seized.

LXXII. And be it enacted, That when any such Writ *de terris*, issuing from the Circuit Court, shall have been, in the manner hereinbefore provided, re-

turned into the Superior Court, it shall be lawful for the said last named Court, in its discretion, to direct the record of the cause in which such Writ of Execution shall have issued, to be removed into the Superior Court, and such removal shall be made on an order made by the said Court, and addressed to the Clerk of the Circuit Court at the place from which the record is to be removed, in the same manner and according to the same regulations as are hereinbefore provided for the removal of records in other cases into the Superior Court.

LXXIII. And be it enacted, That if any opposition be made to the execution of any Writ *de bonis* issued from the Circuit Court, such opposition shall be made returnable to the Circuit Court at the place where the cause shall be pending, or at the place in the same District (or in the District of Gaspé, in the same County) where the Circuit Judge or Circuit Judges shall reside, if the Term at such last named place be nearer to the day on which the opposition shall have been allowed, there to be heard and determined; and when such opposition shall have been made returnable at such last mentioned place, the Court shall have power, if it deem it necessary, to order the removal of the record in the original suit or action from the place where the judgment was rendered to the place where the Circuit Judge or Judges shall reside, and such removal shall be made in the manner hereinbefore provided for the removal of records in similar cases; and the Bailiff charged with the execution of the Writ shall, immediately after he shall have been served with a true copy of the said opposition, return the same, and the Writ with his proceedings thereon, to the Court to which the opposition shall have been so made returnable; and when final judgment shall have been given on any such opposition, the Writ of Execution and all

Oppositions to Writs *de bonis* where returnable.

Removal of record in certain cases.

Duty of Bailiff receiving opposition.

Proceedings on final judgment.

Proviso as to
fiat to stay
proceedings on
oppositions.

proceedings thereon, with a true copy of the said judgment, (and the record in the original suit or action, if it shall have been removed) shall be remitted to the Circuit Court at the place where the judgment was rendered, where further proceedings shall thereupon be had, as to law may appertain: Provided always, that the *fiat* or order to stay proceedings upon such Writ *de bonis*, in consequence of any such opposition, and to make such opposition returnable as aforesaid, may be made by any Circuit Judge, although he be not then within the limits of the Circuit, or by the Clerk of the Circuit Court, and to that effect such Circuit Judge or Clerk is hereby authorized to administer all oaths in such cases required by law.

Certain powers vested in Circuit Judges as to matters requiring dispatch.

LXXIV. And be it enacted, That the Circuit Court, and any Judge who might hold the same at any place, shall as well in Court as out of Court, in term or out of term or in vacation, have and may exercise within the said Circuits respectively, and concurrently with the Judges of the Superior Court, the same power and authority as are vested in the Superior Court and the Judges thereof, in what respect the Probate of Wills, the election and appointment of Tutors and Curators, and the taking of the counsel and opinion of relations and friends in cases where the same are by law required to be taken, the closing of inventories, attestation of accounts, *insinuations*, affixing and taking off seals of safe custody, and other acts of the same nature requiring dispatch; and the proceedings in all such cases shall form part of the records of the Circuit Court in the Circuit in which they shall be had: Provided always, that the appointments and orders made by any Judge under the authority of this section shall be liable to be set aside by the Superior Court in the District, in the manner and under the provisions of law, in and under

Proviso: how orders made in such matters may be set aside.

which appointments and orders of like nature made by a single Judge might be set aside immediately before the time when this Act shall come fully into effect.

LXXV. And be it enacted, That Clerks of the Circuit Court shall be appointed for the Montreal Circuit, the Quebec Circuit, the Three-Rivers Circuit, and the Sherbrooke Circuit, respectively; and from time to time, and as vacancies shall occur in the several Circuits in Lower-Canada, by death, resignation, removal from office or otherwise, Clerks of the Circuit Court shall be appointed in and for such Circuits, respectively; and every Clerk of the Circuit Court shall have power, by an instrument under his hand and seal, to appoint a Deputy, who shall act as such only in the case of the absence or sickness of such Clerk, and such instrument shall be entered at full length in the Register of the Court: Provided always, that the Clerk may at all times remove such Deputy and appoint another in his place.

Clerks of the Circuit Court to be appointed, &c.

May have Deputies.

Proviso.

LXXVI. And be it enacted, That it shall be lawful for any person under the age of twenty-one years and above the age of fourteen years, to prosecute any suit in the proper Circuit Court, for any sum of money not exceeding six pounds five shillings, currency, which may be due to him for wages, in the same manner as if he were of full age; any law to the contrary notwithstanding.

Minors may sue for wages in C. Court.

LXXVII. And be it enacted, That the said Circuit Court shall be holden in every year at the times and places hereinafter appointed; and the local extent and limits of the jurisdiction of the said Circuit Court, sitting at such places respectively, shall, so far as regards the commencement of any suit, action or proceeding, be as follows, that is to say:

Places of holding Circuit Courts, and extent of Circuits.

IN THE SAID DISTRICT OF QUEBEC:

Quebec Circuit.

In the City of Quebec, in and for the Circuit to be called the Quebec Circuit, on the last six juridical days of each month in the year, except August, and the said Circuit shall include and consist of all that part of the said District of Quebec which shall not be included within any of the other Circuits hereinafter described;

Rimouski Circuit.

In the Parish of St. Germain, in and for the Circuit called and to be called the Rimouski Circuit, from the nineteenth to the twenty-eighth day, inclusively, of each of the months of January, May and September, which said Circuit doth and shall include and consist of the County of Rimouski, except the Parishes of Rivière-du-Loup and Cacona;

Kamouraska Circuit.

In the Parish of St. Louis de Kamouraska, in and for the Circuit called and to be called the Kamouraska Circuit, from the first to the tenth day, inclusively, of each of the months of February, June and October, which said Circuit doth and shall include and consist of the County of Kamouraska, and the Parishes of Rivière-du-Loup and Cacona;

St. Thomas Circuit.

In the Parish of St. Thomas, in and for the Circuit called and to be called the St. Thomas Circuit, from the thirteenth to the twenty-second day, inclusively, of each of the months of February, June and October, which said Circuit doth and shall include and consist of the County of L'Islet, including so much of the Parish of St. Pierre, Rivière du Sud, as may be within the County of Bellechasse and the Parishes of Berthier, St. Vallier, St. Michel and St. François, Rivière du Sud, in the County of Bellechasse;

BeauceCircuit.

In the Parish of Ste. Marie, Nouvelle Beauce, in and for the Circuit called and to be called the

Beauce Circuit, from the first to the tenth day, inclusively, of each of the months of March, July and November, which said Circuit doth and shall include and consist of the County of Dorchester, (except the Seigniorship of Lauzon);

In the Township of Leeds, in and for the Circuit Leeds Circuit. called and to be called the Leeds Circuit, from the sixteenth to the twenty-fifth day of February, inclusively, from the nineteenth to the twenty-eighth of June, inclusively, and from the twentieth to the twenty-ninth of October, inclusively; which said Circuit doth and shall include and consist of the County of Megantic, and the Parishes of St. Sylvester and St. Giles, in the County of Lotbinière;

In the Parish of Lotbinière in and for the Circuit Lotbinière Circuit. called and to be called the Lotbinière Circuit, from the thirteenth to the twenty-second day, inclusively, of each of the months of March, July and November; which said Circuit shall include and consist of the County of Lotbinière, except the Parishes of St. Sylvester and St. Giles;

In the Parish of Cap Santé, in and for the Circuit Portneuf Circuit. called and to be called the Portneuf Circuit, from the seventh to the sixteenth day, inclusively, of each of the months of January, May and September; which said Circuit shall include and consist of the County of Portneuf;

In the Parish of Les Eboulements, in and for the Circuit Saguenay Circuit. called and to be called the Saguenay Circuit, from the first to the tenth day, inclusively, of each of the months of March, July and October; which said Circuit shall include and consist of that part of the County of Saguenay, which is bounded as follows, that is to say: on the west by the County of Montmorency, on the north by the parallel of the forty-eighth degree of north latitude, from the County of

Montmorency, until it meets the prolongation of the eastern line of the Township of St. Jean on the River Saguenay, and thence by the said prolongation and the said line, as far as the River Saguenay, and thence on the west by a line to be drawn astronomically north to the limits of the Province ; on the north and on the east by the limits of the Province, and on the south-east by the River St. Lawrence, upwards from the limits of the Province to the County of Montmorency ;

Chicoutimi
Circuit.

At the Village of Chicoutimi, in and for the Circuit to be called the Chicoutimi Circuit, on the last six juridical days of each of the months of January, February, May, June, September and November in each year ; which said Circuit, shall include and consist of that part of the County of Saguenay, not hereinbefore included in the Saguenay Circuit, and those parts of the Counties of Quebec and Montmorency, respectively, which lie north of the parallel of the forty-eighth degree of north latitude.

IN THE SAID DISTRICT OF MONTREAL :

Montreal Cir-
cuit.

In the City of Montreal, in and for the Circuit to be called the Montreal Circuit, on the last six juridical days of each month in the year except August, and the said Circuit shall include and consist of all that part of the said District of Montreal which shall not be within any of the other Circuits hereinafter described ;

Berthier Cir-
cuit.

In the Parish of Berthier, in and for the Circuit called and to be called the Berthier Circuit, from the twenty-first to the thirtieth day, inclusively, of each of the months of January, May and September ; which said Circuit doth and shall include and consist of the County of Berthier, and all the Islands in the River St. Lawrence which lie within the County of Richelieu, except those on the south side of the main or ship channel ;

In the Parish of St. Pierre de l'Assomption, in and for the Circuit called and to be called the Assumption Circuit, from the first to the tenth day, inclusively, of each of the months of March, July and November; which said Circuit doth and shall include and consist of the County of Leinster, except the Parishes of Lachenaye, St. Henri de Mascouche and St. Lin;

L'Assomption
Circuit.

In the Parish of St. Louis de Terrebonne, in and for the Circuit called and to be called the Terrebonne Circuit, from the twelfth to the twenty-first day, inclusively, of each of the months of March, July and November; which said Circuit doth and shall include and consist of the County of Terrebonne, and the said Parishes of Lachenaye, St. Henri de Mascouche and St. Lin, in the County of Leinster;

Terrebonne
Circuit.

In the Parish of St. Benoit, in and for the Circuit called and to be called the Two Mountains Circuit, from the seventh to the sixteenth day inclusively, of each of the months of January, May and September; which said Circuit doth and shall include and consist of the County of Two Mountains, except Isle Bizarre;

Two Moun-
tains Circuit.

At the Village of Aylmer, in and for the Circuit called and to be called the Ottawa Circuit, from the twentieth to the twenty-ninth day inclusively, of each of the months of January, May and September; which said Circuit doth and shall include and consist of the County of Ottawa;

Ottawa Cir-
cuit.

In the Parish of St. Michel de Vaudreuil, in and for the Circuit called and to be called the Vaudreuil Circuit, from the first to the tenth day inclusively, of each of the months of March, July and November, which said Circuit doth and shall include and consist of the County of Vaudreuil;

Vaudreuil Cir-
cuit.

In the Parish of Ste. Martine, in and for the Circuit called and to be called the Beauharnois Circuit,

Beauharnois
Circuit.

from the twelfth to the twenty-first day, inclusively, of each of the months of March, July and November; which said Circuit doth and shall include and consist of the County of Beauharnois, except the Township of Hemmingford;

St. John Circuit.

In the Parish of St. John the Evangelist, in and for the Circuit called and to be called the St. John's Circuit, from the tenth to the nineteenth day, inclusively, of each of the months of February, June and October; which said Circuit doth and shall include and consist of the Seigniories of Lacolle and De Léry, and the Islands in the River Richelieu, lying wholly or partly opposite the same, and the Township of Sherrington, all in the County of Huntingdon, the Township of Hemmingford, in the County of Beauharnois, the Parishes of St. John the Evangelist and St. Luc, in the County of Chambly, and the Parish of Ste. Marguerite de Blairfindie, lying partly in the County of Chambly and partly in that of Huntingdon, the County of Missisquoi, except the Townships of Dunham and Sutton, and the County of Rouville, except the Parishes of St. Mathias, St. Hilaire and St. Jean Baptiste de Rouville;

But see Cap. 39, correcting this Section.

Missisquoi Circuit.

At Nelsonville, in the Township of Dunham, in and for the Circuit called and to be called the Missisquoi Circuit, from the twenty-first to the thirtieth day inclusively, of each of the months of February, June and October; which said Circuit doth and shall include and consist of the County of Shefford (except the Township of Milton,) of so much of the County of Stanstead as does not lie in the District of St. Francis, and of the Townships of Dunham, Stanbridge and Sutton, in the County of Missisquoi, and the Parishes of St. Armand East and St. Armand West;

See Cap. 39.

St. Hyacinthe Circuit.

At the Village of St. Hyacinthe, in and for the Circuit called and to be called the St. Hyacinthe Circuit,

from the tenth to the nineteenth day, inclusively, of each of the months of February, June and October ; which said Circuit doth and shall include and consist of the County of St Hyacinthe, the Township of Milton, in the County of Shefford, the Parishes of St. Charles and St. Barnabé, in the County of Richelieu, and the Parishes of St. Hilaire and St. Jean Baptiste de Rouville, in the County of Rouville ;

In the Parish of St. Ours, in and for the Circuit Richelieu Circuit. called and to be called the Richelieu Circuit, from the twenty-first to the thirtieth day inclusively, of each of the months of February, June and October ; which said Circuit doth and shall include and consist of the County of Richelieu, (except the Parishes of St. Charles and St. Barnabé, and the Islands of the said County which lie in the River St. Lawrence, on the north-side of the main or ship channel,) and the Parishes of Contrecoeur and St. Antoine, in the County of Verchères.

IN THE SAID DISTRICT OF THREE-RIVERS :

At the Town of Three-Rivers, in and for the Circuit Three-Rivers Circuit. called and to be called the Three-Rivers Circuit, on the last six juridical days of the months of March, May, June, September, November and December in each year ; and the said Circuit shall include and consist of all the said District of Three-Rivers.

IN THE SAID DISTRICT OF ST. FRANCIS :

At the Town of Sherbrooke, in and for the Circuit Sherbrooke Circuit. to be called the Sherbrooke Circuit, on the last six juridical days of the months of February, March, June, September and October, and on the first six juridical days of the month of December in each year ; and the said Circuit shall include and consist of all that part of the said District of St. Francis which shall not be within any of the other Circuits hereinafter described ;

Richmond
Circuit.

At the Village of Richmond, in the Township of Shipton, in and for the Circuit called and to be called the Richmond Circuit, from the tenth to the nineteenth day, inclusively, of each of the months of March and September ; which said Circuit doth and shall include and consist of the Townships of Durham, Kingsey, Tingwick and Chester, in the County of Drummond, and the Townships of Shipton, Melbourne, Brompton and Windsor, in the County of Sherbrooke ;

Stanstead Cir-
cuit.

At Stanstead Plain, in the Township of Stanstead, in and for the Circuit called and to be called the Stanstead Circuit, from the fifteenth to the twenty-fourth day, inclusively, of each of the months of May and November ; which said Circuit doth and shall include and consist of the Townships of Stanstead, Barnston, Barford, and Hatley, and so much of the Township of Bolton as lies within the District of St. Francis.

IN THE SAID DISTRICT OF GASPÉ :

District of
Gaspé.

7 V. c. 17.

Proviso :
Governor in
Council may
alter the time
of holding
Terms of
Superior or
Circuit Court.

At the places and times appointed for holding of the Circuit Courts in the said District, in and by the Act passed in the Seventh year of Her Majesty's Reign, and intituled, *An Act to establish the District of Gaspé, and to provide for the due administration of Justice therein*, or as may be provided for the holding of the Circuit Court therein, by any Act of the present Session amending the said Act : Provided always, that the Governor may by any Proclamation or Proclamations to be issued from time to time by and with the advice of the Executive Council, alter the times or any of the times of holding the Superior Court in any District or Districts, or the times or any of the times of holding the Circuit Court in any Circuit or Circuits (including those in the District of Gaspé) and may declare that such alteration shall

take place from and after a time to be appointed in each case, in any such proclamation, and may in like manner again alter the times of holding such Courts or any of them when and so often as it shall appear to him that the public convenience and the due administration of justice shall require it: and from the time of the issuing of any such Proclamation, the Judges and Clerks of such Courts and all other persons concerned shall govern themselves as if the times thereby appointed for holding the same had been appointed for that purpose by this Act, and shall fix the Return Days of all Writs and Process which ought to be returned in Term accordingly; and any Writ or Process which is only returnable in Term, and which shall before the issuing of any Proclamation or before it shall have been known to the Clerk or Judge of the Court, have been made returnable on some day which in consequence of such Proclamation will not be a day in Term on which the same can be returned, shall be returnable on the Return Day next after that on which it was made returnable: Provided always, that neither the number of times at which the Circuit Court shall be held annually in any Circuit, nor the number of days included in the Terms shall be altered by any Proclamation under this Section: Provided also, that all actions, suits and proceedings commenced before the time when this Act shall come fully into effect in a Circuit Court held at any place at which after the said time the Circuit Court will not be held, shall be transmitted into the Circuit Court, and shall be continued and completed therein, at the place where the said Court shall be held for the Circuit in which the place of sitting of the Circuit Court in which they were commenced shall be included, as if they had been commenced therein; and all papers, writings, documents and proceedings in the Office of the Clerk of the Circuit Court at the place where no sittings of the Circuit Court are

As to Returns
of Process in
certain cases.

Proviso:
Number and
length of
Terms not to
be altered.

Proviso as to
suits com-
menced at
places where
the Circuit
Court will not
be held after
this Act comes
into effect.

Transmission
of records, &c.

to be held under this Act, or in his custody, whether the same relate to any action, suit or proceeding therein then pending or completed before the time when this Act shall come fully into effect, shall forthwith after the said time be transmitted into the Circuit Court, and shall be kept at the Office of the Clerk of the said Court at the place where pending proceedings of the same Court are to be completed as aforesaid, and shall make part of the Records and Muniment of the Circuit Court at such place; and every Writ or Process issued before the time when this Act shall come fully into effect, out of the Circuit Court at any place where no sitting of the said Court will be held after the said time, and made returnable after the said time, shall be returned into the Circuit Court at the place where pending proceedings of the same Court are to be completed as aforesaid, and on the day on which it shall have been made returnable, unless it be in a non-appealable case, and such day shall happen not to be a Return Day at such place in non-appealable cases, and it shall then be returned on the Return Day for such cases which shall be next after the day on which it shall have been made returnable; and in either case it shall have the same and no other effect, as if it had issued from the Circuit Court, and had been made returnable on the day, and at the place on and at which it is to be returned.

As to Returns of Process issued before this Act comes into effect and returnable after that time.

Its effect.

Changes in the limits of any Circuit not to affect pending suits.

LXXVIII. Provided always, and be it enacted, That no change made by this Act in the limits of any Circuit, shall affect any action, suit or proceeding commenced in any Circuit Court before the time when this Act shall come fully into effect, but the same, and all proceedings and matters incident thereto, whether before or after execution, shall be continued and dealt with as if the limits of the Circuit in which such action, suit or proceeding shall have been commenced, had not been changed or affected by this Act.

LXXIX. Provided always, and be it enacted, That for all appealable cases, every day in Term or in vacation not being a Sunday or Holy-day, shall be a Return Day, but the six first juridical days only of each Term shall be Return Days in non-appealable cases; and at the close of the sixth juridical day, or at any time thereafter, the Judge may, if there be no business before the Court, close the sitting thereof until the then next Term, or may, in his discretion, and if it be requisite to the dispatch of the business before the Court, prolong the Term until such business be dispatched, or his duty shall require his attendance at some other place; Provided also, that if by illness, accident or any other cause, the Judge by whom any Circuit Court ought to be holden shall not be present on the first or any other juridical day, being a Return Day in any Term, it shall be lawful for the Clerk of such Court to receive all Returns to be made on such day, in non-appealable cases, and to cause any defendant or party in any such case, summoned to appear on such day, to be called, and to enter his appearance, or record his default, notwithstanding the absence of the Judge.

Return days in appealable and non-appealable cases.

Power of Judge to close or prolong the Term.

Proviso. Clerk may receive returns, &c. in certain cases.

LXXX. And be it enacted, That from and after the day to be appointed for that purpose in any Proclamation to be issued by the Governor appointing such day, and declaring that a proper Gaol hath been erected at Chicoutimi aforesaid in and for the Chicoutimi Circuit, General and Special Sessions of the Peace shall be held therein, the said General Sessions being held at such times as shall be appointed by the Governor in and by the Proclamation aforesaid, in like manner and with like powers and duties as in the several Districts of Lower-Canada respectively; and a Clerk of the Peace and other requisite officers may be appointed accordingly; and the Justices of the Peace for the District of Quebec shall

Sessions of the Peace, &c. to be held in Chicoutimi Circuit when a Gaol is erected.

Clerk of the Peace to be appointed. Who shall

hold the Sessions, &c.

be the Justices by whom such Sessions of the Peace shall be held, but the said Chicoutimi Circuit shall not be detached from the said District, except only with regard to such Sessions and matters cognizable thereat.

No Commissioners' Court to be held in Quebec, Montreal or Three-Rivers.

7 V. c. 19.

But pending suits to be completed in the Circuit Court.

Papers and documents of Commissioners' Courts to be transmitted to Circuit Court.

As to Return of Process issued before this Act shall be in force.

LXXXI. And be it enacted, That from and after the time when this Act shall come fully into effect, no Commissioners' Court shall be held in the City of Quebec or in the City of Montreal or in the town and parish of Three-Rivers under the Act passed in the Seventh year of Her Majesty's Reign, and intituled, *An Act to provide for the Summary Trial of Small Causes in Lower-Canada*, but that all actions, suits, and proceedings theretofore commenced in the Commissioners' Court at either of the said Cities, or town and parish of Three-Rivers, shall be transmitted into the Circuit Court, and be continued and completed therein, at the City or town in which the same were respectively commenced, as if they had been commenced therein, or the said Circuit Court were one and the same Court with the Commissioners' Court at such place; and all papers, writings, documents and proceedings in the office of the Clerk of the Commissioners' Court at either of the said Cities, or town and parish of Three-Rivers, or in his custody, whether the same relate to any action, suit or proceeding therein, then pending or completed before the time when this Act shall come fully into effect, shall forthwith after the said time, be transmitted into the Circuit Court, and shall be kept in the office of the Clerk of the said Court at the same place, and shall make part of the records and muniments of the said Court; and every Summons or Process issued before the time when this Act shall come fully into effect, out of the Commissioners' Court at either of the said Cities or town and parish of Three-Rivers respectively, and made returnable after the said time,

shall be returned into the Circuit Court at the same place and on the day on which it shall have been made returnable, unless such day should happen not to be a return day at such place in non-appealable cases in the Circuit Court, and it shall then be returned on the return day for such cases, which shall be next after the day on which it shall have been made returnable, and in either case, it shall then have the same effect and no other, as if it had issued from the Circuit Court, and had been made returnable on such day and at such place.

LXXXII. And be it enacted, That whenever the jurisdiction of any Court or the right to appeal from any judgment of any Court, is dependent upon the amount in dispute, such amount shall be understood to be that demanded, and not that recovered, if they be different; but if the amount recovered be such that it might have been recovered in any inferior Court, the Plaintiff shall recover such costs only as he would have recovered if the suit had been brought in such inferior Court, unless the Court in which the suit is brought shall order otherwise.

Amount demanded to govern in certain cases.

Provision as to costs.

LXXXIII. And be it enacted, That any party desiring to confess judgment in any cause, either in the Superior Court, or in the Circuit Court, (except in non-appealable cases in the latter Court,) shall file an appearance therein, and may then file a confession of judgment in writing, signed by him, (or by an Attorney thereunto specially authorized by an authentic *Acte* to be filed with it,) and countersigned by his Attorney *ad litem*; and if the Plaintiff shall accept such confession, he may forthwith inscribe the case for judgment on the same, and the Prothonotary or Clerk shall thereupon draw up a judgment accordingly, which being signed by the Plaintiff or his Attorney *ad litem*, shall be held to be the judgment of the Court, and recorded and executed accordingly;

Mode of confessing judgment in appealable cases in any Court.

Judgment on such confession if accepted.

And in non-appealable cases.

and in non-appealable cases in the Circuit Court, Judgment may be confessed orally in open Court.

Effect of a confession not accepted by the Plaintiff.

LXXXIV. And be it enacted, That any confession of judgment filed or made orally as aforesaid, and not accepted by the Plaintiff, shall, if such Plaintiff shall not, by the judgment in the cause, recover more than he would have obtained judgment for under such confession, have the same effect, with regard to all costs incurred after the filing or making of such confession as if it had been accepted by the Plaintiff at the time of the filing or making thereof, and in any such case the Defendant shall be entitled to recover from the Plaintiff such costs, incurred by him after the filing or making of such confession, as may be awarded to him by the Court in its discretion.

Facts alleged in pleadings and not denied, &c., to be deemed admitted.

As to costs of proving facts neither admitted or denied.

LXXXV. And be it enacted, That in any pleading in any contested civil case, every allegation of fact, the truth of which the opposite party shall not expressly deny or declare to be unknown to him, shall be held to be admitted by him; and the costs of proving any such allegation of fact or any document proved in evidence, shall always be in the discretion of the Court, so that the whole or any part of such costs may be awarded against a party denying or not admitting any fact or document which in the opinion of the Court he must have known to be true or genuine, whatever be the event of the case.

Rules of construction as to pleadings.

LXXXVI. And be it enacted, That to all allegations of fact in any pleading, the ordinary rules of legal construction shall apply, so that it shall be sufficient to support any pleading that the facts alleged in it agree sufficiently with those proved to maintain the conclusions of such pleading or some of them, and that the Court shall be of opinion that the opposite party could not have been misled by such pleading as to the real nature and effect of the facts intended to

be therein alleged and to be proved under such pleading; and the Court may in its discretion, at any time before judgment, and on such conditions as it shall deem just, allow any pleading to be amended, so as to agree with the facts proved, if the Court shall be of opinion that the ends of justice will be promoted by allowing such amendment.

Court may allow amendment.

LXXXVII. And be it declared and enacted, That in civil cases no form of action or of words is or shall be necessary in any declaration, opposition or other pleading or paper, but the parties may and shall respectively state *bona fide*, and to the best of their belief, the real facts on which they intend to rely, and which they allege to be true and offer to prove, in plain and concise language, to the interpretation of which the rules of construction applicable to such language in the ordinary transactions of life do and shall apply, so that no allegation or statement may or shall be held to be insufficiently made, if it would be ordinarily understood to have the meaning intended by the party using it.

No form of action or of words to be requisite.

LXXXVIII. And be it enacted, That no trial by Jury shall be allowed in any civil suit or action, wherein the sum of money or value of the thing demanded or in dispute shall not exceed twenty pounds currency, unless the same shall have been instituted before the time when this Act shall come fully into effect, and one of the parties thereto shall before the said time have declared his choice and option to have a trial by Jury therein.

No trial by Jury in cases under £20.

LXXXIX. And for the avoidance of doubts—Be it declared and enacted, That any party to any suit or action of a commercial nature may be examined on *faits et articles*, in the like manner as parties may be examined in other cases; any law touching the rules of evidence to be observed in such cases, to the contrary notwithstanding.

Faits et articles in commercial cases.

As to Sundays
and Holy-days.

XC. And be it enacted, That if the day on which any thing is by this Act directed to be done, shall be a Sunday or Holy-day, then such thing shall and may be done with like effect on the next following juridical day.

Word "Ster-
ling" how to
apply in judi-
cature Acts.

XCI. And be it enacted, That the word "Sterling," in any Act or Ordinance relative to the administration of justice, and in force in Lower-Canada, shall, with regard to any suit or action commenced after the twentieth day of April, one thousand eight hundred and forty-four, or to be commenced after this Act shall come fully into effect, and with regard to all proceedings therein, be held to have the meaning assigned to the said word by the Act of the Legislature of this Province, passed in the Session held in the fourth and fifth years of Her Majesty's Reign, and intituled, *An Act to regulate the Currency of this Province*, that is to say: each pound sterling, in any sum mentioned in such Act or Ordinance, shall be held to be equal to one pound, four shillings and four pence, currency.

Demande in
intervention
need not be
allowed by a
Judge, &c.,
but must be
filed, &c.

XCII. And be it enacted, That it shall not be necessary that any *demande* in intervention should be allowed by any Court or any Judge, but such *demande* may be at once filed at the Office of the Prothonotary or Clerk of the Court, and the mere filing thereof shall stay proceedings in the case during three days; and if during that time it shall be served on the proper parties, and the return of such service shall be filed at the Office aforesaid, proceedings shall be had as in an action of the same nature; but if such return be not so filed, such *demande* in intervention shall be *ipso facto* null, and any party may demand and obtain from the Prothonotary or Clerk, *acte* of the non-filing of such return, and may file such *acte*, which shall have the same effect as a judgment pro-

Nullity for
non-compli-
ance with this
section.

nouncing such nullity, and the parties may thereupon proceed as if such *demande* in intervention had never been filed.

XCIII. And be it enacted, That if in any case, either in the Superior Court or in the Circuit Court, any Writ shall require to be executed by the Sheriffs of two or more Districts, or by a Bailiff in one District and by a Sheriff or Sheriffs in another or others, then such Writ shall be addressed to such Sheriff or Sheriffs, and to any Bailiff of the Superior Court, as the case may require, and as many originals shall be made as there may be Districts in which it is to be executed; but this shall not affect any provision herein made with regard to *alias* Writs.

Provision for Writs which are to be executed by several Officers.

XCIV. And be it enacted, That in any suit or action brought or to be brought against any person who shall have left his domicile in Lower-Canada, or against any person who shall have had no domicile in Lower-Canada, but shall have personal or real estate within the same, it shall be lawful for the plaintiff, if such person be not personally served with process, to summon and implead such person, by a Writ issued in the usual way out of the Superior Court, or out of the Circuit Court, in the District or Circuit wherein such person may have had his domicile, or where such property may be situate, and that upon the return of the Sheriff or Bailiff to the Writ, that the defendant cannot be found in the said District or Circuit, it shall be lawful for the Court, or for any Judge thereof in vacation, to order that the defendant shall by an advertisement to be twice inserted in the English language in any newspaper published in that language, and twice in the French language in any newspaper published in that language in Lower-Canada, (such newspapers to be designated by the Court or Judge) be notified to appear and answer to such suit or action within two months after the last

As to suits against absentees.

Advertisement to be inserted in newspapers.

insertion of such advertisement ; and that upon the neglect of the defendant to appear and answer to such suit or action within the period aforesaid, it shall be lawful for the plaintiff to proceed to trial and judgment as in a case by default.

Powers under
Lessors and
Lessees' Acts,
and by whom
to be exer-
cised.

Act of L. C. 3
W. 4. c. 1.

Ordinance L.
C. 3 V. (3) c.
47.

Provide.

XCV. And be it enacted, That all the powers vested in any Judge or Judges of the Superior Court by virtue of this Act and of the Act of the Legislature of Lower-Canada passed in the Third year of the Reign of His late Majesty King William the Fourth, and intituled, *An Act to regulate the exercise of certain rights of Lessors and Lessees*, and the Ordinance of the Legislature of Lower-Canada, passed in the second year of Her Majesty's Reign, and intituled, *An Ordinance to amend and continue the Act to regulate certain rights of Lessors and Lessees*, shall be and are hereby vested in, and may be exercised by any one Judge of the Superior Court, or by any Circuit Judge, in Term or in Vacation, and an appeal shall lie from the judgment of any such Judge or Circuit Judge to the Court of Queen's Bench established by an Act of this Session, in the cases in which an appeal to the Provincial Court of Appeals is given in the said last mentioned Act : but nothing in this section shall be construed to prevent the Superior Court, or any two or more Judges thereof, sitting together, from exercising any of the said powers, if they shall in any case deem it expedient so to do.

How the privi-
lege of the
Lessor on
goods taken in
execution shall
be exercised.

XCVI. And be it declared and enacted, That in all cases of the taking of goods and chattels in execution by virtue of a Writ issuing out of any Court in Lower-Canada, wherein a Lessor may claim a privilege or lien for rent, it is not and shall not be lawful for such Lessor to prevent the sale of such goods and chattels by opposition, but it is and shall be lawful for him to deliver to or lodge with the Sheriff or the Bailiff who shall have seized such goods and

chattels, his opposition *afin de conserver*, either before or after the sale, and if the same be so delivered or lodged before the sale, the Sheriff or Bailiff shall nevertheless proceed to the sale of the goods and chattels by him seized, and make his return thereof; and upon such return the Lessor shall have his privilege or lien upon the proceeds of the sale of such goods and chattels, and be collocated accordingly; any law, usage or custom to the contrary notwithstanding: Provided always, that when any such opposition or any other opposition *afin de conserver* upon monies levied by virtue of a Writ *de bonis* directed to a Bailiff, shall be delivered to and lodged with the Bailiff before he shall have paid the proceeds of the sale to the party suing out such Writ, it shall be the duty of the Bailiff forthwith to make his return of the said Writ according to law, and to pay over into the hands of the Clerk of the Court in which the case shall be pending the proceeds of the sale to abide the judgment of the Court.

Proviso: duty of the Bailiff receiving any opposition.

XCVII. And be it enacted, That no recognizance to the Crown shall be estreated in the manner heretofore used, but the sum forfeited by the non-performance of the conditions of such recognizance, shall be recoverable with costs by action in any Court having jurisdiction in civil cases to the amount, at the suit of the Attorney-General or Solicitor-General, or other Officer or party authorized to sue for the Crown; and in any such action it shall be held that the party suing for the Crown is duly empowered so to do, and that the conditions of the recognizance were not performed, and that the sum therein mentioned is therefore due to the Crown, unless the Defendant shall prove the contrary.

Recognizances how to be enforced for the future.

XCVIII. And be it enacted, That all and every the powers and authorities which immediately before the time when this Act shall come fully into effect, shall

Habeas Corpus powers vested in the S. Courts, and

C. Court, and
in the Judges
thereof.

Penalty for
denying the
Writ in vaca-
tion.

Provision as to
service of no-
tices, &c.,
when any
thing is or-
dered to be
done in a
place other
than that
where the suit
is pending.

be by law vested in the several Courts of Queen's Bench in the several Districts of Lower-Canada, and in the Chief Justices and the Justices thereof respectively, relating in any manner or way to the Writ of Habeas Corpus, as well in criminal as in civil cases, and to the awarding or issuing or return thereof, and to the hearing and determining in due course of law, of any question, issue or matter thence arising or incident thereto, shall be and the same are hereby vested as well in the Circuit Court, as in the Superior Court, (concurrently with the other Courts and Judges in whom like powers may by any Act of this Session be vested) and in each and every of the Judges of the said Superior Court and Circuit Court respectively, as well in term as in vacation; which said Judges shall respectively be subject and liable to the same penalty for denying in vacation time, any Writ or Writs of Habeas Corpus, as is by law provided for the denial of a Writ of Habeas Corpus in vacation time by any Judge or Justice, and the said penalty shall be recovered from the Judges of the Superior Court, and Circuit Court respectively, in the like cases and circumstances, and in the same manner as is by law provided with respect to any Judge or Justice.

XCIX. And be it enacted, That whenever under this Act any thing shall have been ordered by the Superior Court, or by the Circuit Court, to be done in any case or matter therein pending, by or before the Superior Court or the Circuit Court, or some Judge or officer thereof, in some District or Circuit other than that in which such case or matter is pending, then after the order shall have been four clear days in the hands of the Prothonotary or Clerk of the Court at the place where such thing is to be done, all parties may proceed as if the case or matter were pending there; and if any notice or paper require to

be served on any party in relation to the thing so required to be done, it shall be held validly served if left for him at the office of such Prothonotary or Clerk, unless he shall previously have filed at the Office of that Officer, an Election of Domicile, where such service may be made, within one mile of the said Office, or unless personal service be required by law.

C. And for the purpose of ensuring uniformity in the practice and proceedings of the Superior Court, and Circuit Court in the several Districts and Circuits in Lower-Canada: Be it enacted, That the Superior Court, or any six or more of the Judges thereof, shall and may (and it shall be their duty so to do within one year from the time when this Act shall come fully into effect,) agree upon, make and establish Tariffs of Fees for the Officers of the said Courts respectively, and the Counsel, Advocates and Attornies practising therein, and also such Rules of Practice as shall be requisite for regulating the due conduct of the causes, matters and business before the said Courts, respectively, or the Judges thereof, or any of them, and in Term or out of Term, and all process and proceedings therein or thereunto relating: and such Tariffs of Fees and Rules of Practice respectively, being signed by any six of the said Judges, shall, without further formality, and immediately upon the receipt thereof, or of a copy certified by the Prothonotary of the Superior Court having the custody of the original, be entered by the Prothonotaries and Clerks of the Superior Court, or of the Circuit Court, in the Registers of the said Courts respectively, and shall then have full force and effect in each District or Circuit in which they shall have been so registered, until they shall have been repealed or amended, as hereinafter mentioned, and such repeal or amendment shall have been registered as aforesaid; and the Judges of the Superior Court, or any six or

S. Court or any six Judges, to make Tariffs and Rules of Practice for the said Court and for the C. Court.

How such Tariffs and Rules shall be authenticated, &c.

They may be amended,

more of them, shall have full power and authority from time to time to repeal or amend the said Tariffs and Rules of Practice, or any part thereof; and such repeal or amendment being signed by any six or more of the said Judges shall be registered as aforesaid by the proper Prothonotaries or Clerks, and shall have effect accordingly: Provided always, that no such Rule of Practice shall be contrary to or inconsistent with this Act, or any other Act or law in force in Lower-Canada, otherwise the same shall be void; and provided also, that until such Tariffs of Fees and Rules of Practice, respectively, shall be made and established as aforesaid, the Tariff of Fees and Rules of Practice in force in each District or Circuit immediately before the time when this Act shall come fully into effect, with regard to the Court of Queen's Bench, or Circuit Court therein, shall continue to be in force, and shall apply to the Superior Court, or Circuit Court and the proceedings therein, as far as regards such District or Circuit; except that in all cases in the Circuit Court in which the sum or value of the thing in dispute shall exceed twenty pounds currency, the Tariff of Fees in force at the time aforesaid with regard to the same class of cases, in the Court of Queen's Bench in any District, shall be the Tariff for the Circuit Court in the same District until a Tariff shall be made for such cases under this Section.

Proviso: such Rules not to be inconsistent with any law.

Proviso: what Tariffs and Rules shall be in force until new ones be made.

Exception; As to cases over £20, in C. Court.

Attornies practising in any Circuit to elect a domicile there.

CI. And be it enacted, That each Attorney practising in the Circuit Court in any Circuit, shall file in the Office of the Clerk of the Court for such Circuit, his election of a domicile within one mile of the place where the Court shall be held in such Circuit, or in default of his so doing, any notice, pleading or other paper in any case before the Court in such Circuit, shall be well served upon him if left for him at the Office of the Clerk of the Court for such Circuit.

CII. And be it enacted, That no Commissioners for receiving affidavits shall be appointed by the Circuit Court, but the Commissioners for receiving affidavits in the Superior Court, shall, in the Districts for which they shall have been respectively appointed, be Commissioners for receiving affidavits to be used in the Circuit Court, without any other appointment.

Who shall be Commissioners for receiving affidavits in C. Court.

CIII. And be it enacted, That no Prothonotary or Clerk of any Circuit Court, shall during his continuance in office, nor shall his Deputy while performing the Duties of the Office, practise as an Advocate, Counsel or Attorney-at-law in Lower-Canada.

Prothonotaries and Clerks not to practise as attorneys, &c.

CIV. And be it enacted, That the bonds given before this Act shall come fully into effect by the several Prothonotaries of the Court of Queen's Bench in Lower-Canada and the Clerks of the Circuit Courts therein, and their sureties for the due performance of the official duties of such Prothonotaries and Clerks respectively, shall notwithstanding this Act, and the change of their names of Office, and those of the Courts of which they are Officers, remain in full force and avail to all parties as if they had been given after this Act had come fully into effect, and for the due performance of the duties of the Office which such Prothonotary or Clerk shall hold by virtue of this Act, and for duly accounting for and paying all monies which shall have come into their hands respectively by virtue of such Offices respectively, as if such bonds respectively had been given under this Act and conditioned accordingly; and each Prothonotary of the Superior Court, and each Clerk of the Circuit Court to be appointed after this Act shall come fully into effect, shall within three months after his appointment, give security for the due performance of the duties of his Office and for duly accounting for and paying all monies which shall come into his hands by virtue of his Office, by a bond

Bonds given by them to continue in force.

Prothonotaries and Clerks hereafter appointed to give security.

Amount of such security. to be given by him jointly and severally with good and sufficient sureties, which bond shall stand and be as and for a security to the amount thereof, for the damages which may be sustained by any party, by reason of the negligence or misconduct of such Prothonotary or Clerk ; and the amount for which such bond shall be given shall be as follows, that is to say : by the Prothonotary of the Superior Court, in the District of Montreal or of Quebec, and his sureties, in the sum of two thousand pounds currency : by the Prothonotary of the Superior Court, in the District of Three-Rivers or of St. Francis, Kamouraska or Ottawa, and his sureties, in the sum of one thousand pounds currency ; by the joint Prothonotary of the Superior Court, in the District of Gaspé, and their sureties, in the sum of five hundred pounds currency ; and by each Clerk of the Circuit Court, and his sureties, in the sum of two hundred and fifty pounds currency.

Present Bailiffs continued in office.

Their security to remain in force.

CV. And be it enacted, That the persons who immediately before the time when this Act shall come fully into effect, shall be Bailiffs of the Court of Queen's Bench for any District in Lower-Canada, shall without any new appointment become and be Bailiffs of the Superior Court, for the same District, and all bonds and securities which such persons may have respectively given for the due performance of the duties of their office as Bailiffs of the Court of Queen's Bench for such District, shall remain in full force notwithstanding this Act, and shall be held to be conditioned for the due performance of the duty of such persons respectively as Bailiffs of the Superior Court, and shall accordingly enure to the benefit of all parties damnified by the non-performance, mal-performance, or neglect of such duty, as if such bonds and security had been given after the coming of this Act fully into effect, and in the manner and form

hereby required ; but nothing herein contained shall prevent any such person from being removed from the office of Bailiff, as if he had been appointed under this Act ; and such bond shall likewise, notwithstanding this Act, remain in full force with regard to all damages sustained by any person by reason of any thing done or neglected by such Bailiff before this Act shall come fully into effect, and such damages shall be recoverable accordingly.

They may be removed.

Bonds to avail as to past acts.

CVI. And be it enacted, That upon and after the establishment of the District of Kamouraska or of Ottawa, as the case may be, by proclamation as aforesaid, the Bailiffs of the Superior Court appointed for the District of Montreal, and resident within the then new District of Ottawa shall, without any new appointment or order, be Bailiffs of the Superior Court for the said New District of Ottawa, but not for the rest of the District of Montreal, and the Bailiffs of the Superior Court appointed for the District of Quebec, and resident within the then New District of Kamouraska shall be Bailiffs of the Superior Court for the said New District of Kamouraska, but not for the rest of the District of Quebec, until in either case, they shall have been removed from office.

Who shall be Bailiffs in the new Districts when established.

CVII. And be it enacted, That the Bailiffs of the Superior Court shall have power to act as such within the limits of the District for which they shall have been appointed for the service and execution of all Writs, Orders and Process issuing as well from the Superior Court as from the Circuit Court, and from all other Courts in Lower-Canada, which may lawfully be directed to a Bailiff ; and such Bailiffs shall be removeable by the Judges of the Superior Court at any term or sitting thereof, or by any Judge of the said Court, or by any Circuit Judge when holding the Circuit Court.

Bailiffs to act only in their own District.

How removeable.

Bailiffs here-
after appointed
shall give secu-
rity.

Copies of
Bonds.

Duty of Pro-
thonotary as to
such security.

Effect of
Bonds.

Bailiffs of S.
Court to be
Officers of the
Circuit Court.

CVIII. And be it enacted, That every person who shall after this Act shall come fully into effect, be appointed a Bailiff of the Superior Court, shall, before acting as such, enter into a Bond with two good and sufficient sureties who shall justify their sufficiency to the satisfaction of the person before whom the Bond shall be given, unto Her Majesty, Her Heirs and Successors, in the penalty of one hundred pounds currency, conditioned for the due performance of the duties of the said office, and such Bond shall be taken before the Prothonotary of the Superior Court, for the District in which the Bailiff shall have been so appointed, and shall remain of record in the office of the said Prothonotary; and every copy of such Bond delivered by such Prothonotary under his hand, and the seal of the Court, shall be deemed and considered an authentic copy to all intents and purposes; and it shall be incumbent on the said Prothonotary and his Successors in office to inquire and ascertain when such sureties may die, or become insolvent, or resident out of Lower-Canada, (in any of which cases it shall be the express duty of the Bailiff to give notice of the fact to the Prothonotary for the District,) and in such case or cases to require the Bailiff to give other and further security as aforesaid: and every Bond so given shall stand and be as and for a security to the amount thereof, for the damages which may be sustained by any person or party by reason of the culpable negligence or misconduct of the Bailiff.

CIX. And be it enacted, That the Bailiffs of the Superior Court appointed for any District, shall be Bailiffs and Officers of the Circuit Court for the same District, without any other appointment, and shall be amenable to the Circuit Court as such Officers, and the security given by them shall extend and be applicable to all their acts or omissions as Bailiffs of the Circuit Court, as fully as to their acts or omissions

as Bailiffs of the Superior Court; and the Sheriff of each District shall also be the Officer of the Circuit Court, and shall, within his District, obey the orders of the said Court in all matters pending before it, and the Clerk of the Circuit Court at any place shall be the Officer of the said Court, and shall within his Circuit obey the orders of the said Court, in what place soever such orders may be made and directed to such Sheriff or Clerk, and they shall be respectively amenable to the said Court accordingly.

And Sheriffs also.

CX. And be it enacted, That no Bailiff who shall have made the service of the Writ of Summons in any suit or action, shall be competent to be examined as a witness in support of the Plaintiff's demand in such suit or action, save and except as to what may relate to the service of such Writ of Summons.

Bailiffs not to be witnesses in certain cases.

CXI. And be it enacted, That if any Bailiff, or any officer of any Court acting under colour or pretence of the Process of such Court, shall be guilty of extortion or misconduct, or shall not duly pay or account for any money levied or received by him under the authority of this Act or of the Act hereinbefore repealed, it shall be lawful for the Superior Court or for any Judge or Circuit Judge holding the Circuit Court, if the party aggrieved shall think fit to complain to him, to inquire into such matter in a summary way, and for that purpose to summon and enforce the attendance of all necessary parties, and to make such order thereupon for the repayment of any sum of money extorted, or for the due payment of any money so levied or received as aforesaid, and for the payment of such costs to the party aggrieved as such Court, Judge or Circuit Judge shall think just; and in default of immediate payment of any sum of money so ordered to be paid by such Bailiff or by such officer, to commit the offender to the Common Gaol of the District, there to be detained until such payment be made in

Punishment of Officers guilty of extortion or misconduct.

Court may enquire summarily into the facts, &c.

Imprisonment for non-compliance with the sentence.

full, and the provisions of this section shall apply as well to any act of misconduct or neglect committed by any Bailiff before this Act shall come fully into effect, as after that time.

Salary of Circuit Judges.

CXII. And be it enacted, That the salary of each of the said Circuit Judges shall not exceed Five hundred and Fifty pounds per annum, and such salary shall be in lieu of all fees, emoluments, or allowances whatever, whether for travelling expenses or otherwise.

Interpretation Act to apply, &c.

No case to be deemed omitted in this Act.

But to be met by Rules of practice.

CXII. And be it enacted, That the Interpretation Act shall apply to this Act; and that all the provisions thereof shall be liberally construed so as best to promote the attainment of justice in every case, and no construction shall be deemed right which shall leave any provision thereof without effect; and if there be any case in which, before this Act shall come fully into effect, a party would have had the means of enforcing or defending some just claim or right in some Court then existing, and no provision shall be found in this Act under which such claim or right can be enforced or maintained, such provision shall be made by the Rules of Practice to be made under this Act, and until it be so made no proceeding for enforcing or maintaining such claim or right which shall not be inconsistent with this Act, or some other Act of this Session or with the law, shall be held to be illegal or void.

Provisions of Ordinance 4. V. c. 20, to apply to Districts and Circuits under this Act.

CXIV. And be it enacted, That all the provisions and enactments of a certain Ordinance of the Legislature of Lower-Canada, passed in the fourth year of Her Majesty's Reign, and intituled, *An Ordinance to provide for the erection and establishment of Court Houses and Gaols in certain Judicial Districts in this Province*, shall, in so far as the same may not be inconsistent with or repugnant to the provisions of

this Act, be applied to the Districts and Circuits established or confirmed by this Act, in the place and stead of the Judicial Districts in the said Ordinance mentioned.

CXV. And be it enacted, That the foregoing sections of this Act shall come into force and effect upon, from and after the day which shall be appointed for that purpose in any Proclamation to be issued by the Governor of this Province, by and with the advice of the Executive Council thereof, and not before, except in so far as it may be therein otherwise provided; and upon, from and after the said day, any Judge or Officer then appointed under this Act shall and may perform all or any of the duties and functions of his office, although the Court of which he may be a Judge or Officer may not have met or sat, since this Act shall have come fully into force and effect.

SCHEDULE A.

Province of Canada, }
Circuit, } IN THE CIRCUIT COURT.

A. B. of &c. Plaintiff;
and
C. D. of &c. Defendant.

[L. S.] VICTORIA, by the Grace of GOD, of the
United Kingdom of Great Britain and
Ireland, QUEEN, Defender of the Faith :

To C. D., the Defendant above mentioned.

WHEREAS A. B., the Plaintiff aforesaid, demands of you the sum of currency, due by you to him for (*state sufficiently the cause of action*) which said sum you have (as he

saith) refused to pay him. (*If the action be to recover a thing wrongfully detained, &c., vary the statement of the cause of action accordingly. If there be a declaration annexed, refer to it; and omitting the words after "the Plaintiff aforesaid," say, "hath, by his declaration hereunto annexed, made complaint against you in the manner therein set forth."*) And the Plaintiff prays judgment, accordingly.

You are therefore required to satisfy the *demande* of the said Plaintiff in this cause, with costs, or to appear in person or by your Attorney before our said Court, at the Court House, at () in the said Circuit, (at o'clock in the forenoon, *omit these words if the case be appealable*), on the day of instant (or next), to answer the said *demande*; otherwise judgment may be given against you by default.

In witness whereof, we have caused the Seal of our said Court to be hereunto affixed, at this day of in the year of our Lord, one thousand eight hundred and

E. F.

Clerk of the said Court for the said Circuit.

CAP. XXXIX.

An Act to correct an error in an Act of the present Session relative to the Judicature of Lower-Canada.

[30th May, 1849.]

WHEREAS a clerical error exists in the Act Preamble.
of the present Session hereinafter mentioned: For remedy thereof—Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower-Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, that for and notwithstanding any thing in the Act passed in this present Session, and intituled, *An Act to amend the Laws relative to the Courts of Original Civil Jurisdiction in Lower-Canada*, no part of the County of Missisquoi shall be in the St. John's Circuit, but the whole of the said County shall be in the Missisquoi Circuit.

Notwithstanding any thing in c. 38, no part of Missisquoi shall be in the St. John's Circuit.

CAP. XL.

An Act to amend the Law relative to the administration of Justice in Gaspé.

[30th May, 1849.]

WHEREAS by Acts of this Session, the present Courts of Queen's Bench (or King's Bench) and the Court of Appeals for Lower-Canada, Preamble.

Parts of the
Act 7 V. c. 17,
inconsistent
with this Act
or other Acts
of this session,
repealed.

will be abolished after the time when those Acts shall come fully into effect, and a Court of Queen's Bench will be established having jurisdiction in appeal and error in civil cases, and original jurisdiction in Criminal matters, and a Superior Court will be established having original jurisdiction in civil matters, and the several Circuit Courts in Lower-Canada will be united into one Court, the jurisdiction of the said three last mentioned Courts extending throughout all Lower-Canada; and whereas it is necessary so to amend the Act hereinafter mentioned, that its provisions may be consistent with those of the Acts aforesaid: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower-Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That so much of the Act passed in the seventh year of Her Majesty's Reign, and intituled, *An Act to establish the District of Gaspé, and to provide for the due administration of Justice therein*, as requires that the District Judges (who will be, and be called Circuit Judges under the Act hereinafter secondly mentioned,) shall respectively reside at the place directed in the Letters Patent appointing them, or that any case in which a District or Circuit Judge shall be a party or shall be recused shall be heard or determined by or before any other District or Circuit Judge, or that any Writ be tested in the name of any Judge, or that any Bailiff shall be hereafter appointed by the Circuit Court at any place, or as provides what days shall be return days in the Circuit Court at any place, or gives power to the Judge

to close the Court at the end of the third juridical day of any Term, or establishes a Court of Queen's Bench (or King's Bench) in the said District, or directs by what Judges or Justices the same shall be held, or in what manner Writs issuing out of the said Court shall be tested, or fixes the terms of the said Court or the return days for Suits and Process returnable therein, and so much of the said Act as may be inconsistent with this Act, or with the Act of this Session, intituled, *An Act to establish a Court having jurisdiction in Appeals and Criminal matters for Lower-Canada*, or with the Act of this Session, intituled, *An Act to amend the Laws relative to the Courts of Original Civil Jurisdiction in Lower-Canada*, or with any other Act of this Session, shall be, and so much of the said Act first above cited is hereby repealed.

Act of this
Session c. 37.

c. 38.

II. And be it enacted, That the Term of the Superior Court shall be holden in the District of Gaspé, at and during the time mentioned in the Act last aforesaid, by such number of Judges of the Superior Court or of the Circuit Court as shall be requisite to form a *Quorum* of the Superior Court, provided that not more than two of the Judges sitting in the said Court at any one time shall be Circuit Judges; and it shall be the duty of the Circuit Judges resident in the said District to assist in holding the said Term, if not prevented by sickness or other cause beyond their control.

By whom the
Terms of the
Superior
Court in
Gaspé shall
be holden.

III. And be it enacted, That the Superior Court and the Judges thereof shall, in the District of Gaspé, have and exercise not only the jurisdiction, powers and authority of the Superior Court and of the Judges thereof in other Districts, but also, and subject to the like provisions of law in the exercise thereof, the jurisdiction, powers and authority of the Court of Queen's Bench (established by an Act of this Ses-

Superior Court
in Gaspé to
have the pow-
ers of the
same Court in
other Districts
and also the
powers of the
Court of
Queen's
Bench on the
Crown side:

Who shall be
Clerks of the
Court.

Certain pro-
visions for con-
tinuance of
proceedings
and return of
Process in cri-
minal cases to
extend to the
S. Court in
Gaspé.

sion) and of the Judges thereof, in Criminal matters or on the "Crown side," of the said Court; and the joint Prothonotaries of the Superior Court in the said District, shall be the joint Clerks of the Crown for the same, and shall as such be the Clerks as well of the Superior Court in the exercise of its jurisdiction, powers and authority last aforesaid, as of the said Court of Queen's Bench on the Crown side thereof, whenever any Term or Terms of the said last mentioned Court shall be holden in the said District under any Act of the Legislature, or any extraordinary Term of the said Court shall be holden in the said District, under the provisions of the Act secondly above cited; the provisions of which said Act relative to the continuance in the Court of Queen's Bench thereby established of proceedings of a criminal nature pending in any of the present Courts of Queen's Bench, when the said Act shall come into effect, and to the return of Process in such cases, are hereby declared to apply to like proceedings pending in the Court of Queen's Bench in the District of Gaspé, when this Act shall come into effect, and to Process in such cases, except only that such proceedings shall be continued in, and such Process shall be returnable into the Superior Court in the District of Gaspé.

Provisions of
7 V. c. 17, to
apply to the S.
Court and Cir-
cuit Court in
Gaspé, when
not inconsis-
tent with this
Act, &c.

IV. And be it enacted, That in so far as they may not be inconsistent with the provisions of this Act or of any Act of the present Session, the provisions of the Act first above cited and in part repealed, relative to the Court of Queen's Bench (or of King's Bench) therein mentioned, or to the Judges or Officers thereof, or to the Summoning of Jurors to attend the same, shall apply and extend to the Superior Court and to the Judges and Officers thereof, in the District of Gaspé, and the provisions of the said Act relative to Circuit Courts or to the Judges

or Officers thereof, shall apply to the Circuit Court and to the Judges or Officers thereof in the said District.

V. And be it enacted, That the foregoing provisions of this Act shall have force and effect, upon, from and after the day which shall be appointed for that purpose in any proclamation to be issued by the Governor of this Province by and with the advice of the Executive Council thereof, and not before; and that the Interpretation Act shall apply to this Act.

Commence-
ment of this
Act.

C A P. XLI.

An Act to define the mode of proceeding before the Courts of Justice in Lower-Canada, in matters relating to the protection and regulation of Corporate rights and to Writs of Prerogative, and for other purposes therein mentioned.

[30th May, 1849.]

WHEREAS it is expedient to provide an easy and expeditious mode of proceeding before the Courts of Justice in Lower-Canada for the protection of Corporate rights, and for regulating the use and preventing the abuse of the same, and for preventing the usurpation of Corporate Offices, and for enforcing the performance of duties devolving upon persons holding such offices and upon Public Trustees and other Public Officers, Bodies and Boards, and in matters relating to Writs of Prerogative and other Writs: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative

Preamble.

Mode of proceeding against any person usurping or intruding into a Corporate office, &c.

Service of process and delay between service and return.

Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, intituled, *An Act to re-unite the Provinces of Upper and Lower-Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That after this Act shall come into force, whenever any person shall usurp, intrude into or unlawfully hold or exercise any public office or any franchise within that part of this Province formerly constituting the Province of Lower-Canada, or any Office in any Corporation or other Public Body or Board, whether the same shall have been created or shall exist under or by virtue of any Statute or Ordinance, or under the Common Law of Lower-Canada, it shall be lawful for the Superior Court sitting in the District in which such usurpation or unlawful detention shall have occurred, or for any two or more Judges of such Court in vacation, upon a declaration or petition (*requête libellée*) presented by or in the name of any person who may be interested in such public office or franchise, or in such Corporation, Public Body or Board, supported by affidavit to the satisfaction of such Court or of such Judges, and complaining of such usurpation, intrusion or unlawful detention, to order the issuing of a Writ commanding the person complained of to be summoned to appear before the said Court, or the said Judges, to answer such declaration or petition (*requête libellée*,) upon such day as the said Court or the said Judges may think proper to fix : Provided however, that in all such cases the Writ of Summons shall be served on the person so complained of, by leaving a copy thereof and of the said declaration or petition (*requête libellée*,) either with himself in person or at his domicile, in the manner practised in ordinary actions, and that three full days at least shall intervene between the service of such Writ and the return

of the same, if such service shall be made within five leagues from the Court House or other building where the party shall be so summoned to appear, and that not less than three days and an additional day for each five leagues which shall be found between the place where such service shall be made and such Court House or other building, shall intervene between such service and return.

II. And be it enacted, That if the person so complained of, Defendant in such cause, shall appear on the day so fixed, he shall be held to plead specially to such declaration or petition (*requête libellée*) stating the authority under which he assumes to hold or exercise such office or franchise within four days from the day on which he shall so appear, and the plaintiff shall be allowed three full days to answer or reply to such plea.

Delay for Defendant to plead and Plaintiff to answer.

III. And be it enacted, That within three days from the filing of such answer or replication, the plaintiff shall proceed to adduce evidence in support of the allegations contained in his said declaration or petition (*requête libellée*), which evidence or such part thereof as may consist of oral or *parole* testimony, shall be taken down in writing either before the said Court, or in the presence of any one of the Judges thereof (whether the proceedings be had in Term time or in Vacation,) in the manner in which evidence is now taken in ordinary cases at the *Enquête* Sitings of the Courts of Queen's Bench in Lower-Canada, and when the plaintiff shall have declared his evidence (*Enquête*) closed, the defendant shall, after a delay of two days, if any such delay be by him required or asked for, proceed to adduce such evidence as he may offer, and as may be admissible in support of his plea.

Delay for Plaintiff to adduce his evidence.

And for Defendant.

IV. And be it enacted, That so soon as the defendant shall have declared his *Enquête* closed, the plaintiff may, if allowed by the said Court or the said

Plaintiff may adduce evidence in rebuttal.

Inscription of
the case.

Proviso: De-
fendant may
confess; either
party may de-
mur, &c.

Judges, adduce evidence in rebuttal, or if he do not adduce any such evidence in rebuttal, it shall be lawful either for such plaintiff or for such defendant to inscribe the cause for hearing on any day he may think proper to fix; of which inscription the opposite party shall have notice one full day at least previous to the day so fixed for such hearing, and the said Court or the said Judges shall after such hearing proceed with the least possible delay to render judgment in the premises; Provided however, that nothing hereinbefore contained shall prevent or be so construed as to prevent the defendant from acknowledging the usurpation complained of by a confession to be taken in the presence of the Court or of the said Judges, or either of the parties from demurring specially to the declaration or to the plea or to the answer of his adversary, or from demanding a decision upon any objections as to any deficiency, insufficiency, or informality, which he may have been advised to urge against the same or against any of the proceedings in such case, or the said Court or the said Judges from enlarging the time to plead or to adduce evidence in any such case, whenever the said Court or the said Judges may deem it advisable so to do for the more sure attainment of the ends of justice.

Default on
non appear-
ance of De-
fendant.

V. And be it enacted, That whenever the Defendant in any such case shall not appear upon the Day fixed as aforesaid, for the return of the said Writ of Summons, after having been duly called, a default shall be entered against him, and it shall be lawful for the Plaintiff on the following day to proceed to prove the allegations contained in his declaration or petition, (*requête libellée*,) in the manner hereinbefore provided, and to inscribe the case without further delay for judgment by default.

Inscription.

Plaintiff may
in his Petition
state the name
of the person

VI. And be it enacted, That in addition to the matters required to be set forth against the party who shall have so usurped, intruded into, or unlawfully

detained any such office or franchise, the Plaintiff may also set forth in any such declaration or petition, (*requête libellée*,) the name of the person rightfully entitled to such office or franchise, with such averments as may be required to show his right thereto, and in every such case judgment shall be rendered upon the claim of the Defendant, and also upon the right of the party so averred to be entitled to such office or franchise, or only upon the claim of the Defendant, as justice shall require.

entitled to the office, &c.

Judgment in such case.

VII. And be it enacted, That whenever judgment shall be rendered in any such case, upon the right of the person so averred to be entitled to such office or franchise, and the same be in favour of such person, he shall be entitled, after taking the oath of office, and executing any official bond which may be required by law, to take upon himself the execution of such office, or the exercise of such franchise; and it shall be his duty immediately thereafter to demand of the Defendant in such case, all the keys, books, papers and insignia in the custody or within the power of such Defendant, belonging to the office or franchise from which he shall have been ousted, and if such Defendant shall refuse or neglect to deliver over any such keys, books, papers and insignia pursuant to such demand, or shall in any other way or manner wilfully obstruct such person so adjudged to be entitled to such office or franchise as aforesaid, with a view to prevent such person from taking upon him the execution of such office or the exercise of such franchise, he shall be deemed guilty of a misdemeanor; and whenever such refusal or neglect shall occur in any such case, it shall be lawful for the said Court or the said Judges to order the Sheriff of the District to take possession of such keys, books, papers and insignia, and to deliver up the same so taken possession of, to the party entitled or adjudged to be entitled to such office or franchise as aforesaid.

If judgment be rendered in favor of any person averred to be entitled to office, he shall take upon himself the execution of such office.

Proceedings
in cases where
any association
shall act as a
Corporation
without being
legally incor-
porated.

VIII. And be it enacted, That after the time this Act shall come into force, whenever any Association or number of persons shall act within Lower-Canada as a Corporation, without having been legally incorporated, or without being recognized as such Corporation by the Common Law of Lower-Canada, and whenever any Corporation, Public Body or Board shall offend against any of the provisions of the Act or Acts creating, altering, renewing, or re-organizing such Corporation, Public Body or Board, or shall violate the provisions of any law in such manner as to forfeit its charter by mis-user,—and whenever any such Corporation, Public Body or Board shall have done or omitted any Act or Acts, the doing or omitting of which shall amount to a surrender of its corporate rights, privileges and franchises,—and whenever any such Corporation, Public Body or Board shall exercise any franchise or privilege not conferred on it by law, it shall be the duty of Her Majesty's Attorney-General in and for Lower-Canada, for the time being, whenever he shall have good reason to believe that the same can be established by proof, in every case of public interest, and also in every other such case in which satisfactory security shall be given to indemnify the Government of this Province against all costs and expenses to be incurred by such proceeding, to apply for and on behalf of Her Majesty to the Superior Court sitting in the District in which the principal office or place of business of such persons so unlawfully associated together, or of such Corporation, Public Body or Board shall be, or to any two or more of the Judges of such Court in vacation, by an information, declaration or petition, (*requête libellée*,) supported by affidavit to the satisfaction of such Court or of such Judges, complaining of such contravention of the law, and praying for such order or judgment thereon as may be allowed or authorized by law, whereupon it shall be lawful for such Court or

for such Judges, to order the issue of a Writ commanding the persons, Corporation, Public Body or Board so complained of, to be summoned to appear before the said Court or the said Judges, to answer such declaration or petition, (*requête libellée*,) upon such day as the said Court or the said Judges may think proper to fix, and the like proceedings shall be had upon such declaration or petition, (*requête libellée*,) and Writ of Summons, as to service, appearance, entering default, pleading, proof and all other matters, as are hereinbefore provided for the determination of cases in which any person shall have usurped, intruded into or unlawfully detained any public office or franchise ; Provided nevertheless, that the service of any such Writ of Summons and of any such declaration or petition, (*requête libellée*,) may be made by serving the same on such persons so unlawfully associated together, or on such Corporation, Public Body or Board, by leaving true copies of such Writ of Summons, and of such declaration or petition (*requête libellée*,) either with the Mayor, Chairman or other Chief Officer, or with the Secretary or Treasurer of such Association, Corporation, Public Body or Board, or in the case of a pretended Corporation with some one of the persons assuming to hold such office, or with any person of reasonable age, at the principal office or place of business of such (or of such pretended) Association, Corporation, Public Body or Board, and the said Court or the said Judges shall make and pronounce such orders, judgments and decisions in all such cases as to law and justice may appertain.

Proviso as to
service of
Process.

Judgment in
such cases.

IX. And be it enacted, That whenever any Defendant shall be found or adjudged guilty of usurping or intruding into or unlawfully holding or exercising any office, franchise or privilege, judgment shall be rendered that such Defendant be ousted and alto-

If Defendant
be found guilty
of usurping
any office, &c.,
judgment to be
rendered that
he be ousted.

Costs to Defendant if successful.

gether excluded from such office, franchise or privilege, and also that the Plaintiff or party complaining of such usurpation recover his costs against such Defendant: And it shall be lawful for the Court or the Judges rendering such judgment in its or their discretion to condemn such Defendant to pay a fine or penalty not exceeding one hundred pounds, which fine or penalty, when collected, shall be paid over to Her Majesty's Receiver-General of this Province for the time being: and whenever an action or complaint for any such alleged usurpation, intrusion or detention as aforesaid, shall be dismissed, the Defendant shall be entitled to recover costs against the Plaintiff or party so complaining.

Proceedings in case any Corporation shall be found to have forfeited its Corporate rights by mis-user, &c.

Curator appointed: his duties in disposing of the personal property of the Corporation.

X. And be it enacted, That whenever it shall be found or adjudged, that any Corporation, Public Body or Board has, by any mis-user, non-user or surrender, forfeited its corporate rights, privileges and franchises, judgment shall be rendered that such Corporation be ousted and altogether excluded from such corporate rights, privileges and franchises, and that the said Corporation, Public Body or Board be dissolved; and the Court or the Judges rendering such judgment shall thereupon appoint a Curator to and of the property and effects of such Corporation, Public Body or Board, whose duty it shall be, after having given security to the satisfaction of the said Court or of the said Judges for the due discharge thereof, to take possession of the said property and effects, to cause an Inventory thereof to be made in due form of law in the presence of one or more of the Members of such Corporation, Public Body or Board, and after having made such Inventory, to dispose, to the best advantage, of all the personal property which he may have so possessed himself of, and, after realizing the proceeds thereof, to cause the same to be distributed amongst the creditors of such

Corporation, Public Body or Board, by the Superior Court sitting in the District in which the principal office or place of business of such Corporation, Public Body or Board shall have been at the time of the rendering of such Judgment: Provided that due notice be given to such creditors by at least three advertisements to be printed in at least two such public newspapers as the said Court may direct, of which advertisements the first shall be published at least two months previous to the day fixed and therein mentioned as the day on which such Curator shall apply to the said Court for the purpose of effecting such distribution: And provided also, that if there be any debts remaining due by such Corporation, Public Body or Board, the like proceedings shall be had for the discussion of the immoveable property belonging to such Corporation,⁸ Public Body or Board, and for the distribution of the proceeds thereof amongst its creditors, or for dividing the same amongst the parties entitled thereto, as may now by law be had and adopted in Lower-Canada, for the discussion, distribution or division of a vacant estate, or of the estate of an absentee to which a Curator has, or Curators have been appointed; and if there be no debts due by such Corporation, Public Body or Board, or if such debts be unknown to or be beyond the control of the Curator, then the Curator shall proceed to the sale of the immoveable property held by him in his said capacity, to the best and highest bidder, after having given due notice of such sale and of the time and place thereof, by three advertisements in English and French in the Canada Gazette, the first of which shall be published at least four, and not more than five months before such sale; and all sales of immoveable property made by any such Curator, after such notice duly given, shall have the same effect to all intents and purposes as sales made by Sheriffs or by *décrot forcé*; And provided also, that whenever

Proviso :
Notice to
Creditors.

Proviso as to
real property.

Effect of any
sale.

Proviso as to
enforcing the
payment of
costs.

judgment shall be rendered in any such case against any Corporation, Public Body or Board, or against any persons claiming to be a Corporation, the costs awarded by such judgment may be collected by execution, directed either against the property and effects of such Corporation, Public Body or Board, or of such persons claiming to be a Corporation, or against the private property of the Directors or other Officers of any such Corporation, Public Body or Board, or of such persons so claiming to be a Corporation aforesaid.

Proceedings
when any
Corporation,
Inferior Court,
&c., shall re-
fuse to make
any election
required by
law, or to do
any thing it
ought by law
to do, &c.

XI. And be it enacted, That after this Act shall come into force, whenever any Corporation, Public Body or Board shall refuse or neglect to make any election, which by law such Corporation, Public Body or Board is or shall be required to make, or to receive to their functions such of its Members as shall have been legally chosen or elected, or restore to their functions such of its Members as shall have been removed without sufficient cause; and, whenever any person holding any office in any Corporation Public Body or Board, or any public body whatsoever, or any Court of Inferior Jurisdiction, shall omit, neglect or refuse to perform any act or duty belonging to such office, or to such Court, or which the persons holding such office, is or shall be by law required or bound to perform; and, whenever any heir or representative of any Public Officer shall omit, neglect or refuse to do or perform any act which, by law, he may or shall be bound or required to do or perform as such heir or representative of such Public Officer; and in all cases in which a Writ of *Mandamus* will lie and may be legally issued in England, it shall be lawful for any person interested in such Corporation, Public Body or Board, or in the performance of any such act or duty, to apply to the Superior Court sitting in the District in which such

Public Officer, heir or representative of a Public Officer, or Inferior Court shall be, or to two or more Judges of the said Court in vacation, for a Writ of *Mandamus* requiring and directing the Defendant, whether such Defendant be a natural person or a Corporation, Public Body or Board, to do and perform the act or duty which such Defendant may have so neglected or refused to do or perform, or show cause to the contrary on a day certain to be fixed for that purpose by such Court or by such Judges.

Mandamus to shew cause to issue.

XII. And be it enacted, That every such application for any such Writ of *Mandamus* shall be made by a declaration or petition (*requête libellée*) supported by affidavit to the satisfaction of such Court or Justices, setting forth the facts of the case, whereupon it shall be lawful for the said Court or the said Judges to issue such Writ of *Mandamus*, and the Defendant in any such case, whether such Defendant be a natural person, a Corporation or an Inferior Court, shall not be allowed to shew cause to such Writ of *Mandamus*, otherwise than by answering or pleading to such declaration or petition, (*requête libellée*) and such Defendant shall not be required to make any return of or upon any such Writ of *Mandamus*, but the same shall be returned by the Bailiff or other Officer who shall have served it upon such Defendant, with a Certificate under his oath of the time and place of service; and the like proceedings shall be had on all such applications for Writs of *Mandamus*, relative to service, appearance, entering of default, pleading, proof and all other matters, for the determination thereof, as are hereinbefore provided for the determination of cases in which any person shall have usurped, intruded into or unlawfully detained any public office or franchise, or in which any Corporation, Public Body or Board, shall have forfeited its Charter as aforesaid.

Manner of making application for such Mandamus, and proceedings thereupon.

If Defendant answer to declaration or petition in such manner as to justify his conduct : and if the contrary.

Peremptory Mandate.

Penalty for non-obedience.

Default to elect Mayor, &c., not to operate dissolution of Corporation, &c.

XIII. And be it enacted, That if such Defendant shall answer or plead to such declaration or petition, (*requête libellée*) in such manner as to justify his conduct, the action or complaint shall be dismissed, and the Plaintiff shall be sentenced to pay costs, but if the answer shall be considered insufficient, either in law or in fact, or if the Defendant shall fail to appear, and the Plaintiff shall make due proof of the facts alleged by him, and the same shall be deemed sufficient, then the said Court or the said Judges shall issue a Peremptory Mandate, ordering and commanding the Defendant to do that which shall have been so demanded of him, and if such Defendant being a natural person do not obey such Peremptory Mandate of the said Court or the said Judges, a Warrant of Commitment shall issue, under which he shall be imprisoned in the Common Gaol of such District, there to remain until he shall have rendered obedience to and fulfilled the requirements of such Peremptory Mandate, and if such Defendant, being a Corporation, Public Body or Board, refuse to obey such Peremptory Mandate, it shall be lawful for the said Court or the said Judges to sentence such Corporation, Public Body or Board to pay a penalty not exceeding five hundred pounds, which penalty may be levied in the ordinary course of Law, out of the property, real and personal, of such Corporation, Public Body or Board.

XIV. And be it enacted, That if it shall happen that in any Corporation, Public Body or Board within Lower-Canada, no election shall be made of the Mayor, Aldermen, Councillors, Assessors, Trustees, Directors or other Officers of such Corporation, Public Body or Board, or if any such office or offices is or are now remaining vacant in consequence of such election not having taken place upon the day or within the time appointed by charter, law or usage

for that purpose, or if such election being made, the same is or shall be void, or shall hereafter or afterwards be declared void by a competent Tribunal, such Corporation, Public Body or Board shall not thereby be, or be deemed or taken to be, dissolved or disabled from electing such Mayor, Aldermen, Councillors, Assessors, Trustees, Directors or other Officers for the future, but every such Corporation shall be adjudged, deemed and taken to be, and to have been, subsisting, and capable of electing such Officer or Officers to all intents and purposes; and in every such case it shall and may be lawful for the Superior Court sitting in the District in which the principal office or place of business of such Corporation, Public Body or Board shall be, or for two or more of the Judges of the said Court in vacation, to issue a Writ of *Mandamus* requiring the proper Officer, or in his absence such person as the said Court or the said Judges may please to appoint, to proceed to the election of such Mayor, Aldermen, Councillors, Assessors, Trustees, Directors or other Officers, upon a day and hour, and at a place to be prescribed in such Writ of *Mandamus*, and to do every act to be done in order to such election, or to signify to the said Court or to the said Judges good cause to the contrary; and such Writ of *Mandamus* shall be applied for, and the like proceedings shall be had thereon, and for the determination thereof, as in the other cases provided for by this Act; and of the day and time appointed in and by such Writ of *Mandamus*, (if the same be obeyed without cause being shown against it, or in and by the Peremptory Mandate, if any such mandate shall have issued) for proceeding to such election, public notice in writing both in the French and English languages shall, by such person as the said Court or the said Judges shall appoint, be affixed at the door of at least one church in the City, Town, Village, Bo-

Powers of Superior Court
in such case.

Application for
Mandamus :
and proceeding thereupon.

rough, Parish or Township in which the principal office or place of business of such Corporation shall be, or if there be no church, at one of the most public places therein, for the space of at least ten days before the day so prescribed, and in every such case, any other act or acts necessary to be done in order to such election shall be had, made and done at the time appointed in such Writ of *Mandamus* or in such Peremptory Mandate, and in such manner and form as the same ought to have been made upon the day, or within the time prescribed by the Charter, Act or Acts of Incorporation, or usage of such Corporation, Public Body or Board; and the Mayor, Aldermen, Councillors, Assessors, Trustees, Directors, or other Officers, so elected, shall have the same privileges, precedence, powers and authority in all respects, as if such Mayor, Aldermen, Councillors, Assessors, Trustees, Directors or other Officers had been elected on the day or within the time prescribed for such election by the Charter, Act or Acts of Incorporation, or usage of such Corporation, Public Body or Board: Provided always, that no such election, nor any act done in order thereunto, shall be valid unless as great a number of persons having right to be present at and vote therein, shall be present at the assembly holden for such purpose and concur therein, as would have been necessary to be present and concur in such election or act, in case the same had been made or done upon the day, or within the time appointed for that purpose by the Charter, Act or Acts of Incorporation or usage of such Corporation, Public Body or Board; saving only that the presence of the Officer, who, under such Charter, Act or Acts of Incorporation or usage, ought to preside at such election shall not be necessary; And provided also, that any Mayor, Alderman, Councillor, Assessor, Trustee, Director or other Officer of any such Corporation in which the elec-

Proviso: and
to number of
electors pre-
sent, &c.

Proviso:
Officer in pre-
session to hold
over until elec-

tion of a successor or successors to any such office or offices shall not have taken place at the time appointed by Charter, law or usage for that purpose, shall hold over and continue to act as such officer or officers until a successor or successors of such officer or officers shall have been duly elected under the authority of this Act.

tion of successor.

XV. And be it enacted, That in no case in which the rights of any Municipal Corporation are involved shall any witness be inadmissible from the fact of his being an elector entitled to vote in such Municipal Corporation.

Members of a Corporation to be admissible as witnesses.

XVI. And be it enacted, That all Writs of *Certiorari* and of prohibition shall issue out of the Superior Court, and shall be applied for in the like manner as Writs of *Mandamus*, and the like proceedings shall be had thereon as to service, appearance, entering of default, pleading, proof and all other matters for the determination thereof, as on applications for Writs of *Mandamus*; Provided always, that it shall not in any case be requisite to issue any *alias* Writ of *Certiorari*, but all orders which for the attainment of the ends of justice it may become necessary for the Court, or any two of the Judges thereof, to make subsequently to the issuing of the first Writ, shall be made by interlocutory or final judgment, as in ordinary cases; And provided also, that no special affidavit shall be required to establish the service of any writ, order, rule or judgment connected with any of the proceedings provided for by this Act, but the return of service made in due form by the Bailiff under his oath of office, shall in all cases be considered as evidence of the facts therein stated, unless the same be controverted in due course of law; nor shall it be requisite for the party applying for any such Writ to give security either for costs or otherwise.

Mode of obtaining Writs of *Certiorari* or Prohibition.

Proviso as to *alias* Writs, &c.

Proviso as to service.

Security not to be requisite.

As to Writs of
appeal and
error in case
of the death of
any party.

XVII. And be it enacted, That all Writs of Error and of Appeal may be brought either by the party against whom the judgment complained of was rendered, or, in case of his death, by his executors or administrators, if the judgment was to recover any debt, damages or personal property, or by his heirs, devisees or assigns, (*ayants cause*) if the judgment was for the recovery of real estate or the possession thereof, or if the title to real estate was determined thereby.

And in the
case of unmar-
ried women or
widows marry-
ing again.

XVIII. And be it enacted, That if a judgment be recovered against an unmarried woman or a widow, and she afterwards marry, a Writ of Error or of Appeal may be brought thereon by her and her husband jointly; and if a judgment shall have been obtained against several persons and one or more of them die, a Writ of Error or of Appeal may be brought thereon by the survivor or survivors; and if, after the issuing of any Writ of Error or of Appeal, whether the same shall have been issued before or after the passing of this Act, any of the parties to the judgment complained of die, or shall have died, the proceedings on such Writ of Error or Appeal may be continued by and between the survivors alone.

Several per-
sons.

Parties dying
after appeal or
error.

As to Writs of
scire facias,
for annulling
Letters Patent.

XIX. And be it enacted, That all Writs of *scire facias* shall issue out of the Superior Court, and it shall be lawful for the said Court to allow any such Writs to issue upon the information or petition of Her Majesty's Attorney-General or Solicitor-General or other Officer duly authorized in that behalf, for the purpose of vacating or annulling any Letters Patent granted by the Crown in the following cases:

In what cases
they may
issue.

Firstly. Where it shall be alleged that such Letters were obtained by means of some fraudulent suggestion or concealment of a material fact, made by the person to whom the same were issued or made with his consent or knowledge.

Secondly. Where it shall be alleged that such Letters Patent were issued through mistake, and in ignorance of some material fact.

Thirdly. When the patentee or those lawfully claiming under him shall have done or omitted any act, in violation of the terms and conditions upon which such Letters Patent were granted, or shall by any other means have forfeited the interest acquired under the same.

And all such informations or petitions shall be heard, tried and determined in the same manner as ordinary civil suits. Mode of trial, &c.

XX. And be it enacted, That an appeal shall lie to the Court of Queen's Bench sitting in appeal from all final judgments rendered by the Superior Court, in all cases provided for by this Act except in cases of *certiorari*. Appeal given in all cases under this Act, except on *certiorari*.

XXI. And be it enacted, That all Acts and parts of Acts or provisions of law repugnant to or inconsistent with this Act, or which make any provision in any matter provided for by this Act other than such as is made by this Act, shall be and are hereby repealed. Repeal of inconsistent enactments, &c.

XXII. And be it enacted, That the foregoing sections of this Act shall come into force and effect upon, from and after the day which shall be appointed for that purpose in any Proclamation to be issued by the Governor of this Province by and with the advice of the Executive Council thereof, and not before. Commencement of this Act.

CAP. XLII.

An Act to abolish Imprisonment for Debt, and
for the punishment of Fraudulent Debtors, in
Lower-Canada, and for other purposes.

[30th May, 1849.]

Preamble.

Imprisonment
for Debt not
to be allowable
in certain
cases.

WHEREAS Imprisonment for Debt, where fraud is not imputable to the Debtor, is not only demoralizing in its tendency, but is as detrimental to the true interests of the creditor as it is inconsistent with that forbearance and humane regard to the misfortunes of others which should always characterise the legislation of every Christian country; And whereas it is desirable to soften the rigor of the laws affecting the relation between Debtor and Creditor, as far as a due regard to the interests of commerce will permit: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled: *An Act to re-unite the Provinces of Upper and Lower-Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That from and after the passing of this Act, no priest or minister of any religious denomination whatsoever, no person of the age of seventy years or upwards, and no female, shall be arrested or held to bail by reason of any debt, or by reason of any other cause of civil action or suit whatsoever; and that no person shall be arrested or held to bail or detained in custody upon any cause of civil action arising or which may have arisen in any foreign country, or in any civil suit where the cause of action shall not amount to ten pounds of lawful money of this Pro-

vince ; and no Writ of *capias ad satisfaciendum* or other execution against the person, shall issue or be allowed after the passing of this Act.

II. And be it enacted, That it shall not be lawful, Arrest for debt to be allowable only on certain conditions. for the plaintiff in any civil suit or action to proceed to arrest the body of the defendant, or detain him in custody, unless an affidavit be made, in the manner provided by law, by such plaintiff, his book-keeper, clerk or legal attorney, that the defendant is personally indebted to the plaintiff in a sum amounting to or exceeding ten pounds of lawful money of this Province, and also that such plaintiff, his book-keeper or legal attorney, hath reason to believe, and doth verily believe, upon grounds to be specially set forth in such affidavit, that the defendant is immediately about to leave the Province of Canada, with intent to defraud his creditors generally, or the plaintiff in particular, or that the defendant hath secreted or is about to secrete his property with such intent ; Proviso: after arrest the defendant may be discharged if arrested improperly. Provided always, that it shall be lawful for the Court or any Judge of the Court whence any Process shall have issued to arrest any person, either in Term or in vacation, to order any such person to be discharged out of custody, if it shall be made to appear to him, on summary petition and satisfactory proof, either that the defendant is a priest or minister of any religious denomination, or is of the age of seventy years or upwards, or is a female, or that the cause of action arose in a foreign country, or does not amount to ten pounds of lawful money of this Province, or that there was not sufficient reason for the belief that the defendant was immediately about to leave the Province with fraudulent intent where that is the cause assigned for the arrest, or that the defendant had not secreted and was not about to secrete his property with such intent where that is the cause assigned for such arrest.

Defendant arrested on *ca. sa.* may be released on giving security, to surrender himself when required.

Like provision as to a defendant who has given bail to the Sheriff.

III. And be it enacted, That any defendant arrested after the passing of this Act and confined in Gaol under and by virtue of any Writ of *capias ad respondendum*, shall at any time before the rendering of final judgment, if such Writ have been sued out before judgment, and at any time before the judgment declaring the arrest under such Writ valid, if such Writ have been sued out after judgment, be released from such arrest and confinement, if he give good and sufficient security to the satisfaction of the Court into which the process under which he shall have been arrested shall be returnable or returned, or of any Judge of such Court, that he, the defendant, will surrender himself into the custody of the Sheriff whenever required so to do by any order of such Court or of any one Judge thereof, made as hereinafter is provided, or within one month after the service of such order upon him or upon his sureties, and that, in default of his so doing, he will pay the plaintiff his debt, interest and costs; and the Court or Judge before whom such security shall be given, shall cause the sureties to justify upon oath, (if the plaintiff require it) and on security being given by the defendant as aforesaid, the Judge or Court before whom such security shall be given, shall order the defendant to be released from such arrest and confinement; and in like manner any defendant so arrested, but who shall have given bail to the Sheriff as hereinafter is provided, shall have a right on the return day of the Writ or at any time previously thereto, or within eight days thereafter, to give good and sufficient security before the Court into which the Process under which he shall have been arrested shall be returnable or returned, or before any Judge thereof, that he will surrender himself into the custody of the Sheriff whenever required so to do by any order of such Court, or of any Judge thereof made as hereinafter is provided, or within one month after the service

of such order upon him or upon his sureties, and that in default of his so doing, he will pay the plaintiff his debt, interest and costs, and the sureties shall justify upon oath as to their sufficiency, if the plaintiff require it, and upon the security so offered being received and put in, the bail given to the Sheriff shall thereby be discharged.

IV. And be it enacted, That if judgment for a sum of, or exceeding twenty pounds of lawful money of this Province, exclusive of interest from the service of Process and costs, be rendered against any defendant who shall so have been arrested and shall so have put in security as hereinbefore is provided, then such defendant shall be bound within thirty days from the rendering of such judgment, if the same remain then unsatisfied, to make and file in the office of the Prothonotary or Clerk of the Court a statement, under oath, making known of what property, real or personal, he is possessed, and where the same is situate, to the intent that the plaintiff may proceed and take the said property in execution, if he see fit, and also making known the names and addresses of all and every the creditors of such defendant, and the amount and nature (privileged, hypothecary or otherwise) of the claim or claims of every such creditor, and also a declaration that he is willing to abandon the property real and personal set forth in the said statement for the benefit of his creditors; and if the defendant neglect to file such statement as aforesaid, or if at any time within two years after the filing of such statement, the plaintiff in the suit shall establish, either by the examination of the defendant under oath or by other evidence, that when the statement was so filed the defendant was proprietor of any chattels, effects, lands or tenements, of the value of twenty pounds currency, wilfully omitted from the said statement, or that at any time

Defendant having given security under this Act, to make a certain declaration if judgment be given against him for £20 or upwards.

Consequences of default to make such declaration, or making it false, &c.

between the institution of the plaintiff's action and the making of such statement on the part of the defendant, or within thirty days next preceding the institution of such action, the defendant secreted any part of his property with the intent of defrauding his creditors, or that the defendant has made any fraudulent mis-statement in respect of his creditors or their claims, or if the defendant fail to appear for the purpose of being examined in relation to such statement, at any time appointed for such examination by the Court or any Judge thereof, then the said Court, or in vacation any Judge thereof, shall order the defendant to be imprisoned in the Common Gaol of the District for such period not exceeding one year as such Court or Judge shall think reasonable, in punishment of the misconduct of which he or they shall adjudge such defendant to have been guilty ; and if the defendant so ordered to be imprisoned shall not surrender himself or be surrendered for that purpose according to the requirements of the order in that behalf, then the parties who shall so have become security that the defendant would so surrender himself as aforesaid, shall forthwith be liable to pay to the said plaintiff the debt, interest and costs, in relation to which such security shall have been given, and all subsequent costs.

Defendant in
gaol may make
a like state-
ment, &c.

V. And be it enacted, That it shall be lawful for any defendant arrested as aforesaid, and confined in gaol, at any time either before or after judgment, to make and file a statement of his property real and personal, and of his creditors, such as is mentioned in the next preceding section of this Act, and to make and file with such statement a declaration that he is willing to abandon the property real and personal set forth in the said statement, for the benefit of his creditors ; and if the plaintiff, within four months from the service upon him or upon his Attorney of a

Plaintiff may
prove fraud,
&c.

copy of such statement and declaration, shall establish either by the examination of the defendant under oath or by other evidence, that when the statement was so filed, the defendant was proprietor of any chattels, effects, lands or tenements of the value of twenty pounds currency, wilfully omitted from such statement, or that at any time between the institution of the plaintiff's action and the making of such statement on the part of the defendant, or within thirty days next preceding the institution of such action, the defendant secreted any part of his property with the intent of defrauding his creditors, or that the defendant has made any fraudulent misstatement in respect of his creditors or their claims, then the said Court, or in vacation any Judge thereof, shall order the defendant to be imprisoned in the Common Gaol of the District for such period not exceeding one year, as such Court or Judge shall think reasonable, in punishment of the misconduct of which he or they shall adjudge the defendant to have been guilty; but if no omission such as aforesaid in the statement so made and filed by the defendant, be established, and if it be not established that the defendant has secreted any part of his property within the period aforesaid, and with the intent aforesaid, then it shall be lawful for the said Court, or in vacation for any Judge thereof, at the expiration of the said period of four months, to order the defendant to be discharged from his imprisonment: Provided always, that in any case where such omission or other misconduct shall have been formally alleged and complained of against such defendant before the expiration of the said term of four months, such Court or Judge, upon satisfactory cause shown, may extend the time during which proof relative to such complaint may be taken, for a period of not more than if two months, and if during such extension of time such omission or other mis-

If no fraud,
&c., be proved
defendant to be
released.

Proviso:
period for
proving fraud,
&c., may be
extended.

conduct be established, such Court or Judge may order such defendant to be imprisoned in punishment thereof, in the same manner as if the same had been established during the said term of four months.

Curator to be appointed to the property abandoned by the defendant.

Notice of appointment.

Opposition to the statement.

VI. And be it enacted, That when any defendant, arrested or imprisoned as aforesaid, shall have made and filed a statement of his property real and personal as aforesaid, and shall as aforesaid have declared himself willing to abandon the same for the benefit of his creditors, it shall be lawful for the Court or for any Judge thereof upon the application of the plaintiff, (if made within two months from the service of such statement and declaration upon the plaintiff or his Attorney, and after fifteen days' notice, in the form of the Schedule No. 1, subjoined to this Act, of the time and place of such application, previously given in the *Canada Gazette*,) to appoint, at the discretion of such Court or Judge, after hearing any parties claiming to be interested, a fit and proper person as Curator to the property so offered to be abandoned, and of such appointment notice shall by such Curator forthwith be given (in the form of the Schedule No. 2, subjoined to this Act) for the space of one month in the *Canada Gazette*, and also for any period which may be ordered by such Court or Judge, in any other newspaper or newspapers which such Court or Judge may see fit to name; and in case such Curator shall fail or delay to give such notice, then the same may be given either by the plaintiff or by the defendant; and during the said period of four months, within which the plaintiff shall have it in his power to adduce evidence with respect to any omissions such as aforesaid, in the statement so made and filed by the defendant, or with respect to the defendant having secreted any part of his property within the period and with the intent aforesaid, or made any fraudulent mis-statement in

respect of his creditors or their claims, it shall also be in the power of any other creditor of such defendant to appear in the cause in relation to which such notice shall have been given, and to adduce evidence and examine the defendant for the same purpose, in the same manner and with the same effect as the plaintiff in such cause under this Act can adduce such evidence or examine the defendant; and whenever, as hereinbefore provided, a defendant shall have been arrested or imprisoned as aforesaid, and shall have declared his willingness to abandon all his property, real and personal, for the benefit of his creditors, and a Curator shall thereupon have been appointed to take charge of such property in pursuance of this Act, and public notice shall have been given as hereinbefore required of the appointment of such Curator within fifteen days after the same shall have been made, and the defendant shall not be adjudged guilty of any misconduct in the premises rendering him liable to punishment as hereinbefore is provided, such Defendant shall not thereafter be liable to be arrested or imprisoned or detained in prison at the suit of the plaintiff by whom he shall have been arrested, or at the suit of any other person, for or by reason of any cause of action arising before the making and filing of such statement and declaration by such defendant; and in case such defendant shall notwithstanding at any time afterwards be arrested for or by reason of any such cause of action, it shall be lawful for the Court or for any Judge of the Court whence the Process shall have issued for such arrest, upon a summary petition and satisfactory proof, to order such defendant to be discharged out of custody.

Effect if no
fraud, &c., be
proved.

VII. And be it enacted, That the powers of the Curator so to be appointed, shall extend not only to the property real and personal comprehended in the

Powers of the
Curator ex-
tended to all
property of the
defendant.

statement to be so made and filed by such defendant, but also to any other property real or personal of the defendant, that ought to have been comprehended in such statement; and the real estate comprehended or that ought to have been comprehended in such statement, shall be sold upon such Curator in the ordinary course of law; and the personal property comprehended or that ought to have been comprehended in such statement shall be collected and got in by such Curator, and by him be paid over or distributed, or caused to be paid over or distributed also in the ordinary course of law.

As to defendants against whom, but for this Act, a *ca. sa.* might have issued.

VIII. And be it enacted, That in every case in which a judgment shall, either before or after the passing of this Act, have been rendered against a defendant, for a sum amounting to or exceeding twenty pounds of lawful money of this Province, exclusive of interest from the service of Process and costs, and for the satisfaction of which judgment a Writ of *capias ad satisfaciendum* might have been sued out according to the laws in force in Lower-Canada before the passing of this Act, such defendant shall, after the discussion of his apparent property real and personal in the ordinary course of law, be bound, within thirty days from personal service upon him of a certified copy of such judgment, together with a notice in writing (in the form of the Schedule No. 3, subjoined to this Act) demanding of him that he do make and file the statement hereinafter mentioned, to make and file in the Office of the Prothonotary or Clerk of the Court, a statement under oath, making known of what property, real or personal, he is possessed, and where the same is situate, to the intent that the plaintiff may proceed and take the said property in execution, if he see fit, and also making known the names and addresses of all and every the creditors of such defendant, and the amount and nature (privileged, hypothecary or other-

wise) of the claim or claims of every such creditor; and if the defendant neglect to file such statement as aforesaid, or if at any time within two years after the filing of such statement, the plaintiff in the suit shall establish, either by the examination of the defendant under oath or by other evidence, that when the statement was so filed the defendant was proprietor of any chattels, effects, lands or tenements, of the value of twenty pounds currency, wilfully omitted from the said statement, or that at any time between the institution of the plaintiff's action and the making of such statement on the part of the defendant, or within thirty days next preceding the institution of such action, the defendant secreted any part of his property with the intent of defrauding his creditors, or that the defendant has made any fraudulent mis-statement in respect of his creditors or their claims, or if the defendant fail to appear for the purpose of being examined in relation to such statement, at any time appointed for such examination by the Court or any Judge thereof, then the said Court, or in vacation any Judge thereof, shall order the defendant to be imprisoned in the Common Gaol of the District, for such period not exceeding one year, as such Court or Judge shall think reasonable, in punishment of the misconduct of which he or they shall adjudge such defendant to have been guilty.

Punishment of defendant guilty of fraud, suppression, &c., in such statement.

IX. And be it enacted, That it shall be lawful for any defendant, who at the time of the passing of this Act shall be imprisoned under and by virtue of any Writ of *Capias ad respondendum* or *Capias ad satisfaciendum*, to apply by summary petition to the Court in which the suit wherein such Writ issued is pending, or to any Judge thereof, for release from custody, on the ground that such defendant is a priest or minister of some religious denomination, or is of the age of seventy years or upwards, or is a

Defendant arrested before this Act may be released in certain cases.

female, or that the cause of the action arose in a foreign country, or does not amount to ten pounds of lawful money of this Province; and if it shall be made to appear to the said Court or to any Judge thereof, by satisfactory proof, that the application so made is well founded, then such Court or Judge shall forthwith order such defendant to be discharged from imprisonment.

Act to apply to persons in prison at the passing thereof.

X. And be it enacted, That all the provisions of this Act shall extend and apply to, and be held to extend and apply to, all persons who at the time of the passing of this Act or at any time thereafter, shall be in prison under and by virtue of any Writ of *Capias ad respondendum* or *Capias ad satisfaciendum*, as well to those who have surrendered or may surrender themselves in discharge of their bail, or who have been or may be surrendered in discharge of their bail, as to others.

This Act not to be construed as discharging any debt.

XI. And be it enacted, That nothing in this Act contained, or by this Act required or permitted to be done, shall have the effect of discharging any debt or debts due by any person or persons who shall be proceeded against, or who shall take any proceedings under the provisions of this Act; but all such debts shall continue in all respects unimpaired, excepting only that the debtor shall not be liable to be arrested or imprisoned in relation to such debt or debts, if expressly exempted from such liability by the provisions of the present Act.

Act not to prevent the putting in of special bail; &c.

XII. And be it enacted, That nothing in this Act contained shall prevent any person arrested under any Writ of *Capias ad respondendum*, from putting in special bail to the action, as permitted by the laws of Lower-Canada now in force, excepting only that such special bail shall not be received unless put in on the return day or at any time before the return

day, or within the eight days next after the return day; Provided always, that it shall be in the power of the Court, upon special application and sufficient cause shewn, to extend the time for putting in such special bail; and it shall also be in the power of the Court, upon special application and sufficient cause shewn, to allow any defendant arrested, and who shall have given bail for his appearance at the return of the Writ, to put in security that he will surrender himself as provided by the third section of this Act, even after the period in that behalf prescribed by the said third section of this Act. Proviso.

XIII. And whereas doubts have been and are entertained, as to the form of the bail to be taken by the Sheriffs for the appearance of defendants arrested and holden to bail, and also as to the liability of the Sheriff taking such bail towards the plaintiff causing the defendant to be arrested, and it is necessary to remove such doubts: Be it therefore declared and enacted, That any bail-bond heretofore taken by any Sheriff for the appearance of any defendant arrested and holden to bail, subject to the condition that the defendant shall appear in Court on the return day of the action, and surrender himself, or be by his bail surrendered, into the custody of the Sheriff in discharge of his bail, or in default thereof shall pay to the Sheriff any sum of money mentioned in such bond, or subject to the condition that the defendant shall appear in Court on the return day of the action to answer the plaintiff in a plea as contained in the declaration to be annexed to the Writ under which the defendant shall so have been arrested, or subject to the condition that the defendant shall put in special bail, or surrender himself or be surrendered by his bail into the custody of the Sheriff in discharge of his bail, at or before any certain time or event, or in default thereof shall

Doubts as to the form and effect of Bail to the Sheriff recited and removed.

pay to the Sheriff any sum of money mentioned in the bond,—or subject to any other condition, as to the appearance or surrender of the defendant, or the giving of special bail or other security at or before any time or event, shall notwithstanding any supposed illegality or any irregularity or insufficiency in the condition set forth in such bond, be good and valid, if such bond be good and valid in other respects; and from and after the passing of this Act, the bond to be taken by any Sheriff for the appearance of any defendant arrested and holden to bail, shall and may be according to the form contained in the Schedule No. 4 subjoined to this Act; and it is hereby declared and enacted that no Sheriff is or shall be held liable, towards any plaintiff at whose suit any defendant shall at any time before the passing of this Act have been arrested and admitted to bail by such Sheriff, or towards any plaintiff at whose suit any defendant shall be arrested and admitted to bail after the passing of this Act, if the bail taken by such Sheriff were, at the time they were taken as such bail, solvent or reputed so to be, to the amount of the sum for which the bond entered into by such bail shall have been given.

Act not to
prevent as-
signment of
Bail-Bond.

XIV. And be it enacted, That nothing herein contained shall prevent any Sheriff from assigning any bail-bond by him to be taken under this Act, in the manner that bail-bonds heretofore taken by any Sheriff have been assignable.

Not to prevent
contraindre par
corps.

XV. Provided always, and be it enacted, That nothing in this Act contained shall extend or be construed to extend to exempt from arrest or imprisonment, any person who may be indebted as tutor, curator, sequestrator depository, sheriff, coroner, bailiff or other officer having charge of public monies, or who may be a *caution judiciaire*, or indebted for the purchase money of any lands or tenements, goods

or chattels, sold and adjudged under the authority of justice by licitation, Sheriff's sale *décret* or otherwise, or for the amount of any condemnation money for damages arising out of personal wrongs for which *contrainte par corps* may be now by law awarded.

XVI. And be it enacted, That any person making a false declaration under oath in any of the matters aforesaid, shall be guilty of perjury and subject to punishment accordingly. False swearing to be perjury.

XVII. And be it enacted, That this Act shall apply only to Lower-Canada, and that all Acts and provisions of law repugnant to or inconsistent with this Act or which make any provision in any matter provided for by this Act other than such as is made by this Act, shall be and are hereby repealed. Act to apply only to L. C. Repeal of inconsistent Laws, &c.

SCHEDULES.

SCHEDULE No. 1

(Referred to in the foregoing Act.)

PROVINCE OF CANADA, }
DISTRICT (or CIRCUIT, }
as the case may be }
OF

In the *(here state the Court in which the action in question is pending.)*

No. *(here state the number of the action.)*

A. B., Plaintiff;

vs.

C. D., Defendant.

PUBLIC NOTICE is hereby given, in pursuance of the provisions of the Act of the Parliament of Ca-

nada, passed in the year of Her Majesty's
 Reign, and intituled, "An Act," (*here insert the title*
of this Act), that at the hour of in the
 noon of , the day
 of next (*or instant, as the case may be,*
 or as soon after that hour as may be, at the Court
 House of (*or, as the case may be,*
 at the Chambers of the Judge, (*sufficiently describing*
the same), the said A. B., Plaintiff in this cause,
 will apply to (*naming the Court, and indicating*
whether the application is to be made to such Court, or
to a Judge thereof), for the appointment of a fit and
 proper person to be Curator to the property, real and
 personal, of the said C. D., Defendant in this cause,
 who has made and filed in the Office of the Protho-
 notary (*or Clerk, as the case may be*) of the said
 Court, a statement under oath of the same, and also
 of his Creditors and their claims, together with a
 declaration that he is willing to abandon his property
 for the benefit of his Creditors—the whole as by the
 said Act required.

And all persons, creditors of the said C. D., are
 hereby notified then and there to attend, to make to
 the said Court (*or Judge, as the case may be*) such
 representation or statement in the premises as they
 may see fit to make.

Given at , this day
 of , 18

A. B., Plaintiff.

SCHEDULE No. 2

(Referred to in the foregoing Act.)

PROVINCE OF CANADA, }
 DISTRICT (or CIRCUIT, }
as the case may be) }
 OF }

In the *(here state the Court in which the action is pending.)*

No. *(here state the number of the action.)*

A. B., Plaintiff;

vs.

C. D., Defendant.

and

E. F., Curator to the property and effects of the said Defendant.

PUBLIC NOTICE is hereby given, in pursuance of the provisions of the Act of the Parliament of Canada passed in the year of Her Majesty's Reign, and intituled, "An Act," *(here insert the title of this Act,)* that on the day of , instant *(or last past, as the case may be,)* the said E. F., of *(state here the address and calling of the Curator,)* was, by order of *(describe here the Court or Judge in question)*, appointed to be Curator to the property and effects, of every kind, real and personal, of the said C. D., Defendant in this cause, abandoned by the said C. D. for the benefit of his Creditors—the whole as by the said Act provided.

And all persons, Creditors or Debtors of the said C. D., are hereby notified and required to govern themselves in the premises accordingly.

Given at , this day of 18 .

E. F., Curator.

(Or A B., Plaintiff, or C. D., Defendant, as the case may be.)

SCHEDULE No. 3

(Referred to in the foregoing Act.)

To C. D. of *(state here the address and calling of the party,)* Defendant in the cause wherein the Judgment, an authentic copy whereof is hereunto prefixed, has been rendered.

TAKE NOTICE that the undersigned, A.B., Plaintiff in the said cause, hereby demands of you, under and by virtue of the section of the Act of the Parliament of Canada, passed in the year of Her Majesty's Reign, and intituled, "An Act," *(here insert the title of this Act)*—a copy of which section is hereunto subjoined for your further information in the premises—that, within thirty days from the personal service to be made upon you of the foregoing certified copy of the said Judgment, together with this Notice, you do make and file the statement in the said section prescribed, in the manner and under the penalties therein set forth.

Done at , this day of , 18 .

A. B., Plaintiff.

(Here insert a copy of the said section of this Act.)

 SCHEDULE No. 4

(Referred to in the foregoing Act.)

KNOW ALL MEN by these presents, that we, *(name here the Defendant and his bail,)* are held and firmly bound to *(name here the Sheriff,)* Sheriff of , in the Province of Canada, in the sum of *(state here the amount sworn to and endorsed on the Writ, with twenty-five per centum added for interest and costs,)*

currency, to be paid to the said Sheriff, or his certain attorney, executors, administrators or assigns; for which payment, to be well and faithfully made, we bind ourselves, and each of us by himself for the whole and every part thereof, and the heirs, executors, and administrators of us, and every of us, firmly by these presents, sealed with our seals, and dated this day of , in the year of Our Sovereign Lady Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, and in the year of Our Lord one thousand eight hundred and .

Whereas the above bounden (*name here the Defendant*) has been by the said Sheriff arrested under and by virtue of a certain Writ sued out of (*name here the Court out of which such Writ may have been sued,*) at the instance of (*name here the Plaintiff,*) and to the said Sheriff in due course of law delivered;

The condition of this obligation is such that if the said (*name here the Defendant*) do on (*state here the return day of the Writ,*) or at any time previously thereto, or within eight days thereafter, give good and sufficient security to the satisfaction of (*name here the Court into which the Writ may be returnable,*) or of any one of the Judges of the said Court, that he, the said (*name here the Defendant,*) will surrender himself into the custody of the said Sheriff whenever required so to do by any order of the said Court, or of any Judge thereof, made as by law provided, or in default thereof, will pay to the said (*name here the Plaintiff*) the debt for which he, the said (*name here Defendant,*) has been arrested as aforesaid, with interest and costs; or do on (*state here the return day of the Writ,*) or at any time previously thereto, or within eight days thereafter, put in special bail, as by law provided, to the action wherein the said Writ

has been sued out as aforesaid, then this obligation shall be void and of no force, but otherwise shall stand in full force, vigor and effect.

Signed, sealed and delivered in presence of

CAP. XLIII.

An Act to remove all doubts as to the right of suing and defending Causes *in formâ pauperis* before the Courts of Law in Lower-Canada.

[30th May, 1849.]

Preamble.

WHEREAS doubts having arisen, whether the Courts of Law in Lower-Canada, and the several Justices thereof, are empowered to allow parties to sue and defend *in formâ pauperis*, as hath been practised heretofore in the said Courts; And whereas it is unjust to refuse access to the Courts to suitors whose pecuniary means are insufficient to enable them to pay, in the first instance, the ordinary fees and charges of the officers of the said Courts: Be it therefore declared and enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower-Canada, and for the Government of Canada*, and it is hereby declared and enacted by the authority of the same, That the said Courts, and each of the Justices thereof, are and shall be empowered and authorized to permit parties to sue and defend causes *in formâ pauperis*, as hath been here-

The Courts and Justices may, in certain cases, allow parties to sue or defend *in formâ pauperis*.

tofore practised, whenever they shall be satisfied by affidavit that such parties, having a good cause of action or a good defence, are unable to establish the same in the ordinary course of law, for want of the necessary means to defray the fees and charges of the several officers of the said Courts whose services are required in the conduct of causes before such Courts.

II. And be it declared and enacted, That the said Courts have and shall have full power and authority, either by interlocutory or by final judgment, to dispauper parties to whom the said privilege of suing *in formâ pauperis* shall have been allowed, whenever law and justice shall require them to be so dispaupered.

Parties may be afterwards dispaupered for cause.

CAP. XLIV.

An Act for the limitation of Actions of Clerks of Courts of Justice and Attorneys *ad lites*, and of all other Officers of Justice, entitled to receive fees and costs.

[30th May, 1849.]

WHEREAS doubts have arisen with respect to the right of the Clerks of the several Courts of Justice in Lower-Canada, to sue for the recovery of sums due to them for fees or emoluments of office, after a certain time from the day when such fees or emoluments have become due; and whereas by an Ordinance of the King of France, of the month of June in the year One thousand five hundred and ten, it is enacted and ordained, That all Actions of Clerks of Courts of Justice, for the recovery of sums due to them by virtue of their office, shall be subject to a prescription of three years; and whereas the said Or-

Preamble.

Ord. King of France, June 1510, cited.

Defendants in
actions by
Prothonota-
ries, for fees
may plead
three years'
prescription.

dinance forms part of the Civil Law of Lower-Canada: Be it therefore declared and enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, intituled, *An Act to re-unite the Provinces of Upper and Lower-Canada, and for the Government of Canada*, and it is hereby declared and enacted by the authority of the same, That in all Actions brought or to be brought by the Prothonotary or Clerk of any Court of Justice in Lower-Canada, for the recovery of fees or emoluments of office, it has always been and shall be lawful for the defendant to plead three years' prescription to the demand in any such Action, dating from the date of the delivery or transmission of the papers, documents and orders which such Prothonotary or Clerk may have been required to prepare and deliver, by virtue of the duties of his office, or from the date at which it may have been lawful for such Clerk to demand the payment of any sum for the filing of actions, pleas or other judicial documents, on the filing of which a fee is granted to such Clerk, as provided by the said Ordinance, and such prescription shall be a bar (*fin de non recevoir*) to any such action.

Doubts recited.

II. And whereas doubts have arisen relative to the limitation of actions of Attorneys *ad lites* against their clients, and of Sheriffs and other Officers of Justice for the drawing up, issuing or filing of any document, paper or order by them, or for rendering any other service in their official capacity, for which any fee or remuneration is allowed them—Be it therefore declared and enacted, That in all actions brought by Attorneys *ad lites* against their clients for the re-

Actions of At-
tornies *ad*
lites for fees or
disbursements

covery of fees or disbursements, accrued before the passing of this Act, it shall be lawful for the defendant to plead five years' prescription dating from the passing of this Act, and that in all actions brought by Attorneys *ad lites* against their clients for the recovery of fees and disbursements which may accrue and grow due after the passing of this Act, it shall be lawful for the defendant to plead five years' prescription, dating from the day when final judgment shall have been rendered in the cause or proceeding in which the plaintiff shall have been entitled, as Attorney *ad lites* to the fees, and shall have made the disbursements for which any such action shall be brought; and that in all actions brought by Sheriffs and other Officers of Justice for the drawing up, issuing or filing of any document, paper or order by them, or for rendering any other service in their official capacity, for which any fee or remuneration is allowed them, it shall also be lawful for the defendant to plead three years' prescription, dating from the date of the rendering of such services, or of the delivery or filing of such documents, papers or orders; and such prescription shall be a bar (*fin de non recevoir*) to any such action; any law, usage or custom to the contrary notwithstanding.

also limited to
five years, and
of Sheriffs, &c.
to three years.

C A P. X L V.

An Act to facilitate Actions against Persons Associated for Commercial Purposes, and against Unincorporated Companies.

[30th May, 1849.]

WHEREAS difficulties exist in bringing Ac- Preamble.
tions against persons associated as Partners
for trading purposes, or against unincorporated Com-

Partnerships
in Lower-Can-
ada to file a
declaration as
to who the
partners are,
&c.

When such
declaration
must be filed.

panies or Societies formed for like purposes, by reason of the difficulty for parties doing business with such Partnerships, Companies or Societies, to ascertain the names, surnames, residence and addition of all the persons so associated as aforesaid, and great expense and inconvenience are thereby incurred: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Législative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower-Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That all persons associated in Partnership for trading purposes in Lower-Canada, shall cause to be delivered to the Prothonotary of the Court of Civil Jurisdiction, in each District, and to the Registrar of each County, in which they shall carry on business, a declaration in writing, signed by the several members of the said Copartnership, when all such members shall, at the time of making the same, be in the said Province; and if any of the said members be absent at the time, then by the members present, in their own names and for their absent co-members, under their special authority to that effect, and containing the names, surnames, addition and residence of each and every Partner as aforesaid, and the name, style or firm under which they carry on or intend to carry on such business, and stating also the time during which the Partnership has existed, and declaring that the persons therein named are the only members of such Partnership; and such declaration shall be filed within Sixty days after the passing of this Act, if such Partnership shall have been or shall be formed before the time when this Act

shall come into force and effect, and within Sixty days after the formation thereof if it shall be formed after the said Act shall come into force and effect ; and a like declaration shall be filed in like manner when and so often as any change or alteration shall take place in the members of such Partnership, or in the name, style or firm under which they intend to carry on their business—under a penalty of Fifty pounds against each and every member of any Partnership with regard to which the requirements of this section shall not have been complied with, to be recovered before any Court having jurisdiction in civil cases to the amount of such penalty, by any person suing as well in his own behalf as on behalf of Her Majesty ; and one moiety of such penalty shall belong to the Crown for the uses of the Province, and the other moiety to the party suing for the same, unless the suit be brought (as it may be) on behalf of the Crown only, in which case the whole of the penalty shall belong to Her Majesty for the uses aforesaid.

Also on
change of
partners.

Penalty.

Penalty how
recovered and
applied.

II. And be it enacted, That the said Prothonotary and Registrar shall enter each such declaration as aforesaid, in a book to be by them kept for that purpose, which shall be at all times, during office hours, open to the inspection of the public, gratuitously ; and for registering each such declaration the Prothonotary and Registrar shall each be entitled to demand from the person delivering it to him the sum of Two shillings and Six pence if it shall not contain more than two hundred words, and at the rate of Six pence per hundred words, for all above the number of two hundred : and such declaration shall be in the form or to the effect of the Schedule to this Act annexed.

Prothonotary
and Registrar
to register
such declara-
tion.

Fees.

Form of decla-
ration.

III. And be it enacted, That the allegations made in the declaration aforesaid, shall not be controvertible

Legal effect of
the allega-

tions in such
declaration.

as against any party, by any person who shall have signed the same, nor as against any party not being a member of the Partnership, by any person who shall have signed the same or who was really a member of the Partnership therein mentioned at the time such declaration was made; nor shall any such Signer or Partner be deemed to have ceased to be a Partner until a new declaration shall have been made and filed by him or his Copartners, or any of them, as aforesaid, stating such alteration in the Partnership; but nothing herein contained shall exempt from liability any person who, being a Partner, shall not have been mentioned in the declaration, and such person may, notwithstanding such omission, be sued jointly with the partners mentioned in the declaration, or they may be sued alone, and if judgment be recovered against them, any other Partner or Partners may be sued jointly or severally, in an action on the original cause of action, upon which such judgment was rendered—nor shall any thing in this Act be construed to affect the rights of any Partners with regard to each other, except that no such declaration as aforesaid shall be controverted by any signer thereof.

How actions
may be
brought
against part-
nerships if no
declaration be
filed within
sixty days
from the pas-
sing of this
Act.

IV. And be it enacted, That after the expiration of sixty days from the passing of this Act, if any persons shall be or shall have been associated as Partners for the purposes of trade in Lower-Canada, and no declaration shall have been filed under this Act with regard to such Partnership, then any action which might be brought against all the members of the Partnership, may also be brought against any one or more of them, as carrying on or as having carried on trade, jointly with others, (without naming such others in the Writ or declaration) under the name and style of their said Copartnership firm; and if judgment be recovered against him or them, any other Partner or Partners may be sued jointly or severally

on the original cause of action on which such judgment shall have been rendered : Provided always, that if any such action be founded on any obligation or instrument in writing in which all or any of the Partners bound by it shall be named, then all the Partners named therein shall be made parties to such action : Provided always, and be it declared and enacted that the service of any Summons or Process for any claim or demand upon any existing Copartnership liability at the office or place of business of any such existing Copartnership carrying on business within this Province, is and shall be held and deemed to have the same and equal effect as a service made upon the members of the said Copartnership, personally, and any judgment rendered against any member of such existing Copartnership, for a partnership debt or liability, shall and may be executory by Process of Execution against all and every the Partnership, Stock, Property and Effects in the same manner, and to the same extent as if such judgment had been rendered against such Copartnership.

Proviso : if the action be on an instrument.

Proviso as to service of process and execution against partnerships.

V. And be it enacted, That the word "Partnership" in this Act, shall include any unincorporated Society, Company, or Association for trading purposes; and the word "Action" shall include any proceeding at Law to which any such Partnership shall be a party.

Interpretation clause.

VI. And be it enacted, That this Act shall apply only to Lower-Canada.

Act to apply only to L. C.

SCHEDULE.

PROVINCE OF CANADA, }
DISTRICT OF }

We, of in , (*Grocers*),
hereby certify that we have carried on and intend to

carry on trade and business, as (*Grocers,*) at
in partnership under the name or firm of

(*or, as the case may be,*) I, (*or we,*) the undersigned, of _____, hereby certify that I (*or we*) have carried on and intend to carry on trade and business as _____, at _____, in partnership with C. D. of _____, E. F. of _____, and that the said partnership hath subsisted since the _____ day of _____, one thousand _____, and that we (*or I or we,* and the said C. D. and E. F.) are and have been since the said day, the only members of the said Partnership. Witness our (*or any of our*) hands at _____, this _____ day of _____, one thousand eight hundred and _____.

(*Or as the case may be.*)

C A P . X L V I I I .

An Act to amend the Ordinance providing for
the Enregistration of Titles to Immoveable
Property, and Incumbrances thereon.

[30th May, 1849.]

Preamble.

Ordinance
4 V. c. 30,
cited.

WHEREAS great inconvenience and useless expense have arisen from the carrying into effect of certain parts of the Ordinance of the Governor and Special Council of and for the late Province of Lower-Canada, passed in the fourth year of Her Majesty's Reign, and intituled, *An Ordinance to prescribe and regulate the Registering of Titles to Lands, Tenements and Hereditaments, real or immoveable estates, and of charges and incumbrances on the same; and for the alteration and improvement of the law, in certain particulars in relation to the alienation and hypothecation of real estates,*

and the rights and interest acquired therein, and it is expedient and necessary to amend the said Ordinance by repealing certain parts thereof: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower-Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That the twenty-second section of the said Ordinance, in so far only as it relates to the relations and friends who have concurred or who may hereafter concur in the election of any tutor or guardian to a minor or minors, or of any curator to any person or persons interdicted, shall be and is hereby repealed, and shall be as if it had never been enacted, and shall remain in force only as regards subrogate tutors: and that the thirty-fourth section of the said Ordinance relating to married women of full age shall be wholly and entirely repealed, and shall be void as if it had never been enacted; and that all deeds of sale or conveyance of lands belonging to any such married woman as *propres*, consented to by her without previous examination before a Judge or before a Court of Justice, and all acts and things whatsoever done by any such married woman as aforesaid since the said Ordinance came into force, shall avail and have effect as if the said thirty-fourth section of the said Ordinance had never been enacted.

Sect. 22 repealed except as to subrogate Tutors.

Sect. 34 and 36 repealed, and certain acts of married women confirmed.

II. And be it enacted, That for and notwithstanding any thing in the said Ordinance, it shall be lawful for the Registrars of the Counties of Quebec and Montreal respectively, to have and keep sepa-

Registrars at Quebec and Montreal may keep separate Books for the Registration at

full length of
certain classes
of deeds and
instruments.

rate Books and Registers (of the kind and form required by the said Ordinance, and authenticated in the manner thereby prescribed as to those in which memorials are to be registered,) for the registration at full length of deeds, instruments and writings of each of the classes hereinafter mentioned, that is to say :

First. Bonds, recognizances and other securities and obligations in favor of the Crown, wills and testaments, and probates or office copies of wills and testaments.

Second. Marriage contracts and donations.

Third. Appointments of tutors and curators, judgments and judicial acts and proceedings.

Fourth. Deeds of alienation and conveyance (*titres translatifs de propriété*;) not being of any of the classes hereinbefore mentioned, including exchanges and leases for more than nine years, and deeds of partition.

Fifth. Deeds, instruments and writings creating mortgages, privileges, hypothèques or incumbrances, and not being of any of the classes hereinbefore mentioned.

Sixth. All other deeds, instruments and writings not being of any of the classes hereinbefore mentioned; and the registration thereof at full length in such books respectively, shall be valid and effectual to all intents and purposes; and the registration of any deed, instrument or writing at full length in any book, except that kept for the registration of memorials, shall not affect the validity of such registration although the Registrar may have mistaken the class to which such deed, instrument or writing properly belongs.

III. And be it enacted, That for and notwithstanding any thing in the said Ordinance, any Deputy Registrar may resign or be removed from office by his Principal, and in the event of such resignation or removal, it shall be incumbent on such Principal to appoint another Deputy in his place within twenty days after the occurrence of such resignation or removal. And if any such Registrar shall neglect to appoint a Deputy Registrar as hereinbefore is prescribed, he shall forfeit five pounds current money of this Province, for each and every day during which he shall have neglected to make such appointment; which penalty shall and may be recovered in any Court of Record in Lower-Canada, and one half thereof shall go and be paid to Her Majesty, Her Heirs and Successors, and the other half thereof to the informer.

Deputy Registrars may resign or be removed.

Others to be appointed within a certain time.

INDEX.

Cap.	Page.
37.—An Act to establish a Court having jurisdiction in Appeals and Criminal Matters, for Lower-Canada,	3
38.—An Act to amend the Laws relative to the Courts of Original Civil Jurisdiction in Lower-Canada,	23
39.—An Act to correct an error in an Act of the present Session relative to the Judicature of Lower-Canada,	101
40.—An Act to amend the Law relative to the administration of Justice in Gaspé,	<i>Id.</i>
41.—An Act to define the mode of proceeding before the Courts of Justice in Lower-Canada, in matters relating to the protection and regulation of Corporate rights and to Writs of Privilege, and for other purposes therein mentioned,	105
42.—An Act to abolish Imprisonment for Debt, and for the punishment of Fraudulent Debtors, in Lower-Canada, and for other purposes,	122
43.—An Act to remove all doubts as to the right of suing and defending Causes <i>in forma pauperis</i> before the Courts of Law in Lower-Canada,	140
44.—An Act for the limitation of Actions of Clerks of Courts of Justice and Attorneys <i>ad lites</i> , and of all other Officers of Justice, entitled to receive fees and costs,	141
45.—An Act to facilitate Actions against Persons Associated for Commercial Purposes, and against Unincorporated Companies,	143
48.—An Act to amend the Ordinance providing for the Enregistrement of Titles to Immoveable Property, and Incumbrances thereon,	148

