

Inhabitants of
Counties, &c.

as well as one person, and females as well as males, and the inhabitants of Counties, Parishes, Cities and other Districts, and Bodies Corporate as well as individuals; and wheresoever words are used importing the plural number, yet they shall be understood to apply to one matter as well as more than one, and to one person as well as more than one, as though the words had been used in the singular number, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such construction.

ART. 16.

Defined
Terms.

All terms defined in any part of this Act shall, when they occur in any other part thereof, be understood in their defined sense, unless it be otherwise provided, or the Article or Articles for the purposes of which any such term or terms is or are defined, be particularly specified.

CAP. XXX.

An Act to consolidate and improve the Laws relative to the administration of Criminal Justice.

Passed 27th March 1849.

PROCEEDINGS BEFORE INDICTMENT.

For what offences
a Justice of the
Peace may grant
a Warrant or Sum-
mons to cause a
person charged
therewith to be
brought before him.

I. **BE** it enacted by the Lieutenant Governor, Legislative Council and Assembly, That in all cases where a charge or complaint (A) shall be made before any one or more of Her Majesty's Justices of the Peace for any County in this Province, that any person has committed or is suspected to have committed any Treason, Felony, or indictable Misdemeanor, or other indictable offence whatsoever, within the limits of the jurisdiction of such Justice or Justices of the Peace, or that any person guilty or suspected to be guilty of having committed any such crime or offence elsewhere, out of the jurisdiction of such Justice or Justices, is residing or being, or is suspected to reside or be within the limits of the jurisdiction of such Justice or Justices, then and in every such case, if the person so charged or complained against shall not then be in custody, it shall be lawful for such Justice or Justices of the Peace to issue his or their Warrant, (B) to apprehend such person, and to cause him to be brought before such Justice or Justices, or any other Justice or Justices for the same County, to answer to such charge or complaint, and to be further dealt with according to law; provided always, that in all cases it shall be lawful for such Justice or Justices to whom such charge or complaint shall be preferred, if he or they shall so think fit, instead of issuing in the first instance his or their Warrant to apprehend the person so charged or complained against, to issue his or their Summons (C) directed to such person, requiring him to appear before the said Justice or Justices at a time and place to be therein mentioned, or before such other Justice or Justices for the same County as may then be there; and if, after being served with such Summons in manner hereinafter mentioned, he shall fail to appear at such time and place, in obedience to such Summons, then and in every such case the said Justice or Justices, or any other Justice or Justices of the Peace for the same County, may issue his or their Warrant (D) to apprehend such person so charged or complained against, and cause such person to be brought before him or them, or before some other Justice or Justices of the Peace for the same County, to answer to the said charge or complaint, and to be further dealt with according to law; provided nevertheless, that nothing herein contained shall prevent any Justice or Justices of the Peace from issuing the Warrant hereinbefore first mentioned at any time before or after the time mentioned in such Summons for the appearance of the said accused party.

In what cases the
party may be sum-
moned instead of
issuing a Warrant
in the first instance.

If the Summons be
not obeyed, then a
Warrant may be
issued.

II. And be it enacted, That it shall and may be lawful for any Justice or Justices of the Peace to grant or issue any Warrant as aforesaid, or any Search Warrant, on a Sunday as well as on any other day.

Justice may issue any Warrant on Sunday.

III. And be it enacted, That in all cases where a charge or complaint for any indictable offence shall be made before such Justice or Justices as aforesaid, if it be intended to issue a Warrant in the first instance against the party or parties so charged, an information and complaint thereof (A) in writing, on the oath or affirmation of the informant, or of some witness or witnesses in that behalf, shall be laid before such Justice or Justices; provided always, that in all cases where it is intended to issue a Summons instead of a Warrant in the first instance, it shall not be necessary that such information and complaint shall be in writing, or be sworn to or affirmed in manner aforesaid; but in every such case such information or complaint may be by parol merely, and without any oath or affirmation whatsoever to support or substantiate the same; provided also, that no objection shall be taken or allowed to any such information or complaint for any alleged defect therein, in substance or in form, or for any variance between it and the evidence adduced on the part of the prosecution before the Justice or Justices who shall take the examination of witnesses in that behalf, as hereinafter mentioned.

When charge, &c. is made, if a Warrant is to be issued, information, &c. on oath to be laid before Justices.

If Summons to be issued instead, information, &c. not necessary to be on oath.

No objection allowed for alleged defect in form.

IV. And be it enacted, That upon such information and complaint being so laid as aforesaid, the Justice or Justices receiving the same, may, if he or they shall think fit, issue his or their Summons or Warrant respectively, as hereinbefore is directed, to cause the person charged as aforesaid to be and appear before him or them, or any other Justice or Justices of the Peace for the same County, to be dealt with according to law; and every such Summons (C) shall be directed to the party so charged in and by such information, and shall require the party to whom it is so directed to be and appear, at a certain time and place therein mentioned, before the Justice who shall issue such Summons, or before such other Justice or Justices of the Peace of the same County as may then be there, to answer to the said charge, and to be further dealt with according to law; and every such Summons shall be served by a Constable or other Peace Officer, upon the person to whom it is so directed, by delivering the same to the party personally, or if he cannot conveniently be met with, then by leaving the same with some person for him at his last or more usual place of abode; and the Constable or other Peace Officer who shall have served the same in manner aforesaid, shall attend at the time and place and before the Justice or Justices in the said Summons mentioned, to depose, if necessary, to the service of such Summons; and if the person so served shall not be and appear before the Justice or Justices at the time and place mentioned in such Summons, in obedience to the same, then it shall be lawful for such Justice or Justices to issue his or their Warrant (D) for apprehending the party so summoned, and bringing him before such Justice or Justices, or some other Justice or Justices of the Peace for the same County, to answer the charge in the said information and complaint mentioned, and to be further dealt with according to law; provided always, that no objection shall be taken or allowed to any such Summons or Warrant for any alleged defect therein, in substance or in form, or for any variance between it and the evidence adduced on the part of the prosecution before the Justice or Justices who shall take the examination of the witnesses in that behalf, as hereinafter mentioned; but if any such variance shall appear to such Justice or Justices to be such, that the party charged has been thereby deceived or misled, it shall be lawful for such Justice or Justices, at the request of the party so charged, to adjourn the hearing of the case to some future day, and in the meantime to remand the party so charged, or admit him to bail in manner hereinafter mentioned.

Upon complaint being laid, Justices receiving the same may issue Summons or Warrant for appearance of person charged.

How Summons to be served.

If party summoned do not attend, Justice may issue a Warrant to compel attendance.

No objection allowed for alleged defect in form, &c.

V.

Warrant to apprehend parties to be under hand and seal of Justice.

How and to whom directed.

No objection allowed for alleged defect in form, &c.

Regulations as to the backing of Warrants.

Proviso.

V. And be it enacted, That every Warrant (B) hereafter to be issued by any Justice or Justices of the Peace, to apprehend any person charged with any indictable offence, shall be under the hand and seal or hands and seals of the Justice or Justices issuing the same, and may be directed either to any Constable, or other person by name, or generally to the Constable of the Parish within which the same is to be executed, without naming him, or to such Constable and all other Constables or Peace Officers in the County within which the Justice or Justices issuing such Warrant has or have jurisdiction, or generally to all the Constables or Peace Officers within such last mentioned County; and it shall state shortly the offence on which it is founded, and shall name or therein describe the offender; and it shall order the person or persons to whom it is directed to apprehend the offender and bring him before the Justice or Justices issuing the said Warrant, or before some other Justice or Justices of the Peace for the same County, to answer to the charge contained in the said information, and to be further dealt with according to law; and it shall not be necessary to make such Warrant returnable at any particular time, but the same may remain in force until it shall be executed; provided always, that no objection shall be taken or allowed to any such Warrant for any defect therein, in substance or in form, or for any variance between it and the evidence adduced on the part of the prosecution before the Justice or Justices who shall take the examinations of the witnesses in that behalf, as hereinafter mentioned; but if any such variance shall appear to such Justice or Justices to be such, that the party charged has been thereby deceived or misled, it shall be lawful for such Justice or Justices, at the request of the party so charged, to adjourn the hearing of the case to some future day, and in the meantime to remand the party so charged, or to admit him to bail in manner hereinafter mentioned.

VI. And be it enacted, That if the person against whom any such Warrant shall be issued as aforesaid, shall not be found within the jurisdiction of the Justice or Justices by whom the same shall be issued, or if he shall escape, go into, reside or be, or be supposed or suspected to be in any part of this Province, out of the jurisdiction of the Justice or Justices issuing such Warrant, it shall and may be lawful for any Justice of the Peace of the County into which such person shall so escape or go, or in which he shall reside or be, or be supposed or suspected to be, upon proof alone being made on oath of the hand writing of the Justice or Justices, or either of them, issuing such Warrant, to make an endorsement (E) on such Warrant, signed with his name, authorizing the execution of such Warrant within the jurisdiction of the Justice making such endorsement, and which endorsement shall be sufficient authority to the person bringing such Warrant, and to all other persons to whom the same was originally directed, and also to all Constables and other Peace Officers of the County where such Warrant shall be so endorsed, to execute the same in such other County, and to carry the person against whom such Warrant shall have issued, when apprehended, before the Justice or Justices of the Peace who first issued the said Warrant, or before some other Justice or Justices of the Peace in and for the same County where the offence in the said Warrant mentioned appears therein to have been committed; provided always, that if the prosecutor, or any of the witnesses on the part of the prosecution, shall then be in the County where such person shall have been so apprehended, the Constable or other person or persons who shall have so apprehended such person, may, if so directed by the Justice backing such Warrant, take and convey him before the Justice who shall have so backed the said Warrant, or before some other Justice or Justices of the same County; and the

the said Justice or Justices may thereupon take the examinations of such prosecutor or witnesses, and proceed in every respect in manner hereinafter directed, with respect to persons charged before a Justice or Justices of the Peace with an offence alleged to have been committed in another County than that in which such persons have been apprehended.

VII. And be it enacted, That if it shall be made to appear to any Justice of the Peace, by the oath or affirmation of any credible person, that any person within the jurisdiction of such Justice is likely to give material evidence for the prosecution, and will not voluntarily appear for the purpose of being examined as a witness at the time and place appointed for the examination of the witnesses against the accused, such Justice may and is hereby required to issue his Summons (F) to such person, under his hand and seal, requiring him to be and appear at a time and place mentioned in such Summons, before the said Justice, or before such other Justice or Justices of the Peace for the same County as shall then be there, to testify what he shall know concerning the charge made against such accused party; and if any person so summoned shall neglect or refuse to appear at the time and place appointed by the said Summons, and no just excuse shall be offered for such neglect or refusal, then (after proof upon oath or affirmation of such Summons having been served upon such person, either personally or by leaving the same for him with some person at his last or most usual place of abode,) it shall be lawful for the Justice or Justices before whom such person should have appeared, to issue a Warrant (G) under his or their hands and seals, to bring and have such person at a time and place to be therein mentioned, before the Justice who issued the said Summons, or before such other Justice or Justices of the Peace for the same County, as shall then be there, to testify as aforesaid; and which said Warrant may, if necessary, be backed as hereinbefore is mentioned, in order to its being executed out of the jurisdiction of the Justice who shall have issued the same; or if such Justice shall be satisfied by evidence upon oath or affirmation that it is probable that such person will not attend to give evidence without being compelled so to do, then instead of issuing such Summons, it shall be lawful for him to issue his Warrant (H) in the first instance, and which, if necessary, may be backed as aforesaid; and if on the appearance of such person so summoned before the said last mentioned Justice or Justices, either in obedience to the said Summons, or upon being brought before him or them by virtue of the said Warrant, such person shall refuse to be examined on oath or affirmation concerning the premises, or shall refuse to take such oath or affirmation, or having taken such oath or affirmation, shall refuse to answer such questions concerning the premises as shall then be put to him, without offering any just excuse for such refusal, any Justice of the Peace then present, and having there jurisdiction, may by Warrant (I) under his hand and seal, commit the person so refusing to the Common Gaol for the County where such person so refusing shall then be, there to remain and be imprisoned for any time not exceeding seven days, unless he shall in the meantime consent to be examined, and to answer concerning the premises.

VIII. And be it enacted, That in all cases where any person shall appear or be brought before any Justice or Justices of the Peace charged with any indictable offence, or whether such person shall appear voluntarily upon Summons, or have been apprehended with or without Warrant, or be in custody for the same or any other offence, such Justice or Justices, before he or they shall commit such accused person to prison for trial, or before he or they shall admit him to bail, shall, in the presence of such accused person, who shall be at liberty to put questions

Power to Justices to summon Witnesses to attend and give evidence.

If Summons be not obeyed, Warrant may be issued to compel attendance.

In certain cases Warrant may be issued in the first instance.

Persons appearing on Summons, &c. refusing to be examined, may be committed.

As to examination of Witnesses.

questions to any witness produced against him, take the statement (K) on oath or affirmation of those who know the facts and circumstances of the case, and shall put the same into writing, and such deposition shall be read over to and signed respectively by the witnesses who shall have been so examined, and shall be signed also by the Justice or Justices taking the same; and the Justice or Justices before whom any such witness shall appear to be examined as aforesaid, shall before such witness is examined, administer to such witness the usual oath or affirmation, which such Justice or Justices shall have full power and authority to do; and if upon the trial of the person so accused as first aforesaid, it shall be proved by the oath or affirmation of any credible witness, that any person whose deposition shall have been taken as aforesaid, is dead or so ill as not to be able to travel, and if also it be proved that such deposition was taken in the presence of the person so accused, and that he had a full opportunity of cross-examining the witness, then if such deposition purport to be signed by the Justice by or before whom the same purports to have been taken, it shall be lawful to read such deposition as evidence in such prosecution, without further proof thereof, unless it shall be proved that such deposition was not in fact signed by the Justice purporting to sign the same.

Justice to administer oath or affirmation.

Depositions of persons who have died, or who are absent, may in certain cases be read in evidence.

After examination of the accused, Justice to read depositions taken against him, and caution him as to any statement he may make;

and inform him that he has nothing to hope or fear from either promise or threat.

Place where examination taken not to be deemed an open Court, and no person to remain without consent.

IX. And be it enacted, That after the examinations of all the witnesses on the part of the prosecution as aforesaid, shall have been completed, the Justice of the Peace, or one of the Justices by or before whom such examination shall have been so completed as aforesaid, shall, without requiring the attendance of the witnesses, read or cause to be read to the accused the depositions taken against him, and shall say to him these words, or words to the like effect: "Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so; but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial:" and whatever the prisoner shall then say in answer thereto, shall be taken down in writing, (L) and read over to him, and shall be signed by the said Justice or Justices, and kept with the depositions of the witnesses, and shall be transmitted with them as hereinafter mentioned; and afterwards, upon the trial of the said accused person, the same may, if necessary, be given in evidence against him, without further proof thereof, unless it shall be proved that the Justice or Justices purporting to sign the same did not in fact sign the same; provided always, that the said Justice or Justices, before such accused person shall make any statement, shall state to him and give him clearly to understand that he has nothing to hope from any promise of favor, and nothing to fear from any threat which may have been holden out to induce him to make any admission or confession of his guilt, but that whatever he shall then say may be given in evidence against him upon his trial, notwithstanding such promise or threat; provided nevertheless, that nothing herein enacted or contained shall prevent the prosecutor in any case from giving in evidence any admission or confession, or other statement of the person accused or charged, made at any time, which by law would be admissible as evidence against such person.

X. And be it declared and enacted, That the room or building in which such Justice or Justices shall take such examinations and statement as aforesaid, shall not be deemed an open Court for that purpose; and it shall be lawful for such Justice or Justices, in his or their discretion, to order that no person shall have access to, or be or remain in such room or building, without the consent or permission of such Justice or Justices, if it appear to him or them that the ends of justice will be best answered by so doing.

XI. And be it enacted, That it shall be lawful for the Justice or Justices before whom any such witness shall be examined as aforesaid, to bind by recognizance (M) the prosecutor and every such witness to appear at the next Court of Oyer and Terminer or Gaol Delivery, or Court of General Sessions of the Peace, at which the accused is to be tried, then and there to prosecute, or to prosecute and give evidence, or to give evidence, as the case may be, against the party accused; and the said recognizance being duly acknowledged by the person so entering into the same, shall be subscribed by the Justice or Justices before whom the same shall be acknowledged; and the several recognizances so taken, together with the written information, (if any,) the depositions, the statement of the accused, and the recognizance of Bail, (if any,) in every such case, shall be forthwith delivered or transmitted by the said Justice or Justices to the proper officer of the Court in which the trial is to be had; provided always, that if any such witness shall refuse to enter into or acknowledge such recognizance as aforesaid, it shall be lawful for such Justice or Justices of the Peace, by his or their Warrant (N) to commit him to the Common Gaol of the County in which the accused party is to be tried, there to be imprisoned and safely kept until after the trial of such accused party, unless in the meantime such witness shall duly enter into such recognizance as aforesaid, before some one Justice of the Peace for the County in which such Gaol shall be situate; provided nevertheless, that if afterwards, from want of sufficient evidence in that behalf, or other cause, the Justice or Justices before whom such accused party shall have been brought, shall not commit him or hold him to bail for the offence with which he is charged, it shall be lawful for such Justice or Justices, or any other Justice or Justices of the same County, by his or their order (O) in that behalf, to order and direct the keeper of such Common Gaol, where such witness shall be so in custody, to discharge him from the same, and such keeper shall thereupon forthwith discharge him accordingly.

XII. And be it enacted, That if from the absence of witnesses, or from any other reasonable cause, it shall become necessary or advisable to defer the examination, or further examination of the witnesses, for any time, it shall be lawful to and for the Justice or Justices before whom the accused shall appear or be brought by his or their Warrant (P) from time to time to remand the party accused, for such time as by such Justice or Justices, in their discretion, shall be deemed reasonable, not exceeding eight clear days, to the Common Gaol or other prison, or place of security, in the County for which such Justice or Justices shall then be acting; or if the remand shall be for a time not exceeding three clear days, it shall be lawful for such Justice or Justices verbally to order the Constable, or other person in whose custody such party accused may then be, or any other Constable or person to be named by the Justice or Justices in that behalf, to continue or keep such party accused in his custody, and to bring him before the same, or such other Justice or Justices as shall be there acting at the time appointed for continuing such examination; provided always, that any such Justice or Justices may order such accused party to be brought before him or them, or before any other Justice or Justices of the Peace for the same County, at any time before the expiration of the time for which such accused party shall be so remanded, and the gaoler or officer in whose custody he shall then be, shall duly obey such order; provided also, that instead of detaining the accused party in custody during the period for which he shall be so remanded, any one Justice of the Peace before whom such accused party shall appear or be brought, as aforesaid, may discharge him upon his entering into a recognizance (Q)

with

Power to Justice to bind over the prosecutors and witnesses by recognizance.

Recognizances, depositions, &c. to be transmitted to the Court in which the trial is to be had.

Witnesses refusing to enter into recognizances may be committed.

Power to Justice to remand the accused from time to time, not exceeding eight days, by Warrant.

If remand be for three days only, by verbal order.

Party accused may be admitted to bail, on the examination being adjourned.

If party does not appear upon recognizance, Justice may transmit the same to the Clerk of the Crown.

with or without a surety or sureties, at the discretion of such Justice, conditioned for his appearance at the time and place appointed for the continuance of such examination; and if such accused party shall not afterwards appear at the time and place mentioned in such recognizance, then the said Justice or any other Justices of the Peace who may then and there be present, upon certifying (R) on the back of the recognizance the non-appearance of such accused party, may transmit such recognizance to the Clerk of the Crown, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient prima facie evidence of such non-appearance of the said accused party.

If a person be apprehended in one County on charge of an offence committed in another, he may be examined in the former;

XIII. 'And whereas it often happens that a person is charged before a Justice of the Peace with an offence alleged to have been committed in another County than that in which such person has been apprehended, or in which such Justice has jurisdiction, and it is necessary to make provision as to the manner of taking the examinations of the witnesses, and of committing the party accused, or admitting him to bail in such case;' Be it therefore enacted, That whenever a person shall appear or shall be brought before a Justice or Justices of the Peace in the County wherein such Justice or Justices shall have jurisdiction, charged with an offence alleged to have been committed by him in any County within this Province wherein such Justice or Justices shall not have jurisdiction, it shall be lawful for such Justice or Justices, and he and they are hereby required to examine such witnesses, and receive such evidence in proof of such charge as shall be produced before him or them, within his or their jurisdiction; and if in his or their opinion such testimony and evidence shall be sufficient proof of the charge made against such accused party, such Justice or Justices shall thereupon commit him to the Common Gaol for the County where the offence is alleged to have been committed, or shall admit him to bail as hereinafter mentioned, and shall bind over the prosecutor (if he have appeared before him or them) and the witnesses by recognizance, accordingly as is hereinbefore mentioned; but if such testimony and evidence shall not in the opinion of such Justice or Justices be sufficient to put the accused party upon his trial for the offence with which he is so charged, then such Justice or Justices shall bind over such witnesses as he shall have examined, by recognizance, to give evidence as hereinbefore is mentioned; and such Justice or Justices shall by Warrant (S) under his or their hand and seal, or hands and seals, order such accused party to be taken before some Justice or Justices of the Peace in and for the County where and near unto the place where the offence is alleged to have been committed, and shall at the same time deliver the information and complaint, and also the depositions and recognizances so taken by him or them to the Constable who shall have the execution of such last mentioned Warrant, to be by him delivered to the Justice or Justices, before whom he shall take the accused in obedience to the said Warrant, and which said depositions and recognizances shall be deemed to be taken in the case, and shall be treated to all intents and purposes as if they had been taken by or before the said last mentioned Justice or Justices, and shall, together with such depositions and recognizances as such last mentioned Justice or Justices shall take in the matter of such charge against the accused party, be transmitted to the Clerk of the Court where the said accused party is to be tried, in the manner and at the time hereinbefore mentioned, if such accused party shall be committed for trial upon the said charge, or shall be admitted to bail; provided always, that if such last mentioned Justice or Justices shall not think the evidence against such accused party sufficient to put him upon his trial, and shall discharge him without holding him to bail, every such recognizance

and if evidence be deemed sufficient, may be committed to prison.

If insufficient, to be brought before some Justice in the latter County.

so taken by the said first mentioned Justice or Justices, as aforesaid, shall be null and void.

XIV. And be it enacted, That when all the evidence offered upon the part of the prosecution against the accused party shall have been heard, if the Justice or Justices of the Peace then present shall be of opinion that it is not sufficient to put such accused party upon his trial for any indictable offence, such Justice or Justices shall forthwith order such accused party, if in custody, to be discharged as to the information then under inquiry; but if, in the opinion of such Justice or Justices, such evidence is sufficient to put the accused party upon his trial for an indictable offence, or if the evidence given raise a strong or probable presumption of the guilt of such accused party, then such Justice or Justices shall, by his or their Warrant (T), commit him to the Common Gaol for the County or place to which by law he may now be committed, to be there safely kept until he shall be thence delivered by due course of law, or admit him to bail as hereinafter mentioned; provided always, that nothing herein contained shall be construed to require any such Justice or Justices to hear evidence on behalf of any party so accused, unless it shall appear to him or them to be meet and conducive to the ends of justice to hear the same, in which case the evidence so taken in behalf of the accused, shall be transmitted, together with the other depositions in the case, but it shall not be necessary to recognize the witnesses giving such evidence.

If after hearing evidence against the accused, it is not thought sufficient to warrant commitment, he shall be discharged; but if evidence considered sufficient, Justice shall, by Warrant, commit the accused for trial.

XV. And be it enacted, That when in any charge of felony such evidence shall not warrant the Justice or Justices before whom the same may be taken to dismiss the complaint, the accused party shall be committed to prison by such Justice or Justices, except in cases where authority may be expressly given to such Justice or Justices to admit to bail by any Act or Statute.

In felony, accused to be committed, if evidence be not sufficient for dismissal of the complaint. Exception.

XVI. And be it enacted, That any person charged with felony, or suspicion of felony, may be admitted to bail by order of the Supreme Court, or any one of the Judges of the same Court, without bringing the body of the person charged before such Court or Judge; and such Court or Judge may order to be transmitted to them or him the evidence taken before the Justice or Justices of the Peace against such accused party, for the purpose of considering an application for bail, without a Writ of certiorari being issued for that purpose; and any order for bailment to be made by such Court or Judge, shall specify the number of sureties, and the amount in which security is to be taken; and bailment (U) by virtue of such order may be made by any Justice or Justices of the Peace of the County where the accused party may be in custody; which Justice or Justices shall require good and sufficient bail, to the number and amount specified in the order, and shall certify the bailment in writing, and subscribe the same, and shall forthwith transmit the same, together with the order for bailment, to the proper officer of the Court at which the trial is to be.

Judges of the Supreme Court may order bail in cases of Felony; the evidence to be transmitted without a certiorari.

Bail ordered may be taken by a Justice of the Peace.

XVII. And be it enacted, That where any person shall be charged before any Justice of the Peace with any indictable misdemeanor, such Justice, after taking the examinations in writing as aforesaid, instead of committing him to prison for such offence, shall admit the person so charged to bail (U) upon his procuring and producing such surety or sureties as, in the opinion of such Justice, will be sufficient to secure the appearance of such accused person at the time and place when and where he is to be tried for such offence; and thereupon such Justice shall take the recognizance (U) of the said accused person, and his surety or sureties, conditioned for the appearance of such accused person at the time and place of trial, and that he will then surrender and take his trial, and not depart the Court without leave; and in all cases where a person charged with any indictable

Justice may admit to bail persons charged with indictable misdemeanors.

indictable misdemeanor shall be committed to prison to take his trial for the same, it shall be lawful at any time afterwards, and before the first day of the Sitting or Session at which he is to be tried, for the Justice of the Peace who shall have signed the Warrant for his commitment, or any other Justice of the Peace in case of his absence, illness, or other preventing cause, to admit such accused party to bail in manner aforesaid, and such Justice shall forthwith transmit the recognizance of bail in every such case to the proper officer of the Court where such trial is to take place.

After examinations are completed, defendant entitled to copies of the depositions.

XVIII. And be it enacted, That at any time after all the examinations aforesaid shall have been completed, and before the first day of the Assizes or Sessions or other first Sittings of the Court at which the person so committed to prison, or admitted to bail as aforesaid, is to be tried, such person may require, and shall be entitled to have, of and from the officer or person having the custody of the same, copies of the depositions on which he shall have been committed or bailed, on payment of a reasonable sum for the same, not exceeding six pence for each folio of one hundred words.

Clerks of the Peace to assist Justices in felony cases.

XIX. And be it enacted, That it shall be the duty of the Clerk of the Peace in each and every County in this Province, to advise and assist any Justice or Justices of the Peace in such County, when required by such Justice or Justices, in any examination or other proceedings had before such Justice or Justices in regard to any person arrested on a charge of felony or suspicion of felony, and to attend every such examination where the same shall take place within the distance of forty five miles from the Court House of the County; and that a reasonable compensation for such services performed by any Clerk of the Peace shall be made out of the funds of the County, in like manner with other County charges, by order of the Justices of the Peace at any General Sessions.

Judge of Supreme Court to issue Warrant on indictment or information, not treason or felony.

XX. And be it enacted, That whenever any person shall be charged with any offence for which he may be prosecuted by indictment or information in Her Majesty's Supreme Court, not being Treason or Felony, and the same shall be made to appear to any Judge of the same Court, by affidavit or by certificate of an indictment or information being filed against such person in the said Court for such offence, it shall and may be lawful for such Judge to issue his Warrant, under his hand and seal, and thereby to cause such person to be apprehended and brought before him or some other Judge of the same Court, or before some one of Her Majesty's Justices of the Peace, in order to his being bound to the Queen's Majesty, with two sufficient sureties, in such sum as in the said Warrant shall be expressed, with condition to appear in the said Court at the time mentioned in such Warrant, and to answer to all and singular indictments or informations for any such offence; and in case any such person shall neglect or refuse to become bound as aforesaid, it shall be lawful for such Judge or Justice respectively, to commit such person to the Common Gaol of the County, City or place where the offence shall have been committed, or where he shall have been apprehended, there to remain until he shall become bound as aforesaid, or shall be discharged by order of the said Court in Term time, or of one of the Judges of the said Court in Vacation; and the recognizance to be thereupon taken, shall be returned and filed in the said Court, and shall continue in force until such person shall have been acquitted of such offence, or in case of conviction, shall have received judgment for the same, unless sooner ordered by the said Court to be discharged.

Persons found stealing, &c. may be arrested without Warrant.

XXI. And be it enacted, That any person found stealing or embezzling any property, or receiving any property, knowing the same to have been stolen, or committing

committing any other offence with respect to property for which he may be liable to be indicted, may be immediately apprehended without a Warrant, by any Peace Officer, or by the owner of the property upon or with respect to which the offence shall be committed, or by his servant, or any person authorized by him, and forthwith take him before a Justice of the Peace, to be dealt with according to law; and if any credible witness shall prove upon oath before a Justice of the Peace, a reasonable cause to suspect that any person has in his possession or on his premises, any property whatsoever, on or with respect to which any such offence shall have been committed, the Justice may grant a Warrant to search for such property, as in the case of stolen goods; and any person to whom any property shall be offered to be sold, pawned, or delivered, if he shall have reasonable cause to suspect that any such offence has been committed on or with respect to such property, is hereby authorized, and if in his power, is required to apprehend and forthwith to carry before a Justice of the Peace the party offering the same, together with such property, to be dealt with according to law.

Search Warrant may be issued.

XXII. And be it enacted, That it shall and may be lawful for any one of Her Majesty's Justices of the Peace, upon the complaint of any two inhabitants and householders of any City, Town or Parish within this Province, upon oath, of any person keeping a bawdy house, gaming house, or disorderly house, in such City, Town or Parish, to issue his Warrant to bring such person before him; and such Justice shall thereupon bind him over to appear at the next General Sessions of the Peace, or at the next Court of Oyer and Terminer or General Gaol Delivery, to be holden in and for the County in which such place shall be, as to the said Justice shall seem meet, there to answer to such Bill of Indictment as shall be found against him for such offence; and such Justice shall and may, if in his discretion he thinks fit, likewise demand and take security for such person's good behaviour in the meantime; provided always, that before any such Warrant shall be issued by a Justice of the Peace, he shall require the two inhabitants so making complaint to him as aforesaid, to enter into a recognizance in the penal sum of twenty pounds each, to give or produce material evidence against the person complained of at the next Sessions, or Court of Oyer and Terminer or General Gaol Delivery, as the case may be.

Justice on complaint may issue Warrant to bring before him any keeper of a disorderly house, and bind over to appear at next Sessions.

May require security for good behaviour.

Complainants to enter into recognizance to produce evidence.

PROCEEDINGS RELATIVE TO INDICTMENT.

XXIII. And be it enacted, That every offence which before the commencement of this Act would have amounted to Petit Treason, shall be deemed to be Murder only, and no greater offence, and all persons guilty in respect thereof, whether as principals or as accessories, shall be dealt with, indicted, tried and determined as principals and accessories in Murder.

Petit treason to be dealt with as murder.

XXIV. And be it enacted, That every crime of felony, incest, adultery, and all acts of lewdness, shall be dealt with, indicted, tried and determined in the Supreme Court, or Court of Oyer and Terminer and General Gaol Delivery, except in cases where power may be specially given by Act or Statute to any other Court to try and determine any of the said offences.

Felony, &c. to be dealt with in Supreme Court, &c.

XXV. 'And for the more effectual prosecution of accessories before the fact to Felony;' Be it enacted, That if any person shall counsel, procure or command any other person to commit any felony, whether the same be a felony at common law, or by virtue of any Statute or Act of Assembly made or to be made, the person so counselling, procuring or commanding, shall be deemed guilty of felony, and may be indicted and convicted, either as an accessory before the fact to the principal felony, together with the principal felon, or after the conviction

Accessory before the fact may be tried as such, or as a substantive felon, by any Court which has jurisdiction to try the principal felon, although the offence may be committed on the high seas or abroad.

of the principal felon, or may be indicted and convicted of a substantive felony, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice; and the offence of the person so counselling, procuring or commanding, howsoever indicted, may be inquired of, tried, determined and punished by any Court which shall have jurisdiction to try the principal felon; in the same manner as if such offence had been committed at the same place as the principal felony, although such offence may have been committed either on the high seas or at any place on land, whether within Her Majesty's Dominions or without; and that in case the principal felony shall have been committed within the body of any County, and the offence of counselling, procuring or commanding shall have been committed within the body of any other County, the last mentioned offence may be inquired of, tried, determined and punished in either of such Counties; provided always, that no person who shall have been once duly tried for any such offence, whether as an accessory before the fact, or as for a substantive felony, shall be liable to be again indicted or tried for the same offence.

If the offences be committed in different Counties, accessory may be tried in either.

Accessory to be indicted, &c. as if principal attained.

XXVI. And in order that all accessories may be convicted and punished in cases where the principal felon is not attained; Be it enacted, That if any principal offender shall be in any wise convicted of any felony, it shall be lawful to proceed against any accessory either before or after the fact, in the same manner as if such principal felon had been attained thereof, notwithstanding such principal felon shall die or be pardoned, or otherwise delivered before attainder; and every such accessory shall suffer the same punishment, if he be in any wise convicted, as he should have suffered if the principal had been attained.

Accessory before the fact may be indicted as if principal.

XXVII. And be it enacted, That if any person shall become an accessory before the fact to any felony, whether the same be a felony at common law, or by virtue of any Act or Statute made or to be made, such person may be indicted, tried, convicted and punished in all respects as if he were a principal felon.

Accessory after the fact may be indicted at any time.

XXVIII. And be it enacted, That if any person shall become an accessory after the fact to any felony, whether the same be a felony at common law, or by virtue of any Act or Statute made or to be made, he may be indicted and convicted either as an accessory after the fact to the principal felony, together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted of a substantive felony, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, and may thereupon be punished in like manner as any accessory after the fact to the same felony, if convicted as an accessory, may be punished; and the offence of such person, howsoever indicted, may be inquired of, tried, determined and punished by any Court which shall have jurisdiction to try the principal felon, in the same manner as if the act, by reason of which such person shall have become an accessory, had been committed at the same place as the principal felony; provided always, that no person who shall be once duly tried for any such offence, whether as an accessory after the fact, or as for a substantive felony, shall be liable to be again indicted or tried for the same offence.

Mode of stating felony after previous conviction.

XXIX. And be it enacted, That in any indictment for any felony, not punishable with death, committed after a previous conviction for a felony, it shall be sufficient to state that the offender was at a certain time and place convicted of felony, without otherwise describing the previous felony.

Bigamy may be indicted where party apprehended.

XXX. And be it enacted, That in every case of Bigamy, the said offence may be dealt with, inquired of, indicted, tried, determined and punished in the County where the offender shall be apprehended, or be in custody, as if the offence had been actually committed in that County.

XXXI.

XXXI. And be it enacted, That in every indictment for feloniously stealing property, it shall be lawful to add a count for feloniously receiving the same property, knowing it to have been stolen; and in any indictment for feloniously receiving property knowing it to have been stolen, it shall be lawful to add a count for feloniously stealing the same property; and where any such indictment shall have been preferred and found against any person, the prosecutor shall not be put to his election, but it shall be lawful for the Jury who shall try the same, to find a verdict of guilty, either of stealing the property, or of receiving it, knowing it to have been stolen; and if such indictment shall have been preferred and found against two or more persons, it shall be lawful for the Jury who shall try the same, to find all or any of the said persons guilty either of stealing the property, or of receiving it, knowing it to have been stolen, or to find one or more of the said persons guilty of stealing the property, and the other or others of them guilty of receiving it, knowing it to have been stolen.

Feloniously stealing and receiving property &c. may be included in one indictment.

XXXII. 'And in order to provide for trial for Murder and Manslaughter where the death only happens in this Province;' Be it enacted, That where any person being feloniously stricken, poisoned or otherwise hurt upon the sea or at any place out of this Province, shall die of such stroke, poisoning or hurt in this Province, every offence committed in such case, whether the same shall amount to the offence of murder or manslaughter, or of being accessory before the fact to murder, or after the fact to murder or manslaughter, may be dealt with, inquired of, tried, determined and punished in the County in which such death shall happen, in the same manner in all respects as if such offence had been wholly committed in that County.

Trial for murder or manslaughter where death only happens in this Province, may be had in the County where the death takes place.

XXXIII. 'And for the more effectual prosecution of offences committed near the boundaries of Counties, or partly in one County and partly in another, or in places with respect to which it may be uncertain within which of two or more Counties they are situate;' Be it enacted, That when any felony or misdemeanor shall be committed on the boundary or boundaries of two or more Counties, or within the distance of one mile from any such boundary or boundaries, or in any place or places with respect to which it may be uncertain within which of two or more Counties they may be situate, or when any felony or misdemeanor shall be begun in one County and completed in another, every such felony or misdemeanor may be dealt with, inquired of, tried, determined and punished in any of the said Counties, in the same manner as if it had been actually and wholly committed therein.

Offences committed on the boundaries of Counties, &c. may be tried in either County.

XXXIV. 'And for the more effectual prosecution of offences committed during journees from place to place;' Be it enacted, That when any felony or misdemeanor shall be committed on any person, or on or in respect of any property, or in or upon any coach, wagon, cart, sleigh, sled, or other carriage whatever, employed in any journey, or shall be committed on any person, or on or in respect of any property on board any vessel or boat whatsoever, employed on any voyage or journey upon any navigable river, canal, or inland navigation, or on or in respect of any property in, upon, or forming part of any raft whatever, passing in or upon any such navigable river, canal, or inland navigation, such felony or misdemeanor may be dealt with, inquired of, tried, determined and punished in any County through any part whereof such coach, wagon, cart, sleigh, sled, carriage, vessel, boat or raft shall have passed in the course of the journey, voyage or passage during which such felony or misdemeanor shall have been committed, in the same manner as if it had been actually committed in such County; and in all cases where the side, centre, or other part of any highway, or the side, bank,

Offences committed during a journey or voyage, may be tried in any County through which the Coach, &c. passed.

centre, or other part of any such river, canal, or navigation, shall constitute the boundary of any two Counties, such felony or misdemeanor may be dealt with, inquired of, tried, determined and punished in either of the said Counties through, or adjoining to, or by the boundary of any part whereof, such coach, wagon, cart, sleigh, sled, carriage, vessel, boat or raft shall have passed in the course of the journey, voyage or passage during which such felony or misdemeanor shall have been committed, in the same manner as if it had actually been committed in such County.

Cases of forgery may be tried in the County where offender is apprehended.

XXXV. 'And to remedy the difficulties which sometimes arise in prosecutions for Forgery;' Be it enacted, That if any person shall commit any offence of forging, or altering any deed, writing, instrument, or other matter whatsoever, or of offering, uttering, disposing of, or putting off, any deed, writing, instrument, or other matter whatever, knowing the same to be forged or altered, with intent to defraud any person whomsoever, whether the offence in any such case shall be indictable at common law or by virtue of any Act or Acts now in force or hereafter to be made, the offence of every such offender may be dealt with, indicted, tried and punished, and laid and charged to have been committed in any County or place in which he shall be apprehended, or in custody, as if his offence had been actually committed in that County or place; and every principal in the second degree, and every accessory before the fact, and every accessory after the fact, may be dealt with, indicted, tried and punished, and his offence laid and charged to have been committed in any County or place in which the principal offender may be tried.

Accessories in the same place as the principals.

In indictments for forgery, copy not necessary.

XXXVI. 'And in order to prevent justice from being defeated by clerical or verbal inaccuracies in prosecutions for Forgery;' Be it enacted, That in all informations or indictments for Forgery, or in any manner altering any deed, writing, instrument, or other matter whatever, it shall not be necessary to set forth any copy or fac simile thereof, but it shall be sufficient to describe the same in such manner as would sustain an indictment for stealing the same, any law, usage or custom to the contrary notwithstanding.

In indictments for offences committed on the property of partners, it may be laid in any one partner by name, and others.

XXXVII. 'And in order to remove the difficulty of stating the names of all the owners of the property in the case of partners and other joint owners;' Be it enacted, That in any indictment or information for any felony or misdemeanor, whenever it shall be requisite to state the ownership of any property whatsoever, whether real or personal, which shall belong to or be in the possession of more than one person, whether such persons be partners in trade, joint tenants, parceners, or tenants in common, it shall be sufficient to name one of such persons, and to state such property to belong to the person so named, and another or others, as the case may be; and whenever in any indictment or information for any felony or misdemeanor, it shall be necessary to mention, for any purpose whatsoever, any partners, joint tenants, parceners, or tenants in common, it shall be sufficient to describe them in the manner aforesaid, and this provision shall be construed to extend to all Joint Stock Companies and Trustees.

Property belonging to Counties may be laid in the inhabitants of the County.

XXXVIII. 'And with respect to the property of Counties;' Be it enacted, That in any indictment or information for any felony or misdemeanor committed in, upon, or with respect to any Bridge, Court House, Gaol, House of Correction, Infirmary, Asylum, or other building erected or maintained, in whole or in part, at the expense of any County, or on or with respect to any goods or chattels whatsoever, provided for or at the expense of any County, to be used for building, altering or repairing any Bridge, Court House, or other building as aforesaid, or to be used in or with any such Bridge, Court House, or other building, it shall be

be sufficient to state any such property, real or personal, to belong to the inhabitants of such County, and it shall not be necessary to specify the names of any such inhabitants.

XXXIX. 'And with respect to property under the management of Public Officers;' Be it enacted, That in any indictment or information for any felony or misdemeanor committed on or with respect to any buildings, or any goods or chattels, or any other property, real or personal, whatsoever, in the occupation or under the superintendance, charge or management of any Public Officer or Commissioner whatsoever, or any County or Parish Officer or Commissioner whomsoever, it shall be sufficient to state any such property to belong to the Officer or Commissioner in whose occupation, or within or under whose superintendance, charge or management such property shall be, and it shall not be necessary to specify the names of any such Officers or Commissioners.

Property under the management of public officers may be laid in the public officer.

XL. 'And for the preventing abuses from dilatory pleas;' Be it enacted, That no indictment or information shall be abated by reason of any dilatory plea or misnomer, or of want of addition or of wrong addition of the party offering such plea, if the Court shall be satisfied, by affidavit or otherwise, of the truth of such plea; but in such cases the Court shall forthwith cause the indictment or information to be amended according to the truth, and shall call upon such party to plead thereto, and shall proceed as if no such dilatory plea had been pleaded.

Indictment not to abate for dilatory plea.

XLI. And be it enacted, That if any person being arraigned upon any indictment for treason or felony, shall plead thereto a plea "not guilty," he shall, by such plea, without any further form, be deemed to have put himself upon the country for trial, and the Court shall, in the usual manner, order a Jury for the trial of such person accordingly.

Plea of 'not guilty' to put a party on his trial.

XLII. And be it enacted, That if any person being arraigned upon or charged with any indictment or information for treason, felony, or misdemeanor, shall stand mute of malice, or will not answer directly to the indictment or information, in every such case it shall be lawful for the Court, if it shall so think fit, to order the proper officer to enter a plea of "not guilty" on behalf of such person, and the plea so entered shall have the same force and effect as if such person had actually pleaded the same.

If prisoner stand mute of malice, Court may order plea of 'not guilty' to be entered.

XLIII. And be it enacted, That no plea setting forth any attainder shall be pleaded in bar of any indictment, unless the attainder be for the same offence as that charged in the indictment.

Attainder of another crime not pleadable.

XLIV. And be it enacted, That in any indictment for any offence within the meaning of the fourteenth Article of the first Section of Chapter Nine of an Act made and passed during the present Session of the Assembly, intituled *An Act to consolidate and amend the several Acts of Assembly relating to the Criminal Law of this Province, so far as relates to the definition of certain indictable offences, and the punishment thereof*, it shall not be necessary to allege that the article in respect of which the offence is committed is the property of any person, or that the same is of any value.

In indictment for offence against art. 14, sec. 1, cap. 9 of 12 V. c. 29, not necessary to allege property, &c.

XLV. And be it enacted, That in any indictment for any offence within the meaning of the fifteenth Article of the first Section of Chapter Nine in the said last mentioned Act, it shall be sufficient to allege the thing stolen to be evidence of the title or part of the title of the person or some one of the persons having a present interest, whether legal or equitable, in the real estate to which the same relates, and to mention such real estate or some part thereof; and it shall not be necessary to allege the thing stolen to be of any value.

In same against art. 15 of same Act, only necessary to allege the thing stolen to be evidence of title.

Distinct acts of embezzlement may be charged in the same indictment.

XLVI. 'And for preventing the difficulties that have been experienced in the prosecution of embezzlements committed by clerks and servants;' Be it enacted, That it shall be lawful to charge in the indictment and proceed against such offenders for any number of distinct acts of embezzlement, not exceeding three, which may have been committed by him against the same master, within the space of six calendar months from the first to the last of such acts; and in every such indictment, except where the offence shall relate to any chattel, it shall be sufficient to allege the embezzlement to be of money, without specifying any particular coin or valuable security; and such allegation, so far as regards the description of the property, shall be sustained, if the offender shall be proved to have embezzled any amount, although the particular species of coin or valuable security of which such amount was composed, shall not be proved; or if he shall be proved to have embezzled any piece of coin or valuable security, or any portion of the value thereof, although such piece of coin or valuable security may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, and such part shall have been returned accordingly.

Where original offence is a misdemeanor, receivers of articles may be indicted for a misdemeanor.

XLVII. And be it enacted, That if any person shall receive any chattel, money, valuable security, or other property whatsoever, the stealing, taking, obtaining, or converting whereof, is made an indictable misdemeanor, such person knowing the same to have been unlawfully stolen, taken, obtained or converted, every such receiver shall be guilty of a misdemeanor, and may be indicted and convicted thereof, whether the person guilty of the principal misdemeanor shall or shall not have been previously convicted thereof, or shall or shall not be amenable to justice; and every such receiver shall, on conviction, be liable to be punished in the manner provided for the person guilty of the principal misdemeanor.

All receivers may be dealt with where the principal offender is triable.

XLVIII. And be it enacted, That if any person shall receive any chattel, money, valuable security, or other property whatsoever, knowing the same to have been feloniously or unlawfully stolen, taken, obtained or converted, every such person, whether charged as an accessory after the fact to the felony, or with a substantive felony, or with a misdemeanor only, may be dealt with, indicted, tried and punished in any County or place in which he shall have or shall have had any such property in his possession, or in any County or place in which the party guilty of the principal felony or misdemeanor may by law be tried, in the same manner as such receiver may be dealt with, indicted, tried and punished in the County or place where he actually received such property.

The owner of stolen property prosecuting thief or receiver to conviction, shall have restitution of property.

XLIX. 'And to encourage the prosecution of offenders;' Be it enacted, That if any person guilty of any felony or misdemeanor, in stealing, taking, obtaining or converting, or in knowingly receiving any chattel, money, valuable security, or other property whatsoever, shall be indicted for any such offence, by or on the behalf of the owner of the property, or his executor or administrator, and convicted thereof, in such case the property shall be restored to the owner or his representative; and the Court before whom any such person shall be so convicted, shall have power to award from time to time writs of restitution for the said property, or to order the restitution thereof in a summary manner; and the Court may in like manner, if it shall see fit, order the restitution of property in cases where the party so indicted as aforesaid may not be convicted, if it shall clearly appear that the property had been stolen, or taken or obtained from the owner by felony or misdemeanor aforesaid; provided always, that if it shall appear, before any award or order made, that any valuable security shall have been *bona fide* paid or discharged by some person or Body Corporate liable to

Restitution where party not convicted.

Exception.

the

the payment thereof, or being a negotiable instrument, shall have been *bona fide* taken, or received by transfer or delivery, by some person or Body Corporate, for a just and valuable consideration, without any notice, or without any reasonable cause to suspect that the same had by any felony or misdemeanor been stolen, taken, obtained or converted as aforesaid; in such case the Court shall not award or order the restitution of such security.

L. And be it enacted, That all Lotteries which by law are taken and adjudged to be common and public nuisances, may be dealt with, indicted, tried and determined in any Court of Oyer and Terminer or Gaol Delivery, or Court of General Sessions of the Peace for any County in this Province.

Lotteries may be indicted at Oyer and Terminer, &c.

LI. And be it enacted, That the Court of General Sessions of the Peace shall have power to deal with, try, and determine any larceny, or any accessories thereto, or any offence of receiving stolen goods, in which the value of the property on or with respect to which the offence shall be committed, shall not exceed the sum of five pounds; provided always, that the said Court of General Sessions of the Peace, in any case of difficulty, in which a party may be indicted before such Court for any offence under this Act, triable by such Court, whether it be a felony or misdemeanor, either before or after the party has pleaded may cause the indictment to be handed over by the Clerk of the Peace to the next Supreme Court, or Court of Oyer and Terminer held in the County, to be therein dealt with, tried and determined, and shall in such case bind by recognizance all witnesses to appear before such Supreme Court, or Court of Oyer and Terminer and Gaol Delivery, and give evidence upon the trial of such indictment; and if it be a case of misdemeanor, and the party indicted can find good and sufficient bail, shall also take bail from such party to appear in such Supreme Court, or Court of Oyer and Terminer and Gaol Delivery, and plead or take his trial upon such indictment as the case may be; and if it be a case of felony, the said Court of General Sessions of the Peace may, if it so think fit, admit the party indicted to bail, upon his giving good and sufficient bail in like manner to appear and plead, or take his trial upon such indictment as the case may be, in such Supreme Court, or Court of Oyer and Terminer and Gaol Delivery.

General Sessions to deal with larceny where value shall not exceed £5;

In difficult cases may hand over indictment to the Supreme Court or Court of Oyer and Terminer, and bind witnesses, &c;

And bail the party.

EVIDENCE.

LII. And be it enacted, That on any prosecution by indictment or information against any person for forging any deed, writing, instrument or other matter whatsoever, knowing the same to be forged, no person shall be deemed to be an incompetent witness in support of any such prosecution, by reason of any interest which such person may have or be supposed to have in respect of such deed, writing, instrument or other matter.

In forgery, person not to be deemed incompetent for interest in instrument.

LIII. 'And whereas it is expedient to prevent all doubt respecting the civil rights of persons convicted of felonies not capital, who have undergone the punishment to which they were adjudged;' Be it therefore enacted, That when any offender hath been or shall be convicted of any felony not punishable with death, and hath endured or shall endure the punishment to which such offender hath been or shall be adjudged for the same, the punishment so endured shall have the like effect and consequence as a pardon under the Great Seal, as to the felony whereof the offender was so convicted; provided always, that nothing herein contained, nor the enduring of such punishment, shall prevent or mitigate any punishment to which the offender might otherwise be lawfully sentenced on a subsequent conviction for any other felony.

Every punishment for felony, after it has been endured, shall have the effect of a pardon under the Great Seal.

No misdemeanor, except perjury, shall render a party an incompetent witness after he has undergone the punishment.

LIV. ' And whereas there are certain misdemeanors which render the parties ' convicted thereof incompetent witnesses, and it is expedient to restore the competency of such parties after they have undergone their punishment; ' Be it enacted, That when any offender hath been or shall be convicted of any such misdemeanor, except perjury, or subornation of perjury, and hath endured or shall endure the punishment to which such offender hath been or shall be adjudged for the same, such offender shall not, after the punishment so endured, be deemed to be, by reason of such misdemeanor, an incompetent witness in any Court or proceeding, civil or criminal.

In indictments for second felonies not punishable with death, certificate of first conviction to be evidence.

LV. And be it enacted, That in any indictment for a felony not punishable with death, committed after a previous conviction of felony, a certificate containing the substance and effect, omitting the formal part of the indictment and conviction for the previous felony, purporting to be signed by the Clerk of the Court or other Officer having the custody of the Records of the Court where the offender was first convicted, or by the Deputy of such Clerk or Officer, shall upon proof of the identity of the person of the offender, be sufficient evidence of the first conviction, without proof of the signature or official character of the person appearing to have signed the same; and if any such Clerk, Officer or Deputy, shall utter a false certificate of any indictment and conviction for a previous felony, or if any person other than such Clerk, Officer or Deputy, shall sign any such certificate, as such Clerk, Officer or Deputy, or shall utter any such certificate with a false or counterfeit signature thereto, every such offender shall be guilty of felony.

False certificate made felony.

Quakers, &c. to be permitted to affirm in giving evidence in criminal cases.

LVI. And be it enacted, That any Quaker or Moravian who shall be required to give evidence in any criminal case, shall, instead of taking an oath in the usual form, be permitted to take his solemn affirmation or declaration in the words following, that is to say :—' I, A. B., do solemnly, sincerely and truly declare and ' affirm; ' which said affirmation or declaration shall be of the same force and effect in all Courts of Justice and other places, where by law an oath is required, as if such Quaker or Moravian had taken an oath in the usual form.

PROCEEDINGS RELATIVE TO TRIAL.

Every peremptory challenge to Jurors above twenty, to be void.

LVII. And be it enacted, That no person arraigned for any felony shall be admitted to any peremptory challenge above the number of twenty, and if any person indicted for any treason or felony shall challenge peremptorily a greater number of the men returned to be of the Jury, than such person is entitled by law so to challenge, every peremptory challenge beyond the number allowed by law, in the case then in hand, shall be entirely void, and the trial of such person shall proceed as if no such challenge had been made.

Jury not to inquire as to lands, &c.

LVIII. And be it enacted, That when any person shall be indicted for treason or felony, the Jury empannelled to try such person shall not be charged to inquire concerning his lands, tenements, or goods, nor whether he fled for such treason or felony.

Right of traverse in misdemeanors abolished.

LIX. ' And whereas the practice of defendants who are indicted for misdemeanors at any Court of Oyer and Terminer, traversing, without cause shewn ' therefor, to a following Court, is found from the length of time intervening between ' the several Courts, and the difficulty of securing the attendance of witnesses, to ' obstruct the due administration of justice; ' Be it enacted, That the right of traverse by persons indicted for any misdemeanor or misdemeanors at any Court of Oyer and Terminer or General Gaol Delivery, or General Sessions of the Peace, shall be and the same is hereby taken away and abolished, and that hereafter every

every indictment against any person or persons for any misdemeanor or misdemeanors shall be heard, tried and finally determined at the same Court of Oyer and Terminer or General Gaol Delivery, or General Sessions of the Peace, at which such indictment shall have been preferred, unless the Court shall think proper, upon cause shewn, to adjourn the same to the next or any subsequent Court of Oyer and Terminer or General Gaol Delivery, or General Sessions of the Peace.

LX. 'And whereas a failure of justice frequently takes place in criminal trials by reason of variances between writings produced in evidence and the recital or setting forth thereof in the indictment or information, and the same cannot now be amended at the trial, except in cases of misdemeanor; for remedy thereof;' Be it enacted, That it shall and may be lawful for any Court of Oyer and Terminer and General Gaol Delivery, if such Court shall see fit so to do, to cause the indictment or information for any offence whatever, when any variance shall appear between any matter in writing or in print produced in evidence, and the recital or setting forth thereof in the indictment or information whereon the trial is pending, to be forthwith amended in such particular or particulars, by some officer of the Court, and after such amendment, the trial shall proceed in the same manner in all respects, both with regard to the liability of witnesses to be indicted for perjury and otherwise, as if no such variance had appeared.

Courts of Oyer and Terminer may cause indictments to be amended in certain cases.

LXI. And be it enacted, That if no demand of a copy of the depositions taken on the examination of any party accused shall be made before the day appointed for the opening of the Assizes or Sessions at which the trial of such accused party is to take place, such person shall not be entitled to have any copy of such examination of witnesses, unless the Judge or other person to preside at such trial shall be of opinion that such copy may be made and delivered without delay or inconvenience to such trial; but it shall nevertheless be competent for such Judge or other person so to preside at such trial, if he shall think fit, to postpone such trial on account of such copy of the examination of witnesses not having been previously had by the party charged; and all persons shall be entitled at the time of their trial to inspect, without fee or reward, all depositions or copies thereof which shall have been taken against them or on their behalf, and returned into the Court before which such trial shall be had.

Accused not entitled to copy of depositions if not demanded before opening of Assizes or Sessions.

Judge may order copy or postpone trial.

Inspection allowed.

LXII. And be it enacted, That all persons tried for any felonies shall be admitted after the close of the case for the prosecution to make full answer and defence thereto by Counsel learned in the law, or by Attorney in Court where Attornies practise as Counsel; and that in all cases of summary proceedings before Justices, persons accused shall be admitted to make their full defence and answer, and to have witnesses examined and cross-examined by Counsel or Attorney as aforesaid.

In felony and summary conviction cases, accused may defend by Counsel.

LXIII. And be it enacted, That on the trial of any person for any felony whatever, where the crime charged shall include an assault against the person, it shall be lawful for the Jury to acquit of the felony, and to find a verdict of guilty of assault against the person indicted, if the evidence shall warrant such finding.

Verdict of guilty of assault may be found when party is acquitted of felony.

LXIV. And be it enacted, That if upon the trial of any person indicted for obtaining any property, money or valuable security, by false pretence, contrary to law, it shall be proved that he obtained the same in any such manner as to amount in law to larceny, he shall not, by reason thereof, be entitled to be acquitted, and no person tried for such misdemeanor shall be liable to be afterwards prosecuted for larceny upon the same facts.

No acquittal if on trial for false pretence the offence shall amount to larceny.

LXV. And be it enacted, That any Court that has power to try the principal felon in any case of stolen property, may also try the receiver, howsoever indicted;

Same Court may try receiver and principal.

provided

provided always, that no person, howsoever tried for receiving as aforesaid, shall be liable to be prosecuted a second time for the same offence.

On trial of a woman for child murder, Jury may find guilty of concealing birth.

LXVI. And be it enacted, That if on the trial of any woman for the murder of her child, she shall be acquitted thereof, it shall be lawful for the Jury by whose verdict she shall be acquitted, to find, in case it shall so appear in evidence that she was delivered of a child, and that she did, by secret burying or otherwise disposing of the dead body of such child, endeavour to conceal the birth thereof, and thereupon the Court may pass such sentence as if she had been convicted upon an indictment for the concealment of the birth.

Questions of law may be reserved for the decision of the Supreme Court.

LXVII. ' And whereas it is expedient to provide a better mode than that now ' in use, of deciding any difficult question of law which may arise in criminal trials ' in any Court of Oyer and Terminer and Gaol Delivery ; ' Be it therefore enacted, That when any person shall have been convicted of any treason, felony or misdemeanor, before any Court of Oyer and Terminer or Gaol Delivery, the Judge or Commissioner before whom the case shall have been tried, may, in his discretion, reserve any question of law which shall have arisen on the trial for the consideration of the Supreme Court, and thereupon shall have authority to respite execution of the judgment on such conviction, or postpone the judgment until such question shall be considered and decided, as he may think fit ; and in either case the said Court of Oyer and Terminer or Gaol Delivery, in its discretion, shall commit the person convicted to prison, or shall take a recognizance of bail, with one or two sufficient sureties, and in such sum as the said Court shall think fit, conditioned to appear at such time or times as the said Court shall direct, and receive judgment, or to render himself into custody as the case may be.

Supreme Court to have power to affirm or reverse any verdict of a Court of Oyer and Terminer, &c. on a statement of the reserved questions of law, made by a Judge.

LXVIII. And be it enacted, That the Judge or Commissioner of the said Court of Oyer and Terminer and Gaol Delivery, shall thereupon state, in a case to be signed by him, the question or questions of law which shall have been so reserved, with the special circumstances upon which the same shall have arisen, and such case shall be transmitted to the said Supreme Court, and the said Supreme Court shall thereupon have full power and authority to hear and finally determine the said question or questions, and thereupon to reverse, affirm or amend any judgment which shall have been given on the indictment or inquisition on the trial whereof such question or questions have arisen, or to avoid such judgment, and to order an entry to be made on the record, that in the judgment of the said Supreme Court, the party convicted ought not to have been convicted, or to arrest the judgment, or order judgment to be given thereon at some other Session of Oyer and Terminer or Gaol Delivery, if no judgment shall have been before that time given, as they shall be advised, or to make such other order as justice may require ; and such judgment and order (if any) of the said Supreme Court, shall be certified under the hand of the chief or presiding Justice of the said Supreme Court to the Clerk of the Circuits, or his Deputy, who shall enter the same on the original record in proper form ; and a certificate of such entry, under the hand of the Clerk of the Circuits, or his Deputy, in the form, as near as may be, or to the effect mentioned in the Schedule annexed to this Act, with the necessary alterations to adapt it to the circumstances of the case, shall be delivered or transmitted by him to the Sheriff or Gaoler in whose custody the person convicted shall be, and the said certificate shall be a sufficient warrant to such Sheriff or Gaoler, and all other persons, for the execution of the judgment, as the same shall be so certified to have been affirmed or amended, and execution shall be thereupon executed on such judgment, and for the discharge of the person

person convicted from further imprisonment, if the judgment shall be reversed, avoided or arrested; and in that case such Sheriff or Gaoler shall forthwith discharge him, and also the next Court of Oyer and Terminer and Gaol Delivery shall vacate the recognizance of bail, (if any,) and if the Court of Oyer and Terminer and Gaol Delivery shall be directed to give judgment, the said Court shall proceed to give judgment at the next Session.

LXIX. And be it enacted, That the said Supreme Court, when a case has been reserved for their opinion, shall have power, if they think fit, to cause the case or certificate to be sent back for amendment, and thereupon the same shall be amended accordingly, and judgment shall be delivered after it shall have been amended.

Supreme Court may send back case for amendment.

LXX. And be it enacted, That in all cases where it shall be given in evidence upon the trial of any person charged with treason, murder, felony, or any misdemeanor, that such person was insane at the time of the commission of such offence, and such person shall be acquitted, the Jury shall be required to find specially whether such person was insane at the time of the commission of such offence, and to declare whether such person was acquitted by them on account of such insanity; and if they shall find that such person was insane at the time of the committing such offence, the Court before whom such trial shall be had, shall order such person to be kept in strict custody, in such place and in such manner as to the Court shall seem fit, until the pleasure of the Lieutenant Governor or Administrator of the Government for the time being shall be made known; and it shall thereupon be lawful for the said Lieutenant Governor or Administrator of the Government, to give such order for the safe custody of such person during his pleasure, in such place and in such manner as to the said Lieutenant Governor or Administrator of the Government for the time being shall seem fit; and in all cases where any person, before the passing of this Act, has been acquitted of any such offences on the ground of insanity at the time of the commission thereof, and has been detained in custody as a dangerous person by order of the Court before whom such person has been tried, and still remains in custody, it shall be lawful for the said Lieutenant Governor or Administrator of the Government, to give the like order for the safe custody of such person during his pleasure, as the said Lieutenant Governor or Administrator of the Government is hereby enabled to give in the cases of persons who shall hereafter be acquitted on the ground of insanity.

Prisoners charged with treason, murder, &c. and proved insane, to be acquitted, but kept in custody.

LXXI. And be it enacted, That if any person indicted for any offence shall be insane, and shall upon arraignment be found to be so by a Jury lawfully empannelled for that purpose, so that such person cannot be tried upon such indictment, or if upon the trial of any person so indicted such person shall appear to the Jury charged with such indictment to be insane, it shall be lawful for the Court before whom any such person shall be brought to be arraigned or tried as aforesaid, to direct such finding to be recorded, and thereupon to order such person to be kept in strict custody, until the pleasure of the said Lieutenant Governor or Administrator of the Government shall be known; and if any person charged with any offence shall be brought before any Court to be discharged for want of prosecution, and such person shall appear to be insane, it shall be lawful for such Court to order a Jury to be empannelled to try the sanity of such person, and if the Jury so empannelled shall find such person to be insane, it shall be lawful for such Court to order such person to be kept in strict custody in such place and in such manner as to such Court shall seem fit, until the pleasure of the said Lieutenant Governor or Administrator of the Government shall be known;

Person found insane upon arraignment, to be confined.

and in all cases of insanity so found, it shall be lawful for the said Lieutenant Governor or Administrator of the Government to give such order for the safe custody of such person so found to be insane, during his pleasure, in such place and in such manner as to the said Lieutenant Governor or Administrator of the Government shall seem fit.

Inquiry with medical aid to be made respecting prisoners becoming insane.

If certified to be insane, may be removed to Lunatic Asylum.

Removal back to prison, &c. on recovery.

LXXII. 'And whereas it is expedient that provision should be made for the confinement of insane prisoners;' Be it therefore enacted, That if any person, while imprisoned in any prison or other place of confinement, under any sentence of death or imprisonment, or under a charge of any offence, or for not finding bail for good behaviour, or to keep the peace, or to answer a criminal charge, or in consequence of any summary conviction or order by any Justice or Justices of the Peace, or under any other than civil process, shall appear to be insane, it shall be lawful for any two Justices of the Peace of the County or place where such person is imprisoned, to inquire, with the aid of two Physicians or Surgeons, as to the insanity of such person; and if it shall be duly certified by such Justices and such Physicians or Surgeons that such person is insane, it shall be lawful for the said Lieutenant Governor or Administrator of the Government, upon receipt of such certificate, to direct, by Warrant under his hand, that such person shall be removed to such County Lunatic Asylum, or other proper receptacle for insane persons, as the said Lieutenant Governor or Administrator of the Government may judge proper and appoint; and every person so removed under this Act, or already removed or in custody under any former Act relating to insane prisoners, shall remain under confinement in such County Asylum or other proper receptacle as aforesaid, or in any other County Lunatic Asylum or other proper receptacle to which such persons may be removed, or may have been already removed, or in which he may be in custody by virtue of like order, until it shall be duly certified to the said Lieutenant Governor or Administrator of the Government, by two Physicians or Surgeons, that such person has become of sound mind; whereupon the said Lieutenant Governor or Administrator of the Government is hereby authorized, if such person shall still remain subject to be continued in custody, to issue his Warrant or Order to the keeper or other person or persons having the care of any such Asylum or receptacle as aforesaid, directing that such person shall be removed back from thence to the prison or other place of confinement from whence he shall have been taken; or if the period of imprisonment or custody of such person shall have expired, that he shall be discharged.

SUMMARY TRIALS FOR LARCENY.

Persons charged with larceny of property not exceeding in value 40s., may be tried summarily.

LXXIII. And be it enacted, That any person charged with any larceny or any offence of receiving stolen goods, whenever the value of the property stolen shall not exceed forty shillings, may be admitted to bail by any Justice of the Peace before whom such person may be so charged; and in case of any such offender being committed to prison, and not giving sufficient bail for his appearance at the next General Sessions of the Peace for the County where the offence may be triable, within forty eight hours after such commitment, it shall and may be lawful for any three Justices of the Peace of the County where the offender may be committed, or if in the City of Saint John, for the Mayor, Recorder and Aldermen, or any three of them, (the Mayor or Recorder always being one,) forthwith to hear and determine such offence, and on conviction, either by confession or on testimony of one or more credible witness or witnesses, the said Magistrates are hereby authorized and empowered to proceed according to the twelfth

twelfth Article of the first Section of the Act made and passed during the present Session of the Assembly, intituled *An Act to consolidate and amend the several Acts of Assembly relating to the Criminal Law of this Province, so far as relates to the definition of certain indictable offences, and the punishment thereof.* C. 29.

SUMMARY PROCEEDINGS FOR ASSAULT.

LXXIV. 'And whereas it is expedient that a summary power of punishing persons for common assaults and batteries should be provided, under the limitations hereinafter mentioned; Be it therefore enacted, That where any person shall unlawfully assault or beat any other person, it shall be lawful for two Justices of the Peace, upon complaint of the party aggrieved, to hear and determine such offence; and the offender, upon conviction thereof before them, shall forfeit and pay such fine as shall appear to them to be meet, not exceeding, together with costs, if ordered, the sum of five pounds; which fine shall be paid to the Overseers of the Poor, some or one of them, of the City or Parish, or the Commissioners of the Alms House of the County in which the offence shall have been committed, to be by them applied to the support of the Poor of such City or Parish, or of such County; and the evidence of any inhabitants of the City, or Parish, or County, shall be admitted in proof of the offence, notwithstanding such application of the fine incurred thereby; and if such fine as shall be awarded by the said Justices, together with the costs, if ordered, shall not be paid either immediately after the conviction, or within such period as the said Justices shall at the time of the conviction appoint, it shall be lawful for them to commit the offender to the Common Gaol, there to be imprisoned for any term not exceeding one calendar month, unless such fine and costs be sooner paid; but if the Justices, upon the hearing of any such case of assault or battery, shall deem the offence not to be proved, or shall find the assault or battery to have been justified, or so trifling as not to merit any punishment, and shall accordingly dismiss the complaint, they shall forthwith make out a certificate under their hands, stating the fact of such dismissal, and shall deliver such certificate to the party against whom the complaint was preferred.

Assaults may be tried before two Justices in a summary manner.

Application of fine.

Certificate to be given if complaint be dismissed.

LXXV. And be it enacted, That if any person against whom any such complaint shall have been preferred for any common assault or battery, shall have obtained such certificate as aforesaid, or having been convicted, shall have paid the whole amount adjudged to be paid under such conviction, or shall have suffered the imprisonment awarded for non-payment thereof, in every such case he shall be released from all further or other proceedings, civil or criminal, for the same cause.

A certificate from the Justices to be a discharge from further proceedings.

LXXVI. Provided always, and be it enacted, That in case the Justices shall find the assault or battery complained of to have been accompanied by any attempt to commit felony, or shall be of opinion that the same is from any other circumstance a fit subject for a prosecution by indictment, they shall abstain from any adjudication thereupon, and shall deal with the case in all respects in the same manner as they would have done before the passing of this Act; provided also, that nothing herein contained shall authorize any Justices of the Peace to hear and determine any case of assault or battery in which any question shall arise as to the title to any lands, tenements, or hereditaments, or any interest therein or accruing therefrom, or any execution under the process of any Court of Justice.

Cases of difficulty to be handed over to another Court.

LXXVII. 'And for the more effectual prosecution of offences punishable upon summary conviction by virtue of this Act; Be it enacted, That where any person shall be charged on the oath of a credible witness before any Justice of the Peace

Justices may issue Summons or Warrant in cases punishable by summary conviction.

Peace with any such offence, the Justice may summon the person charged to appear before any two Justices of the Peace, at a time and place to be named in such Summons, and if he shall not appear accordingly, then (upon proof of the due service of the Summons upon such person, by delivering the same to him,) the Justices may either proceed to hear and determine the case ex parte, or may issue their Warrant for apprehending such person and bringing him before them, or the Justice before whom the charge shall be made, may (if he shall so think fit) issue such Warrant in the first instance, without any previous Summons.

Prosecution to be within one calendar month.

LXXVIII. Provided always, and be it enacted, That the prosecution for every offence punishable on summary conviction by virtue of this Act, shall be commenced within one calendar month after the commission of the offence, and not otherwise.

Form of conviction.

LXXIX. And be it enacted, That the Justices before whom any person shall be summarily convicted of any offence against this Act, may cause the conviction to be drawn up in the following form of words, or any other form of words to the same effect, as the case shall require, (that is to say):—

‘ Be it remembered, That in the day of in the year of our Lord
 ‘ at in the County of A. B. is convicted before us, [*naming the*
 ‘ Justices,] two of Her Majesty’s Justices of the Peace for the said County, [*or*
 ‘ City and County, *as the case may be,*] for that he the said A. B. did [*specify*
 ‘ the offence, and the time and place when and where the same was committed, *as the*
 ‘ case may be,] and we the said Justices adjudge the said A. B. for his said offence
 ‘ to forfeit and pay the sum of [*here state the amount of the fine imposed,*] and
 ‘ also to pay the sum of for costs; and in default of immediate payment of
 ‘ the said sums, to be imprisoned in the for the space of unless the said
 ‘ sums shall be sooner paid, [*or we order that the said sums shall be paid by the*
 ‘ said A. B. on or before the day of] and we direct that the said sum
 ‘ of [*i. e. the amount of the fine*] shall be paid to the Overseers of the Poor of
 ‘ aforesaid, in which the said offence was committed, or some one of them, to be
 ‘ by them applied to the support of the Poor of the said and we order that
 ‘ the said sum of for costs, shall be paid to C. D., [*the party aggrieved*].—
 ‘ Given under our hands the day and year first above mentioned.’

PROCEEDINGS AFTER CONVICTION.

On Writ of Error, if judgment reversed, Court may give a proper judgment, or remit the Record.

LXXX. And be it enacted, That whenever any Writ of Error shall be brought upon any judgment on any indictment, information, presentment, or inquisition, in any criminal case, and the Court of Error shall reverse the judgment, it shall be competent for such Court of Error either to pronounce the proper judgment or to remit the Record to the Court below, in order that such Court may pronounce the proper judgment upon such indictment, information, presentment, or inquisition.

On notice of a commutation of capital punishment, order to be made for the imprisonment of offender on prescribed conditions.

LXXXI. And be it enacted, That whenever the Lieutenant Governor or Administrator of the Government for the time being, shall exercise the prerogative of the Crown by extending mercy to any offender convicted of any crime punishable with death, upon condition of imprisonment with hard labour in the Provincial Penitentiary, either for the term of life or for any number of years, and shall make the same known to the Court before which such offender hath been or shall be convicted, such Court shall allow to such offender the benefit of a conditional pardon, and make an order for the immediate imprisonment of such offender, under and upon the terms and conditions therein expressed; and in case such intention

of mercy shall be made known to any Judge of the Supreme Court, such Judge shall allow to such offender the benefit of a conditional pardon, and make an order for the immediate imprisonment, with hard labour, of such offender in the Provincial Penitentiary, in the same manner as if such intention of mercy had been signified to any such Court as aforesaid; and such allowance and order shall be considered an allowance and order made by the Court before which such offender was convicted, and shall be entered on the Records of the same Court by the proper officer thereof, and shall be as effectual, to all intents and purposes, and have the same consequences, as if such allowance and order had been made by the same Court during the continuance thereof; and every such order, whether made by the Court, or any Judge of the Supreme Court, as aforesaid, shall subject the offender to be conveyed to the Provincial Penitentiary, and there kept to hard labour during the term of imprisonment mentioned therein, in like manner as if such imprisonment had been imposed as a punishment by the sentence of any Court by authority of law.

Order to have the effect of a sentence by a Court.

LXXXII. And be it enacted, That no judgment shall be given or awarded against any person or persons convicted of any offence, that such person or persons do stand in or upon the Pillory, any law, statute or usage to the contrary notwithstanding.

Pillory abolished.

LXXXIII. And be it declared and enacted, That benefit of Clergy, with respect to persons convicted of felony, is and hereby shall be abolished.

Benefit of Clergy abolished.

LXXXIV. And be it enacted, That no person convicted of felony shall suffer death, unless it be for felony which was excluded from the benefit of Clergy before or on the first day of the Session of the Assembly held in the first year of His late Majesty's Reign, or which hath been or shall be made punishable with death by some Act or Statute passed after that day.

Persons convicted of felony not to suffer death unless expressly mentioned.

LXXXV. 'And that the punishment of offenders may be less frequently inter-
'cepted, in consequence of technical niceties;' Be it enacted, That no judgment upon any indictment or information for any felony or misdemeanor, whether upon demurrer, or after verdict, or outlawry, or by confession, default, or otherwise, shall be given in favour of any prisoner or defendant, or stayed or reversed for want of the averment of any matter unnecessary to be proved, nor for the words "as appears by the Record," or of the words "with force and arms," or of the words "against the Peace," nor for the insertion of the words "against the form of the Statute or Act of Assembly," instead of the words "against the form of the Statutes or Acts of Assembly," or vice versa, nor for that any person or persons mentioned in the indictment or information is or are designated by a name of office, or other descriptive appellation, instead of his, her or their proper name or names, nor for omitting to state the time at which the offence was committed in any case where time is not of the essence of the offence, nor for stating the time imperfectly, nor for stating the offence to have been committed on a day subsequent to the finding of the indictment or exhibiting the information, or on an impossible day, or on a day that never happened, nor for want of a proper or perfect venue, when the Court shall appear by the indictment or information to have had jurisdiction over the offence.

Judgment not to be disturbed for specified technical niceties.

LXXXVI. And be it enacted, That no judgment after verdict upon any indictment or information for any felony or misdemeanor, shall be stayed or reversed for want of a similitur, nor by reason that the Jury process has been awarded to a wrong officer upon an insufficient suggestion, nor for any misnomer or misdescription of the officer returning such process, or of any of the Jurors, nor because any person has served upon the Jury who has not been returned as

Judgment not to be reversed for other enumerated technicalities.

a Juror by the Sheriff or other officer; and that where the offence charged has been created by an Act or Statute, or subjected to a greater degree of punishment by any Act or Statute, the indictment or information shall, after verdict, be held sufficient to warrant the punishment prescribed by the Act or Statute, if it describe the offence in the words of the Act or Statute.

LXXXVII. And be it enacted, That whenever sentence shall be passed for any offence on a person already under sentence of imprisonment for another offence, it shall be lawful for the Court to award imprisonment for the subsequent offence, to commence at the expiration of the imprisonment to which such person shall have been previously sentenced, although the aggregate term of imprisonment may exceed the term for which either of those punishments could be otherwise awarded; and that in case any person imprisoned for any offence shall escape from the Gaol or the Provincial Penitentiary, such person, on being retaken, shall undergo in the Prison from which he shall have escaped, the remainder of his time of imprisonment which was unexpired at the time of such escape, in addition to any penalty, forfeiture or punishment he may incur by reason of such escape.

LXXXVIII. And whereas it is expedient to make provision for setting and keeping to hard labour persons who may be adjudged to that punishment; Be it enacted, That the Justices of the Peace in the several Counties in this Province, at their General Sessions, or at any Special Session to be for that purpose expressly convened and holden, shall be and they are hereby required and empowered to make orders, rules and regulations for setting and keeping to hard labour all persons who may be adjudged to hard labour, or who may be imprisoned for any offence by any Court, or Justice or Justices of the Peace, having competent jurisdiction therefor, and for securing, governing and managing such persons while employed at such hard labour; and in all such cases the work shall be of such kind as the said Justices shall prescribe, and may be performed at any place within the County which the Justices may direct, as well without as within the Prison or House of Correction in which the offender may be imprisoned; and the said Justices at such Sessions as aforesaid, may from time to time appoint one or more fit person or persons to superintend and oversee all such offenders so set to hard labour, and may remove such persons so appointed and appoint others in their stead, and also may revoke, alter and amend any such orders, rules and regulations, as occasion may require; provided always, that in cases where it may be thought expedient that offenders should be set to hard labour within the Common Gaol of the County, the concurrence of the Sheriff of the County shall be previously had to the orders, rules and regulations of the Justices, and the appointment of any such overseer.

LXXXIX. And be it enacted, That the proceeds arising from the work and labour of all offenders so adjudged to hard labour, shall be applied by the said Justices at such Sessions as aforesaid, in the first place to the support and clothing of such offenders, and the overplus (if any) shall be paid to the County Treasurer for the use of the County.

XC. And be it enacted, That if any person so adjudged and set to hard labour as aforesaid, shall refuse to perform any labour lawfully required of him, or shall be guilty of any misbehaviour or disorderly conduct, such Justices of the Peace at any such General or Special Sessions as aforesaid, shall be and they are hereby authorized and empowered, for any such refusal, or misbehaviour, or disorderly conduct, to order such offender into solitary confinement for such time as they may think fit, not exceeding the term of the offender's imprisonment.

A second sentence may pass while person already under sentence of imprisonment.

Justices to make regulations, and set to work persons sentenced to hard labour.

Application of proceeds arising from the labour.

Persons refusing to work, to be put in solitary confinement.

EXPENSES OF CRIMINAL PROCEEDINGS.

XCI. ' And whereas it is necessary to make some provision for the conveyance of criminals from the County or places where found and arrested to the Gaol of the County where the offence may have been committed; Be it enacted, That whenever it may become necessary to convey any criminal or person arrested under any criminal charge from the Gaol of any County or place where so arrested to the Gaol of the County within which the offence may have been committed, it shall and may be lawful for any two Justices of the Peace of the County where the offence may have been committed, to agree upon, order and allow such reasonable sum as may be considered sufficient for the charge and expense of the conveyance of such criminal to the place of commitment; and the sum so agreed upon, ordered and allowed, the Treasurer of the County to which such criminal may be sent or conveyed, shall be and is hereby authorized and directed to pay upon the production of the order of such Justices in favour of the person or persons therein named.

Expenses of conveying prisoners to be allowed by Justices.

XCII. ' And with regard to the payment of the expenses of prosecutions for felony or misdemeanor; Be it enacted, That the Court before which any person shall be prosecuted or tried for any felony or misdemeanor, is hereby authorized and empowered, at the request of the prosecutor, or any other person who shall appear on recognizance or subpoena to prosecute or give evidence against any person accused of any felony or misdemeanor, to order payment to the said prosecutor or other person appearing as aforesaid, of such sum of money as to the Court shall seem reasonable and sufficient to reimburse such prosecutor and witnesses for their travel to and from, and their attendance at such Court; which said order for payment to any prosecutor or other person as aforesaid, shall be forthwith made out and delivered by the proper officer of the Court unto such prosecutor or other person, and shall be made upon the Treasurer of the County in which the offence shall have been committed, or shall be supposed to have been committed, who is hereby authorized and required, upon sight of every such order, forthwith to pay to the person named therein, or to any person duly authorized to receive the same on his behalf, the money in such order mentioned, out of any monies then in or which may thereafter come into his hands as fines collected for the non-attendance of Jurors, or belonging to the said County.

The Court may allow witnesses expenses on criminal prosecutions, payable from County funds.

PROTECTION OF JUSTICES AND CONSTABLES.

XCIII. ' And for the protection of persons acting in the execution of this Act; Be it enacted, That all actions and prosecutions to be commenced against any person for any thing done in pursuance of this Act, shall be laid and tried in the County where the fact was committed, and shall be commenced within six calendar months after the fact committed, and not otherwise; and notice in writing of such action, and of the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action; and in any such action the defendant may plead the general issue, and give this Act, and the special matter, in evidence at any trial to be had thereupon; and no plaintiff shall recover in any such action, if tender of sufficient amends shall be made before such action brought, or if a sufficient sum of money shall have been paid into Court after such action brought, by or on behalf of the defendant; and if a verdict shall pass for the defendant, or the plaintiff shall become non-suited or discontinue any such action after issue joined, or if, upon demurrer or otherwise, judgment shall be given against the plaintiff, the defendant shall recover his full costs as between attorney

Actions to be commenced within six months.

Notice.

General issue.

Tender.

Costs.

attorney and client, and have the like remedy for the same as any defendant hath by law in other cases; and though a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the Judge before whom the trial shall be, shall certify his approbation of the action and of the verdict obtained thereupon.

No action to be brought against any Constable, &c., until demand made of the perusal and copy of the Warrant, and refusal of the same, nor without making Justice a defendant.

XCIV. And be it enacted, That no action shall be brought against any Constable or other officer, or against any person or persons acting by his order and in his aid, for any thing done in obedience to any Warrant under the hand or seal of any Justice of the Peace, until demand hath been made or left at the usual place of his abode by the party or parties intending to bring such action, or by his, her or their attorney or agent in writing, signed by the party demanding the same, of the perusal and copy of such Warrant, and the same hath been refused or neglected for the space of six days after such demand; and in case, after such demand and compliance therewith, by shewing the said Warrant to and permitting a copy to be taken thereof by the party demanding the same, any action shall be brought against such Constable or other officer, or against such person or persons acting in his aid, for any such cause as aforesaid, without making the Justice or Justices who signed or sealed the said Warrant, defendant or defendants, that on producing or proving such Warrant at the trial of such action, the Jury shall give their verdict for the defendant or defendants, notwithstanding any defect of jurisdiction in such Justice or Justices; and if such action be brought jointly against such Justice or Justices, and also against such Constable or other officer, or person or persons acting in his or their aid as aforesaid, then, on proof of such Warrant, the Jury shall find for such Constable or other officer, and for such person or persons so acting as aforesaid, notwithstanding such defect of jurisdiction as aforesaid; and if the verdict shall be given against the Justice or Justices, that in such case the plaintiff or plaintiffs shall recover his, her or their costs against him or them, to be taxed in such manner by the proper officer as to include such costs as such plaintiff or plaintiffs are liable to pay to such defendant or defendants for whom such verdict shall be found as aforesaid.

If action brought against Justice and Constable jointly, and verdict given for Constable on production of Warrant, and against the Justice, the costs against Justice to include Plaintiff's costs to Constable.

Actions against officers to be commenced within six months.

XCV. And be it enacted, That no action shall be brought against any Constable, or other officer or person acting as aforesaid, unless commenced within six calendar months after the act committed.

CONSTRUCTION OF TERMS.

XCVI. And be it enacted, That wherever in this Act in describing or referring to the offence, or the subject matter in or with respect to which it shall be committed, or the offender, or the party affected or intended to be affected by the offence, or with respect to place, words have been or shall be used importing one matter, the singular number, or the masculine gender, or the County only, this Act shall be understood to include several matters as well as one matter, several persons as well as one person, and females as well as males, and bodies corporate as well as individuals, and City and County as well as the County, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such construction; and whenever any forfeiture or penalty is payable to a party aggrieved, it shall be payable to a body corporate in every case where such body shall be the party aggrieved; and the word "property" shall be deemed to denote every thing included under the words "chattels, money or valuable security;" and in all cases where by this or any other Act or Statute the word "affirmation" is used, such affirmation shall be construed to mean such affirmation as is by law allowed.

Construction of terms.

Number. Gender. County.

Penalty to party aggrieved.

Property.

Affirmation instead of Oath.

AS TO FORMS.

XCVII. And be it enacted, That the several Forms in the Schedule to this Act contained, or Forms to the same or the like effect, shall be deemed good, valid and sufficient in law. Forms.

XCVIII. And be it enacted, That this Act may be amended or repealed by any Act to be passed in the present Session of Assembly. Act may be amended.

SCHEDULE.

(A)

Information and Complaint for an Indictable Offence.

To-wit. } The information and complaint of C. D. of [Yeoman,] taken Information or
Complaint.
 this day of in the year of our Lord 184 before the
 undersigned [one] of Her Majesty's Justices of the Peace in and for the said
 [County] of who saith that [&c. stating the offence.]—Sworn before [me] the
 day and year first above mentioned, at

J. S.

(B)

Warrant to apprehend a Person charged with an Indictable Offence.

To the Constable of and to all other Peace Officers in the said [County] of Warrant to
apprehend.

Whereas A. B. of [Labourer] hath this day been charged upon oath before the undersigned [one] of Her Majesty's Justices of the Peace in and for the said [County] of for that he on at did [&c. stating shortly the offence]: These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A. B., and to bring him before [me] or some other of Her Majesty's Justices of the Peace in and for the said [County] to answer unto the said charge, and to be further dealt with according to law.—Given under my hand and seal this day of in the year of our Lord at in the County aforesaid.

J. S. [L. S.]

(C)

Summons to a Person charged with an Indictable Offence.

To A. B. of [Labourer.] Summons to
accused.

Whereas you have this day been charged before the undersigned [one] of Her Majesty's Justices of the Peace in and for the said [County] of for that you on at [&c. stating shortly the offence]: These are therefore to command you, in Her Majesty's name, to be and appear before me on at o'clock in the forenoon at or before such other Justice or Justices of the Peace for the same [County] as may then be there, to answer to the said charge, and to be further dealt with according to law. Herein fail not.—Given under my hand and seal this day of in the year of our Lord at in the County aforesaid.

J. S. [L. S.]

(D)

*Warrant where the Summons is disobeyed.*Warrant on
disobedience of
Summons.

To the Constable of and to all other Peace Officers in the said [County] of

Whereas on the last past, A. B. of [Labourer,] was charged before the undersigned, [one] of Her Majesty's Justices of the Peace in and for the said [County] of for that [&c. as in the Summons]; and whereas [I] then issued [my] Summons to the said A. B., commanding him, in Her Majesty's name, to be and appear before [me] on at o'clock in the forenoon, at or before such other Justice or Justices of the Peace for the same [County,] as might then be there, to answer to the said charge, and to be further dealt with according to law: and whereas the said A. B. hath neglected to be or appear at the time and place appointed in and by the said Summons, although it hath now been proved to me upon oath that the said Summons was duly served upon the said A. B.; These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A. B., and to bring him before me, or some other of Her Majesty's Justices of the Peace in and for the said [County,] to answer to the said charge, and to be further dealt with according to law.—Given under my hand and seal this day of in the year of our Lord at in the [County] aforesaid.

J. S. [L. s.]

(E)

Endorsement in backing a Warrant.

Backing a Warrant.

To-wit. } Whereas proof upon oath hath this day been made before me, one of
 } Her Majesty's Justices of the Peace for the said [County] of that the name of J. S. to the within Warrant subscribed, is of the handwriting of the Justice of the Peace within mentioned; I do therefore hereby authorize W. T. who bringeth to me this Warrant, and all other persons to whom this Warrant was originally directed, or by whom it may lawfully be executed, and also all Constables and other Peace Officers of the said [County] of to execute the same within the said last mentioned [County], and to bring the said A. B., if apprehended within the same [County], before me, or before some other Justice or Justices of the Peace of the same County, to be dealt with according to law.—Given under my hand this day of 184 .

J. S.

(F)

*Summons of a Witness.*Summons of a
Witness.

To G. F. of [Labourer.]

Whereas information hath been laid before the undersigned, [one] of Her Majesty's Justices of the Peace in and for the said [County] of that A. B. [&c. as in the Summons or Warrant against the accused,] and it hath been made to appear to me upon [oath] that you are likely to give material evidence for the [prosecution]; These are therefore to require you to be and to appear before me on next, at o'clock in the forenoon, at or before such other Justice or Justices of the Peace for the same County as may then be there, to testify

testify what you shall know concerning the said charge so made against the said A. B. as aforesaid. Herein fail not.—Given under my hand and seal this day of _____ in the year of our Lord _____ at _____ in the [County] aforesaid.

J. S. [L. s.]

(G)

*Warrant where a Witness has not obeyed a Summons.*Warrant for a
Witness on
disobedience.

To the Constable of _____ and to all other Peace Officers in the said [County] of _____

Whereas information having been laid before the undersigned, [one] of Her Majesty's Justices of the Peace in and for the said [County] of _____ that A. B. [&c. as in the Summons]; and it having been made appear to [me] upon oath, that E. F. of [Labourer] was likely to give material evidence for the prosecution, I did duly issue my Summons to the said E. F. requiring him to be and appear before me on _____ at _____ or before such other Justice or Justices of the Peace for the same County as might be then there, to testify what he should know respecting the said charge so made against the said A. B. as aforesaid; and whereas proof hath this day been made before me, upon oath, of such Summons having been duly served upon the said E. F.; and whereas the said E. F. hath neglected to appear at the time and place appointed by the said Summons, and no just excuse has been offered for such neglect: These are therefore to command you to bring and have the said E. F. before me, on _____ at _____ o'clock in the forenoon, at _____ or before such other Justice or Justices of the Peace for the same [County] as may then be there, to testify what he shall know concerning the said charge so made against the said A. B. as aforesaid.—Given under my hand and seal this _____ day of _____ in the year of our Lord _____ at _____ in the [County] aforesaid.

J. S. [L. s.]

(H)

*Warrant for a Witness in the first instance.*Warrant for a
Witness in first
instance.

To the Constable of _____ and to all other Peace Officers in the said [County] of _____

Whereas information hath been laid before the undersigned, [one] of Her Majesty's Justices of the Peace in and for the said [County] of _____ that [&c. as in Summons]; and it having been made to appear to [me] upon oath, that E. F. of [Labourer] is likely to give material evidence for the prosecution, and that it is probable that the said E. F. will not attend to give evidence without being compelled so to do: These are therefore to command you to bring and have the said E. F. before me, on _____ at _____ o'clock in the forenoon, at _____ or before such other Justice or Justices of the Peace for the same [County] as may then be there, to testify what he shall know concerning the said charge so made against the said A. B. as aforesaid.—Given under my hand and seal this _____ day of _____ in the year of our Lord _____ at _____ in the [County] aforesaid.

J. S. [L. s.]

(I)

(I)

Commitment of a
Witness.

Warrant for Commitment of a Witness for refusing to be sworn or to give evidence.

To the Constable of _____ and to the Keeper of the [Gaol] at _____ in the said
[County] of _____

Whereas A. B. was lately charged before the undersigned, [one] of Her Majesty's Justices of the Peace in and for the said County of _____ for that [&c. as in the Summons ;] and it having been made to appear to [me] upon oath, that E. F. of _____ was likely to give material evidence for the prosecution, I duly issued my Summons to the said E. F. requiring him to be and appear before me on _____ at _____ or before such other Justice or Justices of the Peace as should then be there, to testify what he should know concerning the said charge so made against the said A. B. as aforesaid ; and the said E. F. now appearing before me, [or being brought before me by virtue of a Warrant in that behalf, to testify as aforesaid,] and being required to make oath or affirmation as a witness in that behalf, hath now refused so to do, [or being duly sworn as a witness, doth now refuse to answer certain questions concerning the premises which are here put to him,] without offering any just excuse for such his refusal : These are therefore to command you the said Constable, to take the said E. F. and him safely to convey to the [Gaol] at _____ in the County aforesaid, and there deliver him to the said Keeper thereof, together with this Precept ; and I do hereby command you the said Keeper of the said [Gaol,] to receive the said E. F. into your custody in the said [Gaol,] and him there safely keep for the space of _____ day for said contempt, unless he shall in the meantime consent to be examined, and to answer concerning the premises ; and for your so doing this shall be your sufficient Warrant.—Given under my hand and seal this _____ day of _____ in the year of our Lord _____ at _____ in the [County] aforesaid.

J. S. [L. S.]

(K)

*Deposition of Witnesses.*Depositions of
Witnesses.

To-wit. } The examination of C. D. of [Farmer] and E. F. of
 } [Labourer] taken on [oath] this _____ day of _____ in the year of our
Lord _____ at _____ in the [County] aforesaid, before the undersigned [one] of
Her Majesty's Justices of the Peace for the said [County] in the presence and
hearing of A. B. who is charged this day before [me] for that, he the said A. B. on
at _____ [&c. describing the offence as in a Warrant of Commitment.]

This deponent C. D. on his [oath] saith as follows : [&c., stating the deposition
of the witness as nearly as possible in the words he uses. When his deposition is
complete let him sign it.]

And this deponent E. F. upon his oath, saith as follows, &c.

The above depositions of C. D. and E. F. were taken and [sworn] before me
at _____ on the day and year first above mentioned.

J. S.

(L)

*Statement of the accused.*Statement of
accused.

A. B. stands charged before the undersigned [one] of Her Majesty's Justices
of the Peace in and for the [County] aforesaid, this _____ day of _____ in the
year of our Lord _____ for that he the said A. B. on _____ at _____ [&c. as in the
caption

caption of the depositions,] and the said charge being read to the said A. B., and the witnesses for the prosecution, C. D. and E. F. being severally examined in his presence, the said A. B. is now addressed by me as follows:—"Having heard the evidence, do you wish to say any thing in answer to the charge? You are not obliged to say any thing, unless you desire to do so; but whatever you say, will be taken down in writing, and may be given in evidence against you upon your trial:" whereupon the said A. B. saith as follows:—[*Here state whatever the Prisoner may say, and in his very words, as nearly as possible. Get him to sign it, if he will.*]

A. B.
Taken before me at the day and year first above mentioned.

J. S.

(M)

Recognizance to prosecute or give evidence.

Be it remembered, that on the day of in the year of our Lord C. D. of in the said County, *Farmer,* [or C. D. of the Parish of in the said County, *Surgeon,*] personally came before me, one of Her Majesty's Justices of the Peace for the said County, and acknowledged himself to owe to our Sovereign Lady the Queen, the sum of good and lawful money of the Province of New Brunswick, to be made and levied of his goods and chattels, lands and tenements, to the use of our said Lady the Queen, Her Heirs and Successors, if the said C. D. shall fail in the condition endorsed.

Taken and acknowledged the day and year first above mentioned at before me.

J. S.

Condition to prosecute.

The condition of the within written recognizance is such, that whereas one A. B. was this day charged before me, J. S., Justice of the Peace within mentioned, for that [*&c. as in the caption of the depositions,*] if therefore he the said C. D. shall appear at the next Court of Oyer and Terminer or General Gaol Delivery, [or at the next Court of General Quarter Sessions of the Peace,] to be holden in and for the County of * and there prefer or cause to be preferred a bill of indictment for the offence aforesaid, against the said A. B., and there also duly prosecute such indictment, then the said recognizance to be void, or else to stand in full force and virtue.

Condition to prosecute and give evidence.

Same as the last form to the asterisk,* and then thus:—And there prefer or cause to be preferred a bill of indictment against the said A. B. for the offence aforesaid, and duly prosecute such indictment, and give evidence thereon, as well to the Jurors who shall then inquire of the said offence, as also to them who shall pass upon the trial of the said A. B., then the said recognizance to be void or else to stand in full force and virtue.

Condition to give evidence.

Same as the last form but one to the asterisk,* and then thus:—And there give such evidence as he knoweth upon a bill of indictment to be then and there preferred against the said A. B., for the offence aforesaid, as well to the Jurors who shall then inquire of the said offence, as also to the Jurors who shall pass upon the trial of the said A. B., if the said bill shall be found a true bill, then the said recognizance to be void, or else to stand in full force and virtue.

(N)

Recognizance to prosecute or give evidence.

(N)

Commitment of Witness for refusing to enter into the Recognizance.

Commitment of a
Witness for refus-
ing to enter into
the recognizance.

To the Constable of _____ and to the Keeper of the [Gaol] at _____ in the said
[County] of _____

Whereas A. B. was lately charged before the undersigned, [one] of Her Majesty's Justices of the Peace in and for the said [County] of _____ for that [&c. as in the Summons to the witness,] and it having been made to appear to [me] upon oath, that E. F. of _____ was likely to give material evidence for the prosecution, [I] duly issued [my Summons to the said E. F., requiring him to be and appear] before [me] on _____ at _____ or before such other Justice or Justices of the Peace as should then be there, to testify what he should know concerning the said charge so made against the said A. B. as aforesaid; and the said E. F. now appearing before [me], [or being brought before [me] by virtue of a Warrant in that behalf to testify as aforesaid,] hath been now examined by [me] touching the premises, but being by [me] required to enter into a recognizance conditioned to give evidence against the said A. B., hath now refused so to do; these are therefore to command you, the said Constable, to take the said E. F., and him safely to convey to the Common Gaol of the said County, and there deliver him to the said Keeper thereof, together with this Precept: And I do hereby command you, the said Keeper of the said Gaol, to receive the said E. F. into your custody in the said Gaol, there to imprison and safely keep until after the trial of the said A. B. for the offence aforesaid, unless in the meantime such E. F. shall duly enter into such recognizance as aforesaid, in the sum of _____ pounds, before some one Justice of the Peace for the said [County] conditioned in the usual form to appear at the next Court of [Oyer and Terminer or General Gaol Delivery, or General Quarter Sessions of the Peace,] to be holden in and for the [County] of _____ and there to give evidence before the Grand Jury upon any bill of indictment which may then and there be preferred against the said A. B. for the offence aforesaid, and also to give evidence upon the trial of the said A. B. for the said offence, if a true bill should be found against him for the same.—Given under my hand and seal this _____ day of _____ in the year of our Lord _____ at _____ in the [County] aforesaid.

J. S. [L. s.]

(O)

Subsequent Order to discharge the Witness.

Order to discharge
a Witness.

To the Keeper of the [Gaol] at _____ in the [County] of _____

Whereas by [my] order, dated the _____ day of _____ [instant], reciting that A. B. was lately before them, charged before [me] for a certain offence therein mentioned, and that E. F. having appeared before me, and being examined as a Witness for the prosecution in that behalf, refused to enter into a recognizance to give evidence against the said A. B.; and I thereby committed the said E. F. to your custody, and required you safely to keep him until after the trial of the said A. B. for the offence aforesaid, unless in the meantime he should enter into such recognizance as aforesaid; and whereas for want of sufficient evidence against the said A. B. the said A. B. has not been committed or holden to bail for the said offence, but on the contrary thereof has been since discharged, and it is therefore not necessary that the said E. F. should be detained longer in your custody; these are therefore to order and direct you, the said Keeper, to discharge the

the said E. F. out of your custody, as to the said commitment, and suffer him to go at large.—Given under [my] hand and seal this day of in the year of our Lord at in the [County] aforesaid.

J. S. [L. s.]

(P)

Warrant remanding a Prisoner.

Warrant remanding a Prisoner.

To the Constable of and to the [Keeper of the Gaol] at in the said County of

Whereas A. B. was this day charged before the undersigned, [one] of Her Majesty's Justices of the Peace in and for the said [County] of for that [§c. as in the Warrant to apprehend,] and it appears to me to be necessary to remand the said A. B.: These are therefore to command you, the said Constable, in Her Majesty's name, forthwith to convey the said A. B. to the Common Gaol of the said County, and there to deliver him to the Keeper thereof, together with this Precept: And I hereby command you, the said Keeper, to receive the said A. B. into your custody in the said Gaol, and there safely keep him until the day of instant, when I hereby command you to have him at at o'clock in the forenoon of the same day, before me, or before such other Justice or Justices of the Peace for the said [County] as may then be there, to answer further to the said charge, and to be further dealt with according to law, unless you shall be otherwise ordered in the meantime.—Given under my hand and seal this day of in the year of our Lord at in the [County] aforesaid.

J. S. [L. s.]

(Q)

Recognizance of Bail, instead of Remand, on an adjournment of Examination.

Recognizance of Bail instead of remand.

Be it remembered, that on the day of in the year of our Lord A. B. of Labourer, L. M. of Grocer, and N. O. of Butcher, personally came before me, one of Her Majesty's Justices of the Peace for the said [County], and severally acknowledged themselves to owe to our Lady the Queen the several sums following, that is to say, the said A. B. the sum of and the said L. M. and N. O. the sum of each, of good and lawful money of the Province of New Brunswick, to be made and levied of their several goods and chattels, lands and tenements, respectively, to the use of our said Lady the Queen, Her Heirs and Successors, if the said A. B. fail in the condition endorsed. Taken and acknowledged the day and year first above mentioned, at before me.

J. S.

Condition.

The condition of the within written recognizance is such, that whereas the within bounden A. B. was this day [or on last past] charged before me, for that [§c. as in the Warrant]; and whereas the examination of the witnesses for the prosecution in this behalf is adjourned until the day of instant; if, therefore, the said A. B. shall appear before me on the said day of instant, at o'clock in the forenoon, or before such other Justice or Justices of the Peace for the said [County] as may then be there, to answer [further] to the said charge, and to be further dealt with according to law, then the said recognizance to be void, or else to stand in full force and virtue.

(R)

(R)

Certificate of non-appearance.

Certificate of non-appearance to be endorsed on the Recognizance.

I hereby certify that the said A. B. hath not appeared at the time and place in the above condition mentioned, but therein hath made default, by reason whereof the within written recognizance is forfeited.

J. S.

(S)

Warrant to convey accused before a Justice of the County in which offence was committed.

Warrant to convey the accused before a Justice of the County, &c. in which the offence was committed.

To W. T. Constable of and to all other Peace Officers in the said
[County] of

Whereas A. B. of [Labourer] hath this day been charged before the undersigned [one] of Her Majesty's Justices of the Peace in and for the said County of for that [*&c. as in the Warrant to apprehend*]; and whereas [I] have taken the deposition of C. D., a witness examined by me in this behalf; but inasmuch as [I] am informed that the principal witnesses to prove the said offence against the said A. B. reside in the [County] of C., where the said offence is alleged to have been committed; These are therefore to command you, the said Constable, in Her Majesty's name, forthwith to take and convey the said A. B. to the said County of C., and there carry him before some Justice or Justices of the Peace in and for that [County] and near unto the [Parish of D.] where the offence is alleged to have been committed, to answer further to the said charge before him or them, and to be further dealt with according to law; and [I] hereby further command you, the said Constable, to deliver to the said Justice or Justices, the information in this behalf; and also the said deposition of C. D. now given into your possession for that purpose, together with this Precept.—Given under my hand and seal this day of in the year of our Lord at in the [County] aforesaid.

J. S. [L. s.]

(T)

Warrant of Commitment.

Warrant of Commitment.

To the Constable of and to the Keeper of the Common Gaol of the
[County] of

Whereas A. B. was this day charged before me, J. S., one of Her Majesty's Justices of the Peace in and for the said [County] of on the oath of C. D. of [Farmer] and others, for that [*&c. stating shortly the offence*]: These are therefore to command you, the said Constable of to take the said A. B. and him safely convey to the [Common Gaol] at aforesaid, and there to deliver him to the Keeper thereof, together with this Precept: And I do hereby command you, the said Keeper of the said [Common Gaol] to receive the said A. B. into your custody, in the said Common Gaol, and there safely keep him until he shall be thence delivered by due course of law.—Given under my hand and seal this day of in the year of our Lord at in the [County] aforesaid.

J. S. [L. s.]

(U)

(U)

*Recognizance of Bail.*Recognizance of
Bail.

Be it remembered, that on the day of in the year of our Lord
A. B. of *Labourer*, L. M. of *Grocer*, and N. O. of *Butcher*,
personally came before [us] the undersigned, two of Her Majesty's Justices of the
Peace for the said [County,] and severally acknowledged themselves to owe to our
Lady the Queen the several sums following, [that is to say] the said A. B. the
sum of and the said L. M. and N. O. the sum of each, of good and
lawful money of Great Britain, to be made and levied of their several goods and
chattels, lands and tenements, respectively, to the use of our said Lady the Queen,
Her Heirs and Successors, if he the said A. B. fail in the condition endorsed.—
Taken and acknowledged the day and year first above mentioned, at before us.

J. S.
J. N.*Condition in ordinary cases.*

The condition of the within written recognizance is such, that whereas the said
A. B. was this day charged [or brought] before [me or us] the Justice or Justices
within mentioned, for that [&c. as in the Warrant]; if therefore the said A. B.
will appear at the next Court of Oyer and Terminer and General Gaol Delivery,
[or Court of General Quarter Sessions of the Peace,] to be holden in and for the
County of and there surrender himself into the custody of the Keeper of
the [Common Gaol] there, and plead to such indictment as may be found against
him by the Grand Jury for or in respect of the charge aforesaid, and take his
trial upon the same, and not depart the said Court without leave, then the said
recognizance to be void, or else to stand in full force and virtue.

(V)

Search Warrant.

Search Warrant.

ss.—To the Constable of

Whereas it appears to [me] J. P., Esquire, [one] of the Justices of the Peace
for the [County] of by the information on [oath] of A. B. of in the
[County] of that the following goods, to-wit: have within days
last past by some person or persons unknown been feloniously taken, stolen,
and carried away out of the house or from the possession of the said A. B. at
aforesaid, in the [County] aforesaid, and that the said A. B. hath reasonable
cause to suspect, and doth suspect, that the said goods, or part thereof, are con-
cealed in the dwelling house of C. D. of in the said [County] or are
otherwise in his possession: These are therefore to authorize and require you,
with necessary and proper assistants, to enter, in the day time, into the said
dwelling house, or upon the premises of the said C. D., and there diligently to
search for the said goods; and if the same, or any part thereof, shall be found on
search, that you bring the goods so found, and also the body of the said C. D.
before me, or some other of the Justices of the Peace for the said [County] to be
disposed of and dealt with according to law.—Given under my hand and seal at
in the said [County] the day of A. D. 184 .