

Grace of God, of Great Britain and Ireland, Queen, Defender of the Faith, and so forth, and in the year of Our Lord one thousand eight hundred and forty.

By His Excellency's Command,

W. B. LINDSAY,

Clerk Special Council.

C A P. XLV.

An Ordinance to establish new Territorial Divisions of Lower Canada, and to alter and amend the Judicature, and provide for the better and more efficient administration of Justice throughout this Province.

Preamble.

WHEREAS the provisions of Law under which the existing Courts of Judicature in this Province have been established, are, and have been found by experience to be altogether insufficient and inadequate for the due administration of justice, and other and further provisions in this behalf as well as a corresponding alteration in the division of this Province, for the purposes of Judicature have become necessary;—Be it therefore Ordained and Enacted by His Excellency the Governor of this Province of Lower Canada, by and with the advice and consent of the Special Council for the affairs of this Province, constituted and assembled by virtue and under the authority of an Act of the Parliament of the United Kingdom of Great Britain and Ireland, passed in the first year of the Reign of Her present Majesty, intituled, “*An Act to make temporary provision for the Government of Lower Canada,*” and also by virtue and under the authority of a certain other Act of the same Parliament, passed in the Session held in the second and third years of the Reign of Her present Majesty, intituled, “*An Act to amend an Act of the last Session of Parliament, for making temporary provision for the Government of Lower Canada;*” and it is hereby Ordained and Enacted by the authority of the said Acts of Parliament, that so much of an Act of the Legislature of this Province, passed in the thirty-fourth year of the Reign of His late Majesty King George the Third, intituled, “*An Act for the division of the Province of Lower Canada, for amending the*”
“*Judicature*”

Certain parts
of the Act 34
Geo. 3 cap. 61
17 Geo. 4 cap.
17, 18, 19 Geo.

4 cap. 7 & 8.
 Wit. 4 cap. 13;
 the act 10. 11.
 Geo 4 cap. 17;
 and so much of
 any other Stat-
 utes or laws as
 confers juris-
 diction or pow-
 ers on the
 courts of K. B.,
 and Provincial
 Courts repeal-
 ed.

“Judicature thereof, and for repealing certain laws therein mentioned,” as enacts that the said Province shall consist of three districts, to be called the District of Quebec, the District of Montreal and the District of Three Rivers, and determines the extent and boundaries of the said three Districts; and also so much of the said last mentioned Act as erects the County of Gaspé into an Inferior District, to be called the Inferior District of Gaspé; and also, so much of an Act of the Legislature of this Province, passed in the third year of the reign of His late Majesty King George the Fourth, intituled, “An Act to erect certain Townships therein mentioned into an Inferior District to be called the Inferior District of St. Francis,” as erects certain Townships and parts of Townships therein mentioned into an Inferior District, to be called the Inferior District of St. Francis; and also, so much of another Act of the same Legislature, passed in the third year of the reign of His late Majesty King William the Fourth, intituled, “An Act to continue for a limited time, and to amend a certain Act therein mentioned relating to the Inferior District of St. Francis,” as enacts that the said Inferior District shall be called the District of St. Francis; and also, a certain Act of the Legislature of this Province, passed in the session held in the tenth and eleventh years of the reign of His late Majesty King George the Fourth, intituled, “An Act to repeal certain parts of an Act passed in the thirty-fourth year of His late Majesty’s Reign, intituled, “An Act for the division of the Province of Lower Canada, for amending the Judicature thereof, and for repealing certain laws therein mentioned, and to ascertain the boundaries of the District of Three Rivers;” and also, so much of the said Act passed in the said thirty-fourth year of the reign of His said late Majesty King George the Third, as in any manner relates to the establishment and jurisdiction of Courts of King’s Bench in the Districts of Quebec, Montreal and Three Rivers, and to the establishment and jurisdiction of Provincial Courts in the District of Three Rivers, and in the Inferior District of Gaspé, and to the establishment of annual Circuits in the said Districts of Quebec, Montreal and Three Rivers, and to the establishment and jurisdiction of the Provincial Court of Appeals in the said Province; and also, so much of the said Act passed in the third year of the reign of His said late Majesty King George the Fourth, as in any manner relates to the appointment of a Judge in and for the said Inferior District of St. Francis, and to the establishment and jurisdiction of a Provincial Court therein, and so much as confers any powers on the said Judge, or on the said Provincial Court, in or out of Term; and also, so much of a certain other Act of the Legislature of this Province, passed in the Session of the said Legislature, held in the tenth and eleventh years of the reign of His said late Majesty King George the Fourth, intituled, “An Act to continue further for a limited time, a
 “certain

Proviso.

“ certain Act passed in the third year of His Majesty’s reign, intituled, “ An Act to erect certain Townships therein mentioned into an Inferior District to be called the Inferior District of St. Francis, and to establish Courts of Judicature therein, and to make further provision for the due administration of Justice in the said Inferior District,” as relates to the establishment and jurisdiction of a Court of King’s Bench in the said District of St. Francis, and so much thereof as confers any powers on the said Court of King’s Bench, or the Judges thereof, in term or in vacation; and also, so much of any other Statutes or Laws now in force in this Province, as confers jurisdiction or powers on the said Courts of King’s Bench and Provincial Courts hereinbefore mentioned, or any of them respectively, or on the Judges thereof, shall be, and the same are hereby repealed: Provided always, that the repeal of the said Acts, and parts and provisions of Acts of the Legislature of this Province as aforesaid, shall not have the effect of reviving or giving any force whatever to any Act, Ordinance, or Law, or part of any Act, Ordinance, or Law, which shall by such Acts, and parts and provisions of Acts, have been repealed or determined.

The Province divided into four Territorial Divisions.

Limits and boundaries of the division of Quebec.

II. And be it further Ordained and Enacted, that this Province of Lower Canada, shall, for the purposes of Judicature, be divided into four principal Territorial Divisions, or parts, to be called respectively the Territorial Division of Quebec, the Territorial Division of Montreal, the Territorial Division of Sherbrooke, and the Territorial Division of Gaspé; which said Territorial Divisions respectively, shall be limited and bounded as follows, that is to say:—The said Territorial Division of Quebec, shall be bounded to the westward by the south-western boundary line of the Seigniorie of Batiscan, as far as it extends, and thence by a due north-west line to the northern boundary of this Province, on the north side of the River St. Lawrence, and by the north-eastern boundary lines of the Seigniorie of St. Pierre les Becquets and the Township of Blandford, until intersected by the River Becancour, thence easterly up the said River to the western line of the Township of Somerset, thence southerly along the south western boundary line of the County of Megantic to the River Chaudière; thence southerly up the said River to Lake Megantic; thence through the middle of the said Lake to the mouth of Arnold River; thence southerly up the said River to the southern boundary of this Province, on the south side of the River St-Lawrence; and to the eastward on the north side of the River St. Lawrence by the eastern boundary of this Province, and on the south side of the said River by the western boundaries of the Counties of Bonaventure and Gaspé; and the said Territorial Division

Division of Quebec shall comprehend all that part of this Province which lies to the eastward of the aforesaid western boundary line of the said Territorial Division, on the north side of the River St. Lawrence, and all that part of this Province which lies between the aforesaid western and eastern boundary lines on the south side of the River St. Lawrence. And the said Territorial Division of Montreal shall be bounded to the eastward by the south-western boundary line of the Seigniorie of Batiscan as far as it extends, and thence by a due north-west line to the northern boundary of this Province, on the north side of the River St. Lawrence; and to the south by a prolongation south-easterly of the said south-western boundary line of the Seigniorie of Batiscan, to the middle of the River St. Lawrence; thence up the middle of the said River to a point to be intersected by the south-easterly prolongation of the north-eastern boundary line of the Seigniorie of Maskinongé; thence south in a direct line to the entrance of the Bay of Yamaska or Lavallière; thence south-westerly up the middle of the said Bay until intersected by the south-western boundary line of the Seigniorie of Yamaska; thence south-easterly along the said line until intersected by the River Yamaska; thence southerly up the said River to the north-eastern boundary line of the Seigniorie of St. Charles; thence south-easterly along the said line and the north-eastern boundary of the Seigniorie of De Ramsay to the eastern angle of the said Seigniorie of De Ramsay; thence southerly along the eastern boundaries of the Counties of St. Hyacinthe and Rouville, to the southern boundary of this Province, on the south side of the River St. Lawrence; and the said Territorial Division of Montreal shall comprehend all that part of this Province which lies to the westward of the aforesaid eastern boundary lines of the said Territorial Division. And the said Territorial Division of Sherbrooke shall be bounded to the eastward by the western boundary line of the Territorial Division of Quebec, and to the westward by the eastern boundary line of the said Territorial Division of Montreal; on the north by the said southern boundary line of the said Territorial Division of Montreal, and on the south by the southern boundary of this Province; and the said Territorial Division of Sherbrooke shall comprehend all that part of this Province which lies between the boundaries last aforesaid. And the said Territorial Divisions of Montreal and Sherbrooke shall respectively comprehend all the Islands in the River St. Lawrence opposite and nearest to the shores thereof; and the said Territorial Division of Gaspé shall comprehend all that part of this Province which lies to the eastward of the eastern boundary line of the said Territorial Division of Quebec, comprising the Counties of Bonaventure and Gaspé, on the south side of the River St. Lawrence. And the Village of Sherbrooke, situated in the said Territorial Division of Sherbrooke, shall henceforward be called the Town of Sherbrooke; and New Carlisle, situated in the said Territorial Division of Gaspé, shall henceforward be called the Town of New Carlisle.

Of the Division
of Montreal.

Of the Division
of Sherbrooke.

Of the Division
of Gaspé.

The villages of
Sherbrooke and
New Carlisle,
to be called
towns.

A court of common pleas established.

How the justices thereof are to be appointed.

To have original civil jurisdiction throughout the province, with certain power and authority.

To exercise all the powers, and jurisdiction vested in the court of K. B. in matters of a civil nature, with certain exceptions.

III. And be it further Ordained and Enacted, that there shall be and is hereby established in this Province of Lower Canada, a Superior Court of Record, of Civil Jurisdiction, to be called the Court of Common Pleas for the Province of Lower Canada, which Court shall consist of nine Justices; and the said Justices composing the said Court, shall be appointed, from time to time, by Her Majesty, Her Heirs or Successors, by Letters Patent under the Great Seal of this Province.

IV. And be it further Ordained and Enacted, that the said Court of Common Pleas hereby constituted, shall have original Civil Jurisdiction throughout this Province of Lower Canada, with full power and authority to take cognizance of, hear, try, and determine, in due course of law, all civil pleas, causes and matters whatsoever, as well those in which the Queen 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 certain matters over which jurisdiction is hereinafter given to the Court of Queen's Bench hereby constituted.

V. And be it further Ordained and 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 by law are vested in and are required to be exercised by the several Courts of King's Bench in the several districts of this Province as now constituted, or any or either of them, and in and by the several Justices of the said Courts, or any or either of them, and in and by the Provincial Courts in the Districts of Three Rivers and Saint Francis, and in the Inferior District of Gaspé, and by the Judges of the said Provincial Courts, or any or either of them, as well in term as in vacation, excepting, nevertheless, such of the said powers, authorities and jurisdictions, as are hereinafter vested in the Court of Queen's Bench hereby constituted shall, from and after the period hereinafter appointed for the commencement of this Ordinance, become and be vested in the Court of Common Pleas hereby constituted, and shall and may be as fully and effectually exercised by the said Court of Common Pleas, and the Justices 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 King's Bench, and any or either of them, and the several Justices thereof, or any of them, in term or vacation, if this Ordinance had not been passed.

VI.

The justices to sit in divisions

VI. And be it further Ordained and Enacted, that the said Justices of the said Court of Common Pleas, in the exercise of their judicial power, shall and may sit in divisions, at the times and places hereinafter mentioned, which divisions shall be distinguished by numbers, and be designated and known as the first division, the second division, the third division, and the fourth division.

Where the divisions are to sit, and of how many justices they are to consist.

VII. And be it further Ordained and Enacted, that the first of the said divisions of the said court of common pleas shall sit at the city of Quebec in the said territorial division of Quebec, at the times hereinafter mentioned, and shall consist of three or more of the Justices of the said court; and that the second division of the said Court shall sit at the city of Montreal in the said territorial division of Montreal at the times hereinafter mentioned, and shall consist of three or more of the Justices of the said court; and that the third division of said court shall sit in the said town of Sherbrooke in the said territorial division of Sherbrooke, and shall consist of two or more of the Justices of the said court; and that the fourth division of the said court shall sit in the said town of New Carlisle, and at Carleton, Percé and Douglas Town, in the said territorial division of Gaspé, at the times hereinafter mentioned, and shall consist of one or more of the Justices of the said court.

The Governor to appoint a president to each division composed of two or more justices.

VIII. And be it further Ordained and Enacted, that in each of the said divisions of the said court of common pleas respectively, composed of two or more Justices, it shall be lawful for the Governor of this Province for the time being, by an instrument under his hand and seal at arms, from time to time, as occasion may require, to appoint one of the Justices of the said Court to preside, and in case of his death, absence or incapacity to attend in such division, the senior Justice present shall preside therein, until another President shall be appointed as aforesaid,

And to designate the justices who are to sit in the divisions.

IX. And be it further Ordained and Enacted, that it shall be lawful for the Governor of this Province, for the time being, from time to time to designate and nominate such of the said Justices of the said court of common pleas as he may think fit, to sit in the divisions aforesaid of the said Court, and act therein as Justices as aforesaid.

Each Division to have a seal, to be kept by the president.

X. And be it further Ordained and Enacted, that the said court of common pleas hereby constituted, in each of its divisions, severally and respectively, shall have and use, as occasion may require, a Seal bearing a device and impression of Her Majesty's Royal Arms, with an inscription thereon, expressing that it is the seal

seal of the particular division of the said court for which it is intended and to which it may belong ; which seal shall be kept in the custody of the President of the said division, or in case of his absence, or a vacancy of that office, in the custody of the senior Justice of the said division.

Respecting the
the issuing of
writs and pro-
cess,

XI. And be it further Ordained and Enacted, that all writs and process to be issued from and out of each of the divisions of the said court of common pleas hereby constituted respectively, shall run and be in the name and style of Her Majesty, her heirs or successors, and shall be sealed with the seal belonging to the division of the said court from which the same shall issue, and shall bear the attestation of the President of such division, or in case of vacancy of that office, of the senior Justice of the said division, and shall be signed by the proper officer whose duty it shall be to prepare and make out the same.

When 2 justices
are to be a
quorum.

Proviso.

XII. And be it further Ordained and Enacted, that when a division of the said court of common pleas hereby constituted shall consist of three or more Justices, any two of them shall constitute a quorum : Provided always that if there be only two of such Justices present, and they shall be divided in opinion, the matter shall abide the future judgment of the said Court, in such division.

When a presi-
dent shall have
a double voice.

XIII. And be it further Ordained and Enacted, that when a division of the said court of common pleas hereby constituted, shall consist of two Justices, the President of such division, in case of a difference of opinion between the said two Justices, shall have a double or casting voice.

The Governor
to appoint a
prothonotary.
for each divi-
sion.

XIV. And be it further Ordained and Enacted, that a Prothonotary or Chief Clerk shall, from time to time, as occasion may require, be appointed by the Governor of this Province, for the time being, for each of the said divisions of the said court of common pleas respectively.

What cases are
cognizable in
each separate
division.

XV. And be it further Ordained and Enacted, that the said court of common pleas hereby constituted, in its separate divisions aforesaid, severally and respectively, shall have and hold cognizance of cases only where the defendant or defendants may have a domicile, or be legally served with process, within the territorial division in which the particular division of the said court resorted to by the plaintiff shall sit : Provided always, that if there be two or more defendants, it shall be sufficient to give jurisdiction to the particular division of the said Court in which they

they may be sued or impleaded, that any one of the said defendants be domiciliated, or have been legally served with process within the territorial division in which such particular division of the said court may sit.

The justices sitting on separate divisions to have the power of the whole court.

XVI. And be it further Ordained and Enacted, that the Justices of the said court of common pleas, sitting in separate divisions as aforesaid, or so many of them as shall constitute a quorum thereof as aforesaid, shall have, hold and exercise, in each of the said divisions respectively, the power, authority and jurisdiction of the whole of the said court, and of the Justices composing the same.

When superior terms in the divisions of Quebec, Montreal and Sherbrooke are to be held.

XVII. And be it further Ordained and Enacted, that in each of the said Territorial Divisions of Quebec, Montreal and Sherbrooke, the Justices of the said court of common pleas hereby constituted, or any two or more of them, shall sit and hold terms or sessions of the said court of common pleas, for the cognizance of all civil pleas, causes and matters, which are now cognizable in the superior terms of the courts of King's Bench as now constituted, in the several districts of this Province respectively, and which are hereby made cognizable in the said court of common pleas; and the said terms or sessions of the said court of common pleas shall be held in the said territorial divisions respectively, as follows, that is to say: in each of the said territorial divisions of Quebec, Montreal and Sherbrooke, from the first to the twentieth day of the months of February, April, June and October, both days inclusive, Sundays and holidays excepted.

Actions cognizable in said terms.

XVIII. Provided always, and be it further Ordained and Enacted, that the said court of common pleas, in its several divisions aforesaid, in the said terms thereof, shall only take cognizance of suits or actions wherein the value of the matter in dispute shall exceed the sum of twenty pounds sterling, unless the said suits or actions respectively shall relate to any fee of office, duty, rent, income, or any sum or sums of money payable to Her Majesty, titles to lands or tenements, annual rents, or such like matter or things, where the rights in future may be bound.

When the terms in the division of Gaspé are to be held.

XIX. And be it further Ordained and Enacted, that in the said territorial division of Gaspé, the said Justices of the said court of common pleas hereby constituted, or any one or more of them, shall sit and hold terms and sessions of the said court of common pleas for the cognizance of all civil pleas, causes and matters whatsoever, which are cognizable in the said court of common pleas, as follows, that is to say:—at the said town of New Carlisle, from the first to the twentieth

tieth day of March, and from the eleventh to the thirtieth day of September of each year; and at Carleton, from the first to the tenth day of July of each year; and at Percé, from the first to the tenth day of August of each year; and at Douglas Town, from the sixteenth to the twenty-fifth day of August of each year; the first and last days of each of the said periods being included, and Sundays and holidays being excepted.

Inferior terms to be held in the divisions of Quebec, Montreal and Sherbrooke, till 15th January 1843.

XX. And be it further Ordained and Enacted, that in each of the said territorial divisions of Quebec, Montreal and Sherbrooke, there shall be held by one or more of the Justices of the said court of common pleas, inferior terms or sessions thereof, in each year, until the fifteenth day of January, which will be in the year of our Lord one thousand eight hundred and forty-three, and no longer, which terms shall be held in and for the said territorial divisions respectively, at the places and times hereinafter mentioned, that is to say:—at each of the said cities of Quebec and Montreal, and in the said town of Sherbrooke, from the twenty-first to the thirty-first day of January; from the eleventh to nineteenth day of March; from the twenty-first to the thirty-first day of May; from the twenty-fourth to the thirtieth day of June; from the twenty-first to the thirty-first day of August; and from the twenty-first to the thirtieth day of November, of each and every year, the first and last days of the said periods being included, and Sundays and holidays excepted. And that the said court of common pleas, in the said several divisions thereof respectively, shall, in the said Inferior terms thereof, have the same jurisdiction, powers and authority which by law are now vested in the said courts of King's Bench for the Districts of Quebec and Montreal as now constituted, in the inferior terms thereof, and subject to the same evocation and removal of certain suits or actions from the said inferior terms of the said court of common pleas, to the superior terms thereof, as are now authorized and may be obtained from the inferior terms of the said last mentioned courts of King's Bench for the districts of Quebec and Montreal respectively, to the superior terms thereof, and under the same rules which now govern such proceedings in the Inferior and Superior terms of the said courts of King's Bench.

And to hear & determine in a summary manner without appeal, actions for sums not exceeding £20 sterling.

XXI. Provided always, and it is hereby further Ordained and Enacted, that the said court of common pleas, in the said inferior terms to be held in the said territorial divisions of Quebec, Montreal and Sherbrooke as aforesaid, shall and may have and hold cognizance of, hear, try and determine in a summary manner, without appeal, suits and actions of the nature of those now cognizable in the inferior terms of the said last mentioned courts of King's Bench, wherein the sum demanded

ed shall not exceed the sum of twenty pounds sterling, in the same manner and under and subject to the same rules and regulations, as now obtain in the said inferior terms of the said courts of King's Bench, in suits and actions wherein the amount claimed does not exceed ten pounds sterling.

Of what cases only the said terms shall have cognizance.

XXII. Provided also, and be it further Ordained and Enacted, that the said court of common pleas hereby constituted, in the Inferior terms thereof, to be held in the said territorial divisions of Quebec, Montreal and Sherbrooke as aforesaid, respectively, shall have and hold cognizance of cases only where the defendant or defendants may have a domicile, or be legally served with process, within the territorial division in which the particular division of the said court resorted to by the plaintiff, in the Inferior terms thereof, shall sit, unless there be two or more defendants, in which case it shall be sufficient to give jurisdiction to the particular division of the said court, in the inferior terms thereof, in which they may have been sued or impleaded, that any one of the said defendants be domiciliated, or have been legally served with process, within the territorial division in which such particular division of the said Court, in the Inferior terms thereof may sit.

To what court appeals and writs of error shall lie from the judgments rendered in the superior terms.

XXIII. And be it further Ordained and Enacted, that an appeal and writ of error shall lie from the judgments of the said court of common pleas hereby constituted, in the several divisions aforesaid, in the terms thereof aforesaid, other than the said Inferior terms, to the court of Queen's Bench hereinafter constituted, in every case in which an appeal or writ of error now by law lies from the judgments of the Courts of King's Bench in the several districts of this Province, in the civil superior terms thereof to the Provincial court of appeals, as heretofore established and subsisting at the period hereinafter appointed for the commencement of this Ordinance, upon the same terms and conditions, and under and subject to the same restrictions, limitations, rules and regulations as are now established and obtain, in appeals from the said courts of King's Bench, to the said Provincial Court of Appeals.

The court in its general divisions, may appoint commissioners for special purposes.

XXIV. And be it further Ordained and Enacted, that it shall and may be lawful to and for the said court of common pleas, in its several divisions aforesaid, by commission or commissions under the seal of such divisions respectively, to authorize and appoint any fit or proper person or persons, either generally, or in any particular case, or for one or more turn or turns only, to receive the acknowledgements

knowledgements of recognizances, of bail on bail process, and to administer oaths for the justification of bail, and for receiving and taking the declaration on oath of any Garnishee or Garnishees, and for receiving and taking the answers of any party or parties, on interrogatories on facts and articles, (*faits et articles*,) or on the *juramentum litis decisorium*, or on the *juramentum judiciale*, and for the examination of any witness or witnesses upon interrogatories, and for the taking of any affidavit, declaration on oath, or affirmation, in any suit, matter, or proceeding which may be depending, or about to be instituted in the said court of common pleas, upon such occasions as the said court shall think fit to issue the said commissions.

The justices of the said court, or any six of them may frame and adopt rules of practice.

XXV. And be it further Ordained and Enacted, that for the purpose of establishing uniformity in the practice and proceedings of the said court of common pleas, in its several divisions, it shall be lawful for the Justices of the said court, or any six of them, to meet at any time or times after the period hereinafter appointed for the commencement of this Ordinance, for the purpose of framing and adopting rules to govern the practice and forms of proceeding, and process of the said court with uniformity in its several divisions; and that the said rules, so framed and adopted by the said Justices, or any six of them, not being repugnant to this Ordinance, or to the law of the land, shall, after publication thereof in the said divisions respectively, become and be the rules of practice of each and every of the said divisions, and shall continue to be binding and observed therein, until the same may be rescinded, altered or modified by the said Justices, or any six of them, at any subsequent meeting or meetings of the said Justices, or any six of them, to be for that purpose had, and the publication in the said divisions of the said court respectively, of the new rules or orders by which the same shall or may be rescinded, altered, or modified.

What laws are to continue in force and be observed by the said court in its several divisions.

XXVI. And be it further Ordained and Enacted, that all and singular the laws of this Province, which, before and at the period hereinafter appointed for the commencement of this Ordinance were and shall be in force, to govern and direct the proceedings and practice of the courts of King's Bench, in the several districts of this Province as now constituted, in the exercise of the civil jurisdiction of the said courts, as well in the superior as the inferior terms thereof respectively, and which are not expressly repealed or varied by this Ordinance, shall continue to be in force and be observed in and by the said court of common pleas in its several divisions aforesaid, as well in the superior as the inferior terms thereof, respectively.

XXVII.

All Records
&c. of the
courts of K. B.
in civil matters
to be transmit-
ted to the court of
common pleas.

XXVII. And be it further Ordained and Enacted, that all and every the records, registers, muniments, and judicial and other proceedings of the courts of King's Bench, in the several districts of this Province, in civil matters, shall, forthwith after the period hereinafter appointed for the commencement of this Ordinance, be transmitted into and make part of the records, registers, muniments and judicial and other proceedings of the said court of common pleas hereby constituted, in the respective divisions thereof, to and by which the powers of the said courts of King's Bench respectively, have been transferred, and in pursuance of this Ordinance are to be exercised; — That is to say, all the records, registers, muniments, and judicial and other proceedings of the said court of King's Bench for the district of Quebec, shall be transmitted into the said court of common pleas, in the aforesaid first division thereof; and all the records, registers, muniments and judicial and other proceedings of the said court of King's Bench for the District of Montreal, shall be transmitted into the aforesaid second division thereof; and all the records, registers, muniments and judicial and other proceedings of the said court of King's Bench for the District of Three Rivers, shall be transmitted into the said court of common pleas in the aforesaid second division thereof; and all the records, registers, muniments and judicial and other proceedings of the said court of King's Bench for the said district of Saint Francis shall be transmitted into the said court of common pleas in the aforesaid third division thereof; and all the records, registers, muniments, judicial and other proceedings of the said Provincial court of the said inferior district of Gaspé, shall be transmitted into the said court of common pleas in the aforesaid fourth division thereof.

All legal pro-
ceedings of the
courts of K. B.
to remain in
force, and all
causes &c. de-
pending thereon
to be transmit-
ted to the court
of common
pleas.

XXVIII. And be it further Ordained and Enacted, that no judgment, order, rule or act of the said courts of King's Bench respectively, legally pronounced, given, had or done, before the commencement of this Ordinance, shall be hereby avoided, but shall remain in full force and virtue as if this Ordinance had not been passed; nor shall any action, information, suit, cause, or proceeding depending in the said Courts respectively, be abated, discontinued or annulled, but the same shall be transferred in their present condition respectively, to, and subsist and depend, in the several and respective divisions of the said court of common pleas hereby established, into which the records, registers, muniments and other judicial proceedings of the said courts of King's Bench respectively, and of the said Provincial court of the said inferior district of Gaspé are to be transmitted as aforesaid, as if they had respectively been commenced, brought, or recorded in the said court of common pleas hereby established, and other and further proceedings shall be therein had, in the said respective divisions of the said court

court of common pleas, to judgment and execution, as might have been had, in the said courts of King's Bench and Provincial court respectively, or in the said court of common pleas, in cases or proceedings commenced and depending before the said court of common pleas.

Writs & pro-
cess returnable
into the court
of K. B. to be
returnable into
court of com.
mon pleas.

XXIX. And be it further Ordained and Enacted, that every writ or process which is or shall be returnable into any of the said courts of King's Bench in the several districts of this Province as now constituted, at any day subsequent to the period hereinafter appointed for the commencement of this Ordinance, shall be returned into that division of the said court of common pleas, into which the records, registers and proceedings of the court of King's Bench from which such writ or process may have been or be issued, are by this Act directed and required to be transmitted; and every such writ and process shall be held and considered to be returnable on the first day of the term of the division of the said court of common pleas to which it is hereby made returnable, next following the day on which such writ or process shall have been issued.

General quar-
ter sessions of
the peace to be
held by the
justices of the
peace in the
said several
respective divi-
sions.

XXX. And be it further Ordained and Enacted, that there shall be held four times in every year, in each of the said territorial divisions of Quebec, Montreal, Sherbrooke and Gaspé, a general session of the Peace by the Justices of the Peace of the said territorial divisions respectively, or any three of them, whereof one shall be of the quorum, who shall hear, try and determine all matters relating to the conservation of the Peace, and all crimes and criminal offences, causes and matters which are or may be cognizable in and by a general or quarter session of the Peace, according to the laws in force in this Province; and the said sessions of the Peace for the said territorial divisions of Quebec, Montreal, Sherbrooke and Gaspé, shall respectively be held as follows, that is to say:—at the cities of Quebec and Montreal and the town of Sherbrooke, in and for the said territorial divisions of Quebec, Montreal and Sherbrooke respectively, from the tenth to the nineteenth day of each of the months of January and July, and from the twenty-first to the thirtieth day of each of the months of April and October, the first and last days of each of the said periods being included, and Sundays and Holidays excepted; and at the town of New Carlisle aforesaid, in and for the said territorial division of Gaspé, from the eleventh to the sixteenth day of January, and from the twenty-first to the twenty-sixth day of July of each year, both days inclusive, and Sundays and Holidays excepted; and at Carleton, Percé and Douglas-Town, in and for the said territorial division during the six days

days immediately following the terms or sessions herein before appointed for the holding of the said court of common pleas in the said territorial division of Gaspé; and the said Justices of the Peace in their said general sessions of the Peace to be held as aforesaid, shall be vested with and shall and may exercise within the territorial divisions aforesaid respectively, all and every the powers, authorities and jurisdictions, which at the commencement of this Ordinance shall by law be vested in and required to be exercised by the general sessions of the Peace in the several districts of Quebec, Montreal and St. Francis, and in the aforesaid inferior district of Gaspé respectively.

The Governor may issue commissions of the Peace at such times as in his discretion he may deem expedient.

XXXI. Provided always, and be it further Ordained and Enacted, that it shall be lawful for the Governor of this Province, from time to time, and at such times as in his discretion he may deem expedient, to issue Commissions of the Peace, for any or every district or county, or any city or town, within the said territorial divisions respectively, as if this Ordinance had not been passed, any thing herein contained to the contrary notwithstanding; and when any such commissions of the Peace may be issued, the general or quarter sessions of the Peace to be held by virtue and under the authority of the same, shall be held at the several and respective times herein before appointed for the holding of the general or quarter sessions of the Peace in and for the said territorial divisions of Quebec, Montreal and Sherbrooke respectively, and at the places that may be appointed for the holding of the district courts in the said divisions.

All the powers and authorities exercised within the districts of Quebec, Montreal, St. Francis and Gaspé, to be exercised within the said four divisions.

XXXII. And be it further Ordained and Enacted, that all and every the powers and authorities which by any law of this Province, in force at the time of the commencement of this Ordinance, or by or under any commission under the great seal of this Province, or under the seal at arms of the Governor of this Province, or by any other legal and competent authority, shall have been granted or established, or shall be required to be, or may or might lawfully be exercised within the said districts of Quebec, Montreal and St. Francis, and in the said Inferior district of Gaspé respectively, shall continue to subsist in the same force and with the same effect, and shall and may be exercised in like manner, within the said territorial divisions of Quebec, Montreal, Sherbrooke and Gaspé respectively, as they would have subsisted and might have been exercised in the said districts and inferior district respectively if this Ordinance had not been passed, except in so far as such powers and authorities may be abrogated, revoked or annulled by or may be inconsistent with, the provisions of this Ordinance.

XXXIII.

A court of
Queen's Bench
established.

XXXIII. And be it further Ordained and Enacted, that from and after the period hereinafter appointed for the commencement of this Ordinance, there shall be created and established in this Province, a Supreme Court of Record, to be called the Court of Queen's Bench for the Province of Lower Canada, and the said Court shall consist of and be holden by and before the Chief Justice of this Province for the time being, and two Puisné Justices, to be named and appointed from time to time, by Her Majesty, her heirs, or successors, by Letters Patent, under her or their Great Seal of this Province.

To have original
criminal
jurisdiction
throughout the
Province.

XXXIV. And be it further Ordained and Enacted, that the said court of Queen's Bench hereby constituted, shall have original criminal jurisdiction throughout this Province of Lower Canada, in like manner as Her Majesty's Court of Queen's Bench in that part of Great Britain called England, hath and may lawfully exercise criminal jurisdiction throughout the said part of Great Britain called England, 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 which shall hereafter be had, done or committed, or whereof cognizance may lawfully be taken within this Province of Lower Canada, save and except such as may be cognizable by the jurisdiction of the Admiralty.

To exercise all
the powers, &c.
vested in the
courts of K. B.
in matters of a
criminal nature

XXXV. And be it further Ordained and Enacted, that all and every the powers, authorities and jurisdictions in pleas of the Crown, crimes and criminal offences of what nature and kind soever, which by law are required to be exercised, and may or might be exercised by and are vested in the several courts of King's Bench in the several districts of this Province, 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 in vacation, shall from and after the commencement of this Ordinance, become and be vested in the said court of Queen's Bench hereby constituted, and shall and may be as effectually exercised by the said court of Queen's Bench hereby constituted, and the Justices thereof, severally and respectively, as the same might have been exercised and enjoyed by the said Courts of King's Bench, and any or either of them, and the several Justices thereof, or any of them, if this Ordinance had not been passed.

The Justices of
the court to be
Justices of the
Peace and Co-
roners.

XXXVI. And be it further Ordained and Enacted, that the said Chief Justice of the Province, and the said Puisné Justices of the said court of Queen's Bench for the time being, shall severally and respectively be, and they are hereby appointed to

to be Justices and Conservators of the Peace and Coroners, within and throughout this Province of Lower Canada.

The court to have supreme appellate civil jurisdiction.

XXXVII. And be it further Ordained and Enacted, that the said court of Queen's Bench hereby constituted and the Justices thereof, shall have, hold and exercise a supreme appellate civil jurisdiction, and also the jurisdiction of a supreme court of error within and throughout this Province of 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 and to be appealed, or removed and to be removed by writ of error from all, each, and every Judge and Judges, court and courts wherein an appeal or writ of error by law lies or is allowed, or hereafter may by law lie, or be allowed.

To exercise the powers &c. that are vested in the provincial court of appeals.

XXXVIII. And be it further Ordained and Enacted, that all and every the powers, authorities and jurisdictions which by law are required to be exercised, and may or might be exercised by and are vested in the Provincial court of appeals as now constituted in and for this Province of Lower Canada, and by or in the several Judges or Members of the said Provincial court of appeals, or any of them, as well in term as in vacation shall, from and after the commencement of this Ordinance, become and be vested in the said court of Queen's Bench hereby constituted, and shall and may be as effectually exercised by the said court of Queen's Bench, hereby constituted, and the Justices thereof, severally and respectively, in term or in vacation, as the same might have been exercised and enjoyed by the said Provincial court of appeals, and the several Judges or members thereof, or any of them, in term or in vacation, if this Ordinance had not been passed.

To have re-forming power over courts magistrates &c.

XXXIX. And be it further Ordained and Enacted, that courts and magistrates, and all other persons, bodies politic and corporate within this Province of Lower Canada, shall be subject to the superintending and reforming power, order and control of the said court of Queen's Bench, and of the Justices thereof, in such sort, manner and form as courts and magistrates and other persons, bodies politic and corporate, of and in the aforesaid part of Great Britain called England, are by law subject to the superintending and reforming power, order and control of the court of Queen's Bench in the said part of Great Britain called England, and the Justices thereof in term or in vacation; and shall have power to award and issue writs of Mandamus, Certiorari, Proce'dendo, Prohibition, Quo Warranto,

Warranto and Error, to be directed to such courts, magistrates and persons, bodies politic and corporate, as the case may require, in like manner and for the same and like causes for which such writs may or might be legally awarded and issued, by and from the court of Queen's Bench in the said part of Great Britain called England, and the Justices thereof or any of them, and for which the courts of King's Bench in the several Districts of this Province, and the Justices thereof, or any of them, before the passing of this Ordinance may have awarded and issued, the same; and shall have power to punish any contempt of the said writs, or wilful disobedience thereto, by attachment, fine and imprisonment.

To have a seal.

XL. And be it further Ordained and Enacted, that the said court of Queen's Bench hereby constituted, shall have and use, as occasion may require, a Seal bearing a device and impression of Her Majesty's Royal Arms, within an exergue or label surrounding the same, with this inscription, "The Seal of the Court of Queen's Bench" (or King's Bench, according as the Sovereign on the Throne may be King or Queen,) of Lower Canada," which seal shall be kept in the custody of the said Chief Justice of the Province, and in case of vacancy of the office of Chief Justice, the same shall be kept in the custody of the person who shall be senior Puisné Judge, during such vacancy,

Relating to the issuing of writs process &c.

XLI. And be it further Ordained and Enacted, that all writs, precepts, and process, to be issued from and out of the said court of Queen's Bench, shall run and be in the name and style of Her Majesty, her heirs or successors, and shall be sealed with the seal of the said court of Queen's Bench, and shall have and bear the attestation of the Chief Justice, or in the vacancy of that office of the senior of the Puisné Justices, and shall be signed by the proper officer whose duty it shall be to prepare and make out the same, respectively.

All judgments acts, authority, &c. to be made or done by the judge sitting as a court.

XLII. And be it further Ordained and Enacted, that all judgments, rules, orders and acts of authority or power whatsoever, to be made or done by the said court of Queen's Bench hereby constituted, shall be made or done with and by the concurrence of the said three Judges, or any two of them, on such occasions assembled, or sitting as a court.

How the justices who may be disqualified &c. to sit, from various causes, are to be replaced.

LXIII. And be it further Ordained and Enacted, that whenever any one or more of the Justices of the said court of Queen's Bench hereby constituted shall be disqualified or rendered incompetent to sit in the said court of Queen's Bench, by reason of interest, consanguinity, sickness, absence, or other cause, it shall be lawful

lawful for the Governor of this Province, for the time being, by an instrument under his hand and seal, to nominate and appoint any one or more of the Justices of the said court of common pleas hereby constituted, to sit in the said court of Queen's Bench, in the place and stead of the Justice or Justices so disqualified or rendered incompetent as aforesaid; and such Justice and Justices so appointed, shall have the same powers and authority, during the continuance of such appointment as the Justice or Justices so disqualified or rendered incompetent, would otherwise have had. Provided always, that nothing herein contained shall give power or authority to any Justice or Justices of the said court of Queen's Bench, to sit in, hear, try, or determine any appeal or appeals, cause or causes in error, in which he or they shall have sat in the court, whose judgment or judgments has or have been appealed from.

Provided.

Four terms of court to be held annually.

XLIV. And be it further Ordained and Enacted, that the Justices of the said Court of Queen's Bench, hereby constituted, or any two or more of them, shall sit and hold terms or sessions of the said court of Queen's Bench, at such place within this Province as may by proclamation of the Governor of this Province by and with the advice of the Executive Council thereof be appointed, for the exercise of the criminal and civil jurisdiction of the said court, and of all and every the powers and authorities hereby vested in the said court; which terms or sessions of the said court shall be held four times in each year, that is to say, on the first fifteen juridical days of January, on the first fifteen juridical days of May, on the first fifteen juridical days of August and on the first fifteen juridical days of November.

May issue writs of Nisi Prius.

XLV. And be it further Ordained and Enacted, that it shall be lawful for the said court of Queen's Bench hereby constituted, to grant and issue writs of Nisi Prius for the trial of issues joined in the said court, on indictments for treason, felony, misdemeanor, or other crimes or criminal offences in any District or Districts, County or Counties in this Province of Lower Canada, in like manner as writs of Nisi Prius by law may be and are granted and do issue in such cases from the Court of Queen's Bench in the said part of Great Britain called England; and to exercise the same powers and authorities in respect to such writs of Nisi Prius and the proceedings thereon, as may or might be lawfully exercised in the said part of Great Britain called England, by the court of Queen's Bench there, in relation to such writs issued from that court.

LXVI.

Appeals to lie from the judgments of the court to Her Majesty in Privy Council.

XLVI. And be it further Ordained and Enacted, that an appeal shall lie from the judgments of the said Court of Queen's Bench hereby constituted, to Her Majesty, Her heirs or successors, in her or their Privy Council, in the said part of Great Britain called England, in all, each and every of the causes, matters and things, for and in respect of which an appeal before and at the period hereinafter appointed for the commencement of this Ordinance lay and shall lie from the judgments of the Provincial court of appeals aforesaid, to Her Majesty in her Privy Council, upon the same terms and conditions, and in the same manner and form, and under and subject to the same restrictions, rules and regulations as have been and now are established and obtain in appeals from the said Provincial court of appeals to Her Majesty, in her Privy Council.

May appoint commissioners for taking affidavits.

Provided.

XLVII. And be it further Ordained and Enacted, that it shall and may be lawful for the said court of Queen's Bench hereby constituted, by commission or commissions under the seal of the said court, to authorize and appoint any fit or proper person or persons, either generally or in any particular case, or for one or more term or terms only, for the taking of any affidavit or affirmation in any suit, matter or proceeding which may be depending, or about to be instituted in the said court, upon such occasions as the said court shall think fit to issue such commissions—Provided that nothing herein contained shall extend to authorize the issuing of any commission or commissions for the examination of any witness or witnesses upon any indictment or information for any offence whatever, to be tried and determined by and before the said court.

What laws are to continue in force and be observed by the said court.

XLVIII. And be it further Ordained and Enacted, that all and every the laws of this Province, which before and at the period hereinafter appointed for the commencement of this Ordinance, were and shall be in force to govern and direct the proceedings and practice of the courts of King's Bench in the several Districts in this Province, in the exercise of their criminal jurisdiction, and to govern and direct the proceedings and practice of the Provincial court of appeals aforesaid, and which are not expressly repealed or varied by this Ordinance, shall continue to be in force and be observed in and by the said court of Queen's Bench hereby constituted, in the same manner as the same would have been observed in the said courts of King's Bench and in the said Provincial court of appeals respectively, if this Ordinance had not been passed.

XLIX.

All records &c. of the courts of K. B. in criminal matters, and of the prov. court of appeals, to be transmitted to the court of Queen's Bench.

XLIX. And be it further Ordained and Enacted, that all and every the records, registers, muniments and judicial and other proceedings of the several courts of King's Bench in the several Districts of this Province in criminal matters and appertaining to the criminal jurisdiction of the said courts, and all and every the records, registers, muniments and judicial and other proceedings of the Provincial court of appeals aforesaid, shall forthwith after the period hereinafter appointed for the commencement of this Ordinance, be transmitted into and make part of the records, registers, muniments and judicial and other proceedings of the said court of Queen's Bench hereby constituted.

All legal proceedings of the courts of K. B. in criminal matters, and of the Prov. court of appeals to remain in force; and all indictments, appeals &c. depending therein to be transferred to the court of Queen's Bench.

L. And be it further Ordained and Enacted, that no judgment, order, rule or act of the said courts of King's Bench in the several Districts of this Province, respectively, in criminal matters, and appertaining to the criminal jurisdiction of the said courts, or of the Provincial court of appeals aforesaid, legally pronounced, given, had or done before the period hereinafter appointed for the commencement of this Ordinance, shall be hereby avoided, but shall remain in full force and virtue as if this Ordinance had not been passed; nor shall any indictment, information, suit, appeal, writ of error, or proceeding, depending in the said last mentioned courts of King's Bench, and in the said Provincial court of appeals, 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 court of Queen's Bench hereby established, according to the several jurisdictions hereby given to the said court, severally and respectively, to all intents and purposes as if they had been respectively commenced, brought, found, presented, or recorded in the said court of Queen's Bench hereby constituted: And the said court of Queen's Bench hereby constituted, shall have full power and authority to proceed accordingly, on and in all such indictments, informations, suits, appeals, writs of error, and proceedings, to judgment and execution, and to make such rules and orders respecting the same, as the said courts of King's Bench, or Provincial court of appeals might have made, or as the said court of Queen's Bench hereby established is hereby empowered to make in causes, suits, appeals, writs of error, or proceedings commenced or depending before the said court of Queen's Bench, hereby established.

Writs or process returnable subsequent to the commencement of this ordinance to be returned into the court of Queens Bench.

LI. And be it further Ordained and Enacted, that every writ or process which is or shall be returnable into any of the said courts of King's Bench as now constituted in the exercise of their criminal jurisdiction, or into the said Provincial court of appeals, on any day subsequent to the commencement of this Ordinance, shall be returned into the said court of Queen's Bench hereby constituted, and shall

shall be held and considered to be returnable on the first day of the term of the said court of Queen's Bench next following the day on which such writ or process shall have been issued.

Relating to writs of habeas corpus.

LII. And be it further Ordained and Enacted, that all and every the powers and authorities which before and at the period hereinafter appointed for the commencement of this Ordinance, were and shall be by law vested in the several courts of King's Bench in the several Districts of this Province, and in the Chief Justice 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 or 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 of Queen's Bench hereby constituted, concurrently with the said court of common pleas hereby constituted, and in the said last mentioned courts severally and respectively, and in each and every of the Justices of the said last mentioned courts of Queen's Bench and common pleas respectively, as well in term as in vacation; which said Justices respectively shall be subject and liable to the same penalty for denying in vacation time, any writ or writs of Habeas Corpus as is provided by a certain Ordinance passed by the Governor and Legislative Council of the late Province of Quebec, intituled, "An Ordinance for securing the liberty of the subject, and for the preventing of imprisonment out of this Province," for the denial of a writ of Habeas Corpus in vacation time, by the Chief Justice, commissioners for executing the office of Chief Justice or Judge of the court of King's Bench in the said Ordinance mentioned; and the said penalty shall be recovered from the said Chief Justice of the Province, and the Justices of the said court of Queen's Bench hereby constituted, and the Justices of the said court of common pleas hereby constituted respectively, in the like cases and circumstances and in the same manner as is provided in and by the said last mentioned Ordinance, in respect of the Chief Justice, Commissioners for executing the office of Chief Justice and Judges, in the said Ordinance last aforesaid mentioned.

Commissions of Oyer and Terminer & General Gaol Delivery, to be issued at least twice a year.

LIII. And in order to provide for the more prompt and convenient administration of justice in criminal matters throughout this Province:—Be it further Ordained and Enacted, that it shall be lawful for the Governor of this Province, and he is hereby required, at least twice in each year, and oftener if circumstances should render it fit and expedient, to issue commissions of Oyer and Terminer and General Gaol Delivery, into each and every of the Districts or Counties of this

this Province, in which Court Houses and Gaols now are or hereafter may be erected ; by which Commissions the Commissioners therein named shall be invested with and have the like jurisdiction, power and authority in the execution of the laws of this Province, as Commissioners or Justices of Oyer and Terminer and General Gaol Delivery by law have or may lawfully exercise in the aforesaid part of Great Britain called England, under Commissions of Oyer and Terminer and General Gaol Delivery, in execution of the laws there.

Trial by jury.

LIV. And whereas it is expedient that the benefit of Trial by Jury should be extended and facilitated, and the administration of Justice assimilated to that which obtains in the said part of Great Britain called England, in what respects the establishment of Circuits and the holding of Assizes, and the exercise of jurisdiction, powers and authorities similar to those exercised by Commissioners or Justices of Assize and Nisi Prius, under Commissions of Assize and Nisi Prius in the said part of Great Britain called England :—Be it therefore Ordained and Enacted, that from and after the period hereinafter appointed for the commencement of this Ordinance, all and every the issue and issues of fact joined in any action personal, real or mixed, which may be instituted in the said court of common pleas hereby constituted, may be tried and determined by the verdict of a Jury, at the option and choice of any or either of the parties, in any such action ; and the trial by Jury when so chosen and required, shall be had and the verdict of the Jury rendered and taken in conformity with the provisions of law by which trials by Jury in the cases wherein they are now allowed are regulated, and in like manner as such trials are now had.

The Governor may divide the province into circuits.

LV. And be it further Ordained and Enacted, that it shall be lawful for the Governor of this Province, by and with the advice of Her Majesty's Executive Council thereof, when circumstances may render it expedient to divide this Province into Circuits, to be respectively denominated, limited and established by an order of the said Governor in Council in this behalf, and it shall also be lawful for the said Governor, from time to time, to designate and nominate the Justices of the said courts of Queen's Bench and common pleas respectively, by whom the said Circuits shall be travelled and gone over, and the duties of Judges on such Circuits performed.

Assizes to be held on the said circuits.

LVI. And be it further Ordained and Enacted, that Assizes shall be held on the said Circuits, when and as soon as circumstances may permit, at such places as may from time to time be appointed by an order of the Governor of this Province,

vince, in Council ; and by the same authority, the places so appointed for holding the said Assizes, may be altered and other places substituted for them, as to the Governor of this Province, for the time being, by and with the advice of the Executive Council of this Province, shall seem expedient.

And under commissions of oyer & terminer &c. and nisi prius.

LVII. And be it further Ordained and Enacted, that the said Assizes shall be held under commissions of Oyer and Terminer, General Gaol Delivery and Nisi Prius, similar to and for like purposes as those under which the Assizes are held in the said part of Great Britain called England, except in so far as the difference in the laws of the two countries may require a difference in the said commissions ; and the form of the said commissions, previous to the issuing of the same, shall be settled and determined by the Chief Justice of the Province and the Puisné Justices of the said court of Queen's Bench, or any two of them, and when so settled shall be valid and binding to all intents and purposes whatsoever.

Powers of the commissioners of nisi prius.

LVIII. And be it further Ordained and Enacted, that the commissioners to be named and appointed in and by such commissions of Nisi Prius, shall have power and authority to try all issues of fact joined in any action, personal, real or mixed in the said court of common pleas hereby constituted or in any of the Divisions thereof, in which any or either of the parties shall have made the option of trial by Jury, and in which such trial shall by the said court be appointed to be had, in like manner as issues of fact, joined in actions in the superior courts of Westminster, in the said part of Great Britain called England, are triable or may or might be tried by Commissioners of Assize and Nisi Prius, or any or either of such Commissioners, under Commissions of Assize and Nisi Prius, or any or either of such Commissions in the said part of Great Britain called England, and shall, in respect of such trials to be had as aforesaid, and all matters thereunto relating, have and exercise the same and like jurisdiction, power and authority as are or may be lawfully exercised by Commissioners or Justices of Assize and Nisi Prius, or any or either of such Justices, in the said part of Great Britain called England.

The court of common pleas in the several divisions thereof, of to issue writs of nisi prius.

LIX. And be it further Ordained and Enacted, that it shall be lawful for the said court of common pleas hereby constituted in the several Divisions thereof aforesaid, to award and issue the judicial writ of Nisi Prius, for the trial of any issue of fact, that may be joined in any action, personal, real or mixed, depending in the said Court or any of the Divisions thereof, wherein the option of trial by Jury may have been made by any of the parties, and such trial appointed by the
court

court before Commissioners or Justices of Nisi Prius, to be appointed by Commissions to be issued as hereinbefore mentioned, at the Assizes to be held in this Province as aforesaid, in like manner as the courts of King's Bench and common pleas in the said part of Great Britain called England are authorized to award and issue, and may lawfully award and issue such writs of Nisi Prius, for the trial of issues joined in the said courts respectively, before Justices of Assize and Nisi Prius, or any or either of such Justices, at the Assizes held in the said part of Great Britain called England.

Powers of the commissioners of oyer and terminer, general gaol delivery, and nisi prius.

LX. And be it further Ordained and Enacted, that the Commissioners to be named in the said Commissions of Oyer and Terminer, General Gaol Delivery and Nisi Prius, shall respectively have the same and like jurisdiction, powers and authority, by virtue of the said Commissions, both in civil and criminal matters, in execution of the laws of this Province as are vested in and are, or might be lawfully exercised by Commissioners or Justices of Assize, Oyer and Terminer, General Gaol Delivery, and Nisi Prius in the said part of Great Britain called England, under Commissions of Assize, Oyer and Terminer, General Gaol Delivery and Nisi Prius, issued there in execution of the laws of the said part of Great Britain called England.

When commissions for holding the assizes shall issue.

LXI. And be it further Ordained and Enacted, that Commissions for holding the Assizes as aforesaid, shall be issued, after Court Houses and Gaols shall have been built, in sufficient number, in different parts of the country, to render the holding of such Assizes convenient and proper, and when circumstances, in the opinion of the Governor of this Province for the time being, shall render it expedient.

The prerogative and right of the crown not to be affected by this ordinance.

LXII. Provided always, and be it further Ordained and Enacted, that nothing in this Ordinance contained shall extend or be construed to extend to prevent the Governor of this Province for the time being, from issuing at any time or times, when he may deem it expedient or necessary for the ends of public justice, general or special Commissions of Oyer and Terminer and General Gaol Delivery for any District, or one or more County or Counties in any District, or for any City or Town within this Province, nor to derogate from, or in any manner abridge or affect the prerogative and right of the Crown to erect, constitute and appoint Courts of Criminal and Civil Jurisdiction within this Province, as Her Majesty, her heirs or successors shall think proper, nor to derogate from, abridge or affect any prerogative or right of the Crown whatsoever.

LXIII.

Compensation
for loss by
abolition of
office.

LXIII. And be it further Ordained and Enacted, that it shall be lawful for the Governor of this Province, on any claim which may be made by any of the persons holding offices which will become and be abolished under the provisions of this Ordinance, for compensation for loss by reason of such abolition of the said offices, to determine, by and with the advice of the Executive Council of this Province, whether such claim have or have not a reasonable and just foundation, and if such claim be admitted to be well founded and just, to assess and award thereupon such compensation as by the said Governor, with such advice as aforesaid, may be deemed reasonable and proper, regard being had to the tenure under which the said offices have been held, and to the appointment which might be made of the said persons, if qualified to offices of a similar nature to be filled under the provisions of this Ordinance, and to all such circumstances as may and ought to be considered in relation to any such claim; and the compensation that may be assessed and awarded as aforesaid, shall be paid out of any of the unappropriated monies for public uses in the hands of the Receiver General of this Province.

Meaning of cer-
tain terms.

LXIV. And be it further Ordained and Enacted, that the name " Court of Queen's Bench," applied and used in the foregoing enactments, shall be understood to be the name of the Court to which it is hereinbefore applied as aforesaid, while the Sovereign on the Throne of the United Kingdom of Great Britain and Ireland is a Queen; and that when the Sovereign on the Throne may be a King, the name of the said Court shall be " The Court of King's Bench"; and that the words " Governor of this Province," wherever they occur, in the said enactments, are to be understood as meaning and comprehending the Governor, or the person authorized to execute the Commission of Governor within this Province, for the time being.

This ordinance
to take effect
after 1st Decr.
1840.

LXV. And be it further Ordained and Enacted, that this Ordinance and the several provisions herein contained, shall commence and have execution and effect from and after the first day of December now next ensuing.

And to be a
permanent law.

LXVI. And be it further Ordained and Enacted, that this Ordinance and the provisions therein contained, shall not cease or expire on the first day of November, which will be in the year of our Lord one thousand eight hundred and forty two, but shall be and remain a permanent law, and in full force in this Province, until the same shall be repealed or altered, by competent Legislative authority.

C. POULETT THOMSON.

Ordained

Ordained and Enacted by the authority aforesaid, and passed in Special Council, under the Great Seal of the Province, at the Government House, in the City of Montreal, the Twenty-sixth day of June, in the fourth year of the Reign of Our Sovereign Lady Victoria, by the Grace of God, of Great Britain and Ireland, Queen, Defender of the Faith, and so forth, and in the year of Our Lord one thousand eight hundred and forty.

By His Excellency's Command,

W. B. LINDSAY,

Clerk Special Council.

CA P. XLVI.

An Ordinance for making a Rail-Road from Carillon to Grenville.

Preamble.

WHEREAS the several persons hereinafter mentioned have by their Petition, represented the public advantages which would arise from the construction of a Rail-road from Carillon, on the River Ottawa, to Grenville also on the said River, so as to facilitate the carriage of passengers, goods, wares and merchandize between that part of the said River lying below the Rapids of the *Long Sault* and that part thereof lying above the same, and thereby to promote and encourage the trade and intercourse between the City of Montreal and those places in this Province lying above the said Rapids, and also between this Province and the Province of Upper Canada; and have by the said Petition prayed to be incorporated, and that divers powers and privileges may be granted to them for the purpose of enabling them to construct such Rail-Road; and whereas it is expedient to grant the prayer of the said petitioners, subject to the enactments, provisions and limitations hereinafter set forth and contained:—Be it therefore Ordained and Enacted by His Excellency the Governor of this Province of Lower Canada, by and with the advice and consent of the Special Council for the affairs of this Province, constituted and assembled by virtue and under the authority of an Act of the Parliament of the United Kingdom of Great