VII. And be it enacted, That the several successive Circuit Courts, and Courts of Oyer and Terminer sitting in and for the same County, shall for the purposes of this Act, and the Act whereto this is an amendment, be vested with the like power and authority with regard to any fines set or imposed, or orders made for the levying, receiving, paying, accounting for and appropriation thereof, at any previous Circuit Court and Court of Oyer and Terminer, as if such fines were set or imposed, or orders made at the same Courts; although the said Courts may sit by virtue of several commissions or appointments issued or made at different times.

Successive Circuit Courts and Courts of Oyer and Terminer to have jurisdiction over fines imposed by similar previous Courts for the same County.

SCHEDULE.

William the Fourth, by the grace of God of the United Kingdom of Great Britain and Ireland, King, Defender of the faith. To our Sheriff of greeting: We command you that of the respective goods and chattels of all and singular the persons mentioned in the roll or list hereunto annexed, you do without delay levy or cause to be levied all and singular the fines and sums of money upon them respectively imposed and set, and in the said roll or list mentioned, together with the sum of five shillings from each of them for your service and expense in the execution of this writ, and that you do forthwith pay to the Treasurer of the said County the fines so levied, and make return hereof as by law directed. Witness Esquire, at in the said County the day of in the year of our reign.

A. B., Clerk.

[*To be signed by the Clerk, and tested in the name of the presiding Judge or Justice, on the last day of the term or sitting of the Court.*]

Form of writ of *levari facias.*

CAP. XIV.

An Act for the amendment of the Law and the better advancement of Justice.

Passed 1st *March* 1837.

I. BE it enacted by the Lieutenant Governor, Legislative Council and Assembly, That in case any defendant in any non-bailable writ or process issued out of the Supreme Court, or out of any Inferior Court of Common Pleas in this Province, has a known place of abode within the jurisdiction of the Court from which such writ or process may have issued, such writ or process may be served at the usual place of abode of such defendant, by delivering a copy of the writ or process, with any requisite notice, to the wife of such defendant or to an adult person residing in the House, being a member or inmate of the family of such defendant; provided that such service shall not be deemed good service without the order of the Court out of which the writ or process issued, or a Judge thereof, upon affidavit shewing to the satisfaction of such Court or Judge the circumstances of such service, and that the place where the writ or process was served was at the time of such service the usual place of abode of such defendant.

Non-bailable writs may be served at the Defendant's place of abode.

Proof of service.

II. And be it enacted, That if any writ of summons shall be sued out against any Corporation, and such Corporation should not cause an appearance to be entered at the return of such writ, or within twenty days after such return, in every such case it shall and may be lawful for the plaintiff or plaintiffs in the action, upon affidavit being made and filed in the proper Court of the due service of such writ, to enter an appearance for such Corporation and to proceed thereupon in like manner as in personal actions against individuals.

Plaintiff may enter appearance for a Corporation duly served with a writ of summons and not appearing.

III. And be it enacted, That a defendant who shall have been held to bail upon any mesne process issued out of the Supreme Court in this Province may be rendered

Regulations as to rendering in discharge of

bail, in the Supreme Court, defendant not being in custody.

rendered in discharge of his bail to the common gaol of any County in which he may be, and the render to such County gaol shall be effected in manner following, (that is to say,) the defendant or his bail, or one of them, shall for the purpose of such render obtain an order of a Judge of the said Court, and shall lodge such order with the gaoler of such gaol to which the render may be made, and a notice in writing of the lodgment of such order and of the defendants being actually in custody of such gaoler by virtue of such order, signed by the defendant or the bail, or either of them, or by the Attorney of either of them, shall be delivered to the plaintiff's Attorney, and the Sheriff of such County shall on such render so perfected be duly charged with the custody of such defendant, and the said bail shall be thereupon wholly exonerated from liability as such: Provided always, that in any County in which there may not be a Judge of the said Court at the time of any render so to be made, an order for such render may be obtained from any Commissioner for taking bail in such Court for such County, which order such Commissioner is hereby authorized in such case to grant.

As to rendering in discharge of bail, defendant being already in custody.

IV. And be it enacted, That a defendant who shall hereafter be in custody of any Sheriff by virtue of any legal process, may be rendered in discharge of his bail in any action depending in the said Supreme Court, in the manner hereinbefore provided for a render in discharge of bail; and such Sheriff shall on such render be duly charged with the custody of such defendant, and the said bail shall be thereupon wholly exonerated from liability as such.

The foregoing provisions extended to the Inferior Courts of Common Pleas.

V. And be it enacted. That the provisions hereinbefore contained, in respect to rendering defendants in discharge of their bail, shall extend and apply to the several Inferior Courts of Common Pleas in this Province with regard to actions depending in those Courts respectively; and that any Judge of any such Inferior Court of Common Pleas, or any Commissioner for taking special bail in such Courts, may make an order for the render of any defendant held to bail upon any mesne process issued out of the Court of which he is a Judge or Commissioner to the gaol of the County for which such Court sits, and such and the like proceedings shall be had thereupon as is hereinbefore provided in regard to actions depending in the Supreme Court.

Court or Jury to assess amount to be recovered on judgments by default in actions of debt. Provisions of 26 G. 3, C. 21, and 5 W. 4, C. 37, as to assessment of damages extended to actions of covenant &c.

VI. And be it enacted, That in all actions of debt the amount to be recovered in case of judgment by default or on demurrer shall be ascertained and assessed either by the Court or a jury before judgment is signed, and that the provisions of an Act passed in the twenty sixth year of the reign of King George the Third, intituled "An Act to prevent unnecessary expense in actions on the case or judgments by default," and of an Act passed in the fifth year of the reign of His present Majesty, intituled "An Act to provide for the more convenient administration of justice in the Supreme Court," so far as the same relate to the assessment of damages, shall extend and be construed to apply to actions of covenant for the payment of any certain sum or sums of money, and to actions of debt; and that as well in such actions as in actions on the case where judgment is given for the plaintiff on demurrer, the damages may be assessed in the same manner as in cases where the judgment is by default: Provided always, that nothing herein contained shall extend to actions upon bonds conditioned for the payment of a single sum of money not by instalments.

VII. 'And whereas great expense is often incurred, and delay or failure of 'Justice takes place at trials by reason of variances as to some particular or par-'ticulars, between the proof and the record or setting forth on the record or do-'cument on which the trial is had, of contracts, customs, prescriptions, names 'and other matters or circumstances not material to the merits of the case, and

'by

'by the mis-statement of which the opposite party cannot have been prejudiced,
'and the same cannot in any case be amended at the trial, except where the va-
'riance is between any matter in writing or in print produced in evidence and
'the record: And whereas it is expedient to allow such amendments as herein-
'after mentioned to be made on the trial of the cause;' Be it therefore enacted,
That it shall be lawful for the Supreme Court or any Judge thereof sitting at *nisi prius* or any Inferior Court of Common Pleas, if such Court or Judge shall see fit so to do, to cause the record, writ or document on which any trial may be pending before any such Court or Judge, in any civil action, or in any information in the nature of a *quo warranto*, or proceedings on a mandamus in the Supreme Court, when any variance shall appear between the proof and the recital or setting forth on the record, writ or document on which the trial is proceeding, of any contract, custom, prescription, name or other matter in any particular or particulars in the judgment of such Court or Judge not material to the merits of the case, and by which the opposite party cannot have been prejudiced in the conduct of his action, prosecution or defence, to be forthwith amended by some officer of the Court or otherwise, both in the part of the pleadings where such variance occurs, and in every other part of the pleadings which it may become necessary to amend, on such terms as to payment of costs to the other party or postponing the trial to be had before the same or another jury, or both payment of costs and postponement as such Court or Judge shall think reasonable; and in case such variance shall be in some particular or particulars in the judgment of such Court or Judge not material to the merits of the case, but such as that the opposite party may have been prejudiced thereby in the conduct of his action, prosecution or defence, then such Court or Judge shall have power to cause the same to be amended upon payment of costs to the other party, and withdrawing the record or postponing the trial as aforesaid, as such Court or Judge shall think reasonable; and after any such amendment the trial shall proceed in case the same shall be proceeded with in the same manner in all respect, both with respect to the liability of witnesses to be indicted for perjury and otherwise as if no such variance had appeared; and in case such trial shall be had at *nisi prius*, the order for the amendment shall be endorsed on the postea or the writ, as the case may be, and returned together with the record or writ, and thereupon such papers, rolls and other records as it may be necessary to amend shall be amended accordingly; provided that it shall be lawful for any party who is dissatisfied with the decision of any Judge of the Supreme Court at *nisi prius* respecting his allowance of any such amendment to apply to the Court in banc for a new trial upon that ground, and in case such Court shall think such amendment improper, a new trial shall be granted accordingly on such terms as the Court shall think fit, or the Court shall make such other order as to them may seem meet.

Amendments allowed to be made on the record in certain cases.

Jurisp. Stat. I Jac. 4 C. 15

VIII. And be it enacted, That the said Court or Judge shall and may if they or he think fit, in all such cases of variance, in stead of causing the record or document to be amended as aforesaid, direct the jury to find the fact or facts according to the evidence, and thereupon such finding shall be stated on such record or document, and notwithstanding the finding on the issue joined, the said Court or the Court from which the record has issued shall if they shall think the said variance immaterial to the merits of the case, and the mis-statement such as could not have prejudiced the opposite party in the conduct of the action or defence, give judgment according to the very right and justice of the case.

Power for the Court or Judge to direct the facts to be found specially.

IX. And be it enacted, That it shall be lawful for the executors or administrators of any lessor or landlord to distrain upon the lands demised for any term or

Executors of lessor may distrain for arrears in his lifetime.

or at will for the arrearages of rent due to such lessor or landlord in his lifetime, in like manner as such lessor or landlord might have done in his lifetime.

Arrears may be distrained for within six months after determination of term.

X. And be it enacted, That such arrearages may be distrained for after the end or determination of such term or lease at will, in the same manner as if such term or lease had not been ended or determined; provided that such distress be made within the space of six calendar months after the determination of such term or lease and during the continuance of the possession of the tenant from whom such arrears became due: Provided also, that all and every the powers and provisions in the several Acts of Assembly made relating to distresses for rent shall be applicable to the distresses so made as aforesaid.

No goods &c. to be taken in execution &c. unless the party before removal of the goods &c. pay the landlord the rent due.

Provided it amount to no more than one year's rent.

XI. 'Whereas it is expedient to provide by Act of Assembly for the due payment of certain arrears of rent to the landlord out of goods and chattels liable 'to be taken by execution;' Be it enacted, That no goods or chattels whatsoever lying or being in or upon any messuage, lands or tenements which are or shall be leased for life or lives, term of years, at will or otherwise, shall be liable to be taken by virtue of any execution on any pretence whatsoever unless the party at whose suit the said execution is sued out shall before the removal of such goods from off the said premises by virtue of such execution pay to the landlord of the said premises or his bailiff all such sum or sums of money as are or shall be due for rent for the said premises at the time of the taking such goods or chattels by virtue of such execution; provided the said arrears do not amount to more than one year's rent; and in case the said arrears shall exceed one year's rent then the said party at whose suit such execution is sued out paying the said landlord or his bailiff one year's rent may proceed to execute his judgment as he might have done before the making of this Act; and the Sheriff or other officer to whom such execution may have been delivered to be executed is hereby empowered and required in such case to levy and pay to the party at whose suit the said execution is sued out, as well the money so paid for rent as the money directed to be levied on such execution.

Not to hinder the King &c. to levy &c. any debts, fines &c. due to the Crown.

XII. Provided always and be it enacted, That nothing in the foregoing section contained shall be construed to extend to hinder or prejudice His Majesty, His Heirs or Successors in the levying, recovering or seizing any debts, fines, penalties or forfeitures due or payable to His Majesty, His Heirs or Successors, but that it shall and may be lawful for His Majesty, His Heirs and Successors to levy, recover and seize such debts, fines, penalties or forfeitures in the same manner as if this Act had never been made.

Proceedings by landlords &c. under 8 Anne, C. 14, S. 1, confirmed.

XIII. And be it enacted, That all proceedings which may have been at any time heretofore taken by any landlord or landlords, Sheriff or other officer, under and by virtue of and in due conformity to the first section of an Act of Parliament passed in England in the eighth year of the reign of Queen Anne, intituled "An Act for the better security of rents and to prevent frauds committed by tenants," are hereby ratified and confirmed, and the same are hereby declared to be as good, valid and effectual in the law to all intents and purposes as if the said Act of Parliament had been expressly extended to this Province or specifically re-enacted in the same previous to such proceedings.

Executors may bring actions for injuries to the real estates of the deceased;

XIV. 'And whereas there is no remedy provided by law for injuries to the 'real estate of any person deceased committed in his lifetime, nor for certain 'wrongs done by a person deceased in his life time to another in respect of his 'property real or personal; for remedy thereof,' Be it enacted, That an action of trespass or trespass on the case, as the case may be, may be maintained by the executors or administrators of any person deceased for any injury to the real

real estate of such person committed in his lifetime, for which an action might have been maintained by such person, so as such injury shall have been committed within six calendar months before the death of such deceased person, and provided such action shall be brought within one year after the death of such person; and the damages when recovered shall be part of the personal estate of such person; and further that an action of trespass or trespass on the case, as the case may be, may be maintained against the executors or administrators of any person deceased for any wrong committed by him in his lifetime to another in respect of his property real or personal, so as such injury shall have been committed within six calendar months before such person's death, and so as such action shall be brought within six calendar months after such executors or administrators shall have taken upon themselves the administration of the estate and effects of such person; and the damages to be recovered in such action shall be payable in like order of administration as the simple contract debts of such person.

And actions may be brought against executors for an injury to property, real or personal, by their testator.

XV. And be it enacted, That no plea in abatement for the nonjoinder of any person as a co-defendant shall be allowed in any Court in this Province, unless it shall be stated in such plea that such person is resident within the Province, and unless the place of residence of such person shall be stated with convenient certainty in an affidavit verifying such plea.

Restriction as to pleas in abatement for nonjoinder of a co-defendant.

XVI. And be it enacted, That in all cases in which after such plea in abatement the plaintiff shall, without having proceeded to trial upon an issue thereon, commence another action against the defendant or defendants in the action in which such plea in abatement shall have been pleaded, and the person or persons named in such plea in abatement as joint contractors, if it shall appear by the pleadings in such subsequent action, or on the evidence at the trial thereof, that all the original defendants are liable, but that one or more of the persons named in each plea in abatement or any subsequent plea in abatement are not liable as a contracting party or parties, the plaintiff shall nevertheless be entitled to judgment or to a verdict and judgment, as the case may be, against the other defendant or defendants who shall appear to be liable; and every defendant who is not so liable shall have judgment, and shall be entitled to his costs as against the plaintiff, who shall be allowed the same as costs in the cause against the defendant or defendants who shall have so pleaded in abatement the nonjoinder of such person; provided that any such defendant who shall have so pleaded in abatement shall be at liberty on the trial to adduce evidence of the liability of the defendants named by him in such plea in abatement.

Provision in the case of subsequent proceedings against the persons named in a plea in abatement.

XVII. And be it enacted, That no plea in abatement for a misnomer shall be allowed in any personal action, but that in all cases in which a misnomer would but for this Act have been by law pleadable in abatement in such actions, the defendant shall be at liberty to cause the declaration to be amended, at the costs of the plaintiff, by inserting the right name upon a Judge's summons founded on an affidavit of the right name; and in case such summons shall be discharged the costs of such application shall be paid by the party applying, if the Judge shall think fit.

Misnomer not to be pleaded in abatement.

XVIII. And be it enacted, That in all actions upon bills of exchange or promissory notes or other written instruments, any of the parties to which are designated by the initial letter or letters or some contraction of the christian or first name or names, it shall be sufficient in every affidavit to hold to bail, and in the process or declaration to designate such persons by the same initial

Initials of names may be used in some cases.

letter or letters or contraction of the christian or first name or names, instead of stating the christian or first name or names in full.

Power to the Judges to make regulations as to the admission of written documents.

XIX. 'And whereas it is expedient to lessen the expense of the proof of 'written or printed documents or copies thereof, on the trial of causes;" Be it enacted, That it shall and may be lawful for the Judges of the Supreme Court or any three of them, at any time within three years after the passing of this Act, to make regulations by general rules or orders from time to time, touching the voluntary admission, upon an application for that purpose at a reasonable time before the trial of one party to the other, of all such written or printed documents or copies of documents as are intended to be offered in evidence on the said trial by the party requiring such admission, and touching the inspection thereof before such admission is made, and touching the costs which may be incurred by the proof of such documents or copies on the trial of the cause, in case of the omitting to apply for such admission or the not producing of such documents or copies for the purpose of obtaining admission thereof, or of the refusal to make such admission, as the case may be, and as to the said Judges shall seem meet; and all such rules and orders shall be binding and obligatory in the said Court, and of the like force as if the provisions therein contained had been expressly enacted by the General Assembly.

Power to state a special case without going to trial.

XX. And be it enacted, That it shall be lawful for the parties in any action or information depending in the Supreme Court after issue joined, by consent, and by order of any Judge of the said Court, to state the facts of the case in the form of a special case for the opinion of the Court, and to agree that a judgment shall be entered for the plaintiff or defendant by confession or of *nolle prosequi*, immediately after the decision of the case, or otherwise as the Court may think fit, and judgment shall be entered accordingly.

Jury or Court empowered to allow interest upon debts.

XXI. And be it enacted, That upon all debts or sums certain payable at a certain time or otherwise, the Jury on the trial of any issue, or on any inquisition of damages, or the Court or Judge upon any assessment of damages, may if they shall think fit allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time, or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the time of payment; provided that interest shall be payable in all cases in which it is now payable by Law.

In certain actions the jury may give damages in the nature of interest.

XXII. And be it enacted, That the Jury on the trial of any issue or on any inquisition of damages may, if they shall think fit, give damages in the nature of interest over and above the value of the goods at the time of the conversion or seizure, in all actions of trover or trespass *de bonis asportatis*, and over and above the money recoverable in all actions on policies of assurance made after the passing of this Act.

Executors suing in right of the testator to pay costs.

XXIII. And be it enacted, That in every action brought by any executor or administrator in right of the testator or intestate, such executor or administrator shall, unless the Court in which such action is brought shall otherwise order, be liable to pay costs to the defendant in case of being nonsuited or a verdict passing against the plaintiff, and in all other cases in which he would be liable if such plaintiff were suing in his own right upon a cause of action accruing to himself, and the defendant shall have judgment for such costs, and they shall be recovered in like manner.

XXIV.

Defendants having a *nolle prosequi* or a verdict in any action shall have costs.

XXIV. And be it enacted, That where several persons shall be made defendants in any personal action and any one or more of them shall have a *nolle prosequi* entered as to him or them, or upon the trial of such action, shall have a verdict pass for him or them, every such person shall have judgment for and recover his reasonable costs, unless in the case of a trial the Judge before whom such cause shall be tried shall certify upon the record, under his hand, that there was a reasonable cause for making such person a defendant in such action.

Where *nolle prosequi* entered upon any count &c.

XXV. And be it enacted, That where any *nolle prosequi* shall have been entered upon any count or as to part of any declaration, the defendant shall be entitled to and have judgment for and recover his reasonable costs in that behalf.

Plaintiff in *scire facias*, and plaintiff or defendant on demurrer to have costs.

XXVI. And be it enacted, That in all writs of *scire facias* the plaintiff obtaining judgment on an award of execution shall recover his costs of suit upon a judgment by default as well as upon a judgment after plea pleaded or demurrer joined, and that where judgment shall be given either for or against a plaintiff or for or against a defendant upon any demurrer joined in any action whatever, the party in whose favor such judgment shall be given shall also have judgment to recover his costs in that behalf.

Submission to arbitration by rule of Court &c. not to be revocable without leave of the Court.

XXVII. 'And whereas it is expedient to render references to arbitration in 'actions depending in the Supreme Court more effectual;' Be it enacted, That the power and authority of any arbitrator or arbitrators appointed by or in pursuance of any rule of Court, or order of *nisi prius*, in any action now brought or which shall be hereafter brought in the said Supreme Court shall not be revocable by any party to such reference without the leave of the Court or by leave of a Judge upon good cause shewn therefor; and the arbitrator or arbitrators shall and may and are hereby required to proceed with the reference notwithstanding any such revocation, and to make such award although the person making such revocation shall not afterwards attend the reference.

Power to compel the attendance of witnesses.

XXVIII. And be it enacted, That when any reference shall have been made by any such rule or order as aforesaid, it shall be lawful for the Court or for any Judge thereof, by rule or order to be made for that purpose, to command the attendance and examination of any person to be named or the production of any documents to be mentioned in such rule or order; and the disobedience to any such rule or order shall be deemed a contempt of Court, if in addition to the service of such rule or order an appointment of the time and place of attendance in obedience thereto, signed by one at least of the arbitrators before whom the attendance is required, shall also be served either together with or after the service of such rule or order: Provided always that every person whose attendance shall be so required shall be entitled to the like conduct money and payment of expenses as for and upon attendance at any trial: Provided also that no person shall be compelled to produce, under any such rule or order, any writing or other document that he would not be compelled to produce at a trial, or to attend at more than two consecutive days to be named in such order.

Power for the arbitrators under a rule of Court to administer an oath.

XXIX. And be it enacted, That when in any rule or order of reference it shall be ordered or agreed that the witnesses upon such reference shall be examined upon oath, it shall be lawful for the arbitrators or any one of them, and he or they are hereby authorized and required to administer an oath to such witnesses, or to take their affirmation in cases where affirmation is allowed by law instead of oath; and if upon such oath or affirmation any person making

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the same shall wilfully and corruptly give any false evidence, every person so offending shall be deemed and taken to be guilty of perjury, and shall be prosecuted and punished accordingly.

Law respecting witnesses refusing to answer questions.

XXX. 'And whereas it is expedient to declare the law with respect to 'witnesses refusing to answer questions which may tend to subject them to 'civil suits;' Be it therefore declared that a witness cannot by law refuse to answer a question relevant to the matter in issue, the answering of which has no tendency to accuse himself or to expose him to penalty or forfeiture of any nature whatsoever, by reason only or on the sole ground that the answering of such question may establish or tend to establish that he owes a debt or is otherwise subject to a civil suit, either at the instance of His Majesty or of any other person or persons.

Costs of special juries in case of a non-suit. 26 G. 3, C. 6.

XXXI. 'And whereas it is provided in and by an Act passed in the twenty 'sixth year of the reign of His late Majesty King George the Third, intituled '"An Act for regulating Juries and declaring the qualifications of Jurors," 'that the party who shall apply for a special Jury shall pay the fees for striking 'such Jury, and all the expenses occasioned by the trial of the cause by the 'same, and shall not have any further or other allowance for the same upon 'taxation of costs, than such party would be entitled unto in case the cause had 'been tried by a common Jury, unless the Judge before whom the cause is 'tried shall, immediately after the trial, certify under his hand, upon the back 'of the record, that the same was a cause proper to be tried by a special Jury: 'And whereas the said provision does not apply to cases in which the plaintiff 'has been nonsuited, and it is expedient that the Judge should have such power 'of certifying as well when a plaintiff is nonsuited as when he has a verdict 'against him;' Be it therefore enacted, That the said provision of the said last mentioned Act, and every thing therein contained, shall apply to cases in which the plaintiff shall be nonsuited as well as to cases in which a verdict shall pass against him.

In summary actions in the Supreme Court judgments by default may be entered in vacation.

Clerk of the Pleas to keep a book for entering such judgments.

XXXII. And be it enacted, That in any summary action in the Supreme Court, wherein the plaintiff may be entitled to judgment by default, such judgment may be entered in vacation as an interlocutory judgment, and the damages or sum due may be assessed, and proceedings may be had to final judgment and execution as in other cases; and the Clerk of the Pleas shall keep a book in which shall be set down such judgments by default so entered in vacation, and the time of such entry; and such Clerk for every such entry and certificate thereof shall be entitled to demand and receive a fee of two shillings.

CAP. XV.

An Act in addition to the Acts relating to the public registry of Deeds in this Province.

Passed 1st *March* 1837.

'WHEREAS it is expedient to provide under certain regulations and 'restrictions for the admission in evidence of copies of deeds which 'may have been duly registered in this Province;'

A certified copy of the registry of a deed may be produced in evidence on certain conditions.

I. Be it enacted by the Lieutenant Governor, Legislative Council and Assembly, That in any suit in any Court of law or equity in this Province where any party may be desirous of giving in evidence any deed or instrument which