

CAP. XXXI.

An Act to facilitate the performance of the duties of Justices of the Peace out of Sessions within this Province, with respect to Summary Convictions and Orders.

Passed 27th March 1849.

PROCEEDINGS BEFORE TRIAL.

Preamble.

WHEREAS it would conduce much to the improvement of the administration of justice within this Province, so far as respects Summary Convictions and Orders to be made by Her Majesty's Justices of the Peace therein, if the duties of such Justices, in respect of such Summary Convictions and Orders, were clearly defined by positive enactment;

In all cases where information shall be laid or complaint made of offences committed, Justices may issue Summons to person to answer the same.

I. Be it therefore declared and enacted by the Lieutenant Governor, Legislative Council and Assembly, That in all cases whereon information shall be laid before 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 offence or act within the jurisdiction of such Justice or Justices, for which he is liable by law upon a summary conviction for the same before a Justice or Justices of the Peace, to be imprisoned, or fined, or otherwise punished; and also, in all cases where a complaint shall be made to any such Justice or Justices upon which he or they have or shall have authority by law to make any order for the payment of money, or otherwise; then and in every such case it shall be lawful for such Justice or Justices of the Peace to issue his or their Summons (A) directed to such person, stating shortly the matter of such information or complaint, and requiring him to appear at a certain time and place before the same Justice or Justices, or before such other Justice or Justices of the same County as shall then be there, to answer to the said information or complaint, and to be further dealt with according to law; and every such Summons shall be served by a Constable or other Peace Officer, or other person to whom the same shall be delivered, upon the person to whom it is so directed, by delivering the same to the party personally, or by leaving the same with some person for him at his last or most usual place of abode; and the Constable, Peace Officer, or person who shall serve the same in manner aforesaid, shall attend at the time and place, and before the Justices in the said Summons mentioned, to depose, if necessary, to the service of the said Summons; provided always, that nothing herein mentioned shall oblige any Justice or Justices of the Peace to issue any such Summons in any case where the application for any order of Justices is by law to be made *ex parte*; provided also, that no objection shall be taken or allowed to any information, complaint, or summons, for any alleged defect therein, in substance or in form, or for any variance between such information, complaint, or summons, and the evidence adduced on the part of the informant or complainant, at the hearing of such information or complaint, as hereinafter mentioned; but if any such variance shall appear to the Justice or Justices present and acting at such hearing, to be such that the party so summoned and appearing has been thereby deceived or misled, it shall be lawful for such Justice or Justices, upon such terms as he or they shall think fit, to adjourn the hearing of the case to some future day.

How Summons to be served.

Justices not obliged to issue Summons in certain cases.

No objection allowed for want of form.

If Summons be not obeyed, Justices may issue Warrant,

II. And be it enacted, That if the person so served with a Summons as afore-said shall not be and appear before the Justice or Justices at the time and place mentioned in such Summons, and it shall be made to appear to such Justice or Justices, by oath or affirmation, that such Summons was so served what shall be deemed by such Justice or Justices a reasonable time before the time therein appointed

appointed for appearing to the same, then it shall be lawful for such Justice or Justices, if he or they shall think fit, upon oath or affirmation being made before him or them, substantiating the matter of such information or complaint to his or their satisfaction, to issue his or their Warrant (B) to apprehend the party so summoned, and bring him before the same Justice or Justices, or before some other Justice or Justices of the Peace in and for the same County, to answer to the said information or complaint, and to be further dealt with according to law ; or upon such information being laid as aforesaid for any offence punishable on conviction, the Justice or Justices before whom such information shall have been laid, may, if he or they shall think fit, upon oath or affirmation being made before him or them substantiating the matter of such information to his or their satisfaction, instead of issuing such Summons as aforesaid, issue, in the first instance, his or their Warrant (C) for apprehending the person against whom such information shall have been so laid, and bringing him before the same Justice or Justices, or before some other Justice or Justices of the Peace in and for the same County, to answer to the said information, and to be further dealt with according to law ; or if, where a Summons shall be so issued as aforesaid, and upon the day and at the place appointed in and by the said Summons for the appearance of the party so summoned, such party shall fail to appear accordingly in obedience to such Summons, then and in every such case, if it be proved upon oath or affirmation to the Justice or Justices then present, that such Summons was duly served upon such party a reasonable time before the time so appointed for his appearance as aforesaid, it shall be lawful for such Justice or Justices of the Peace to proceed ex parte to the hearing of such information or complaint, and to adjudicate thereon as fully and effectually to all intents and purposes as if such party had personally appeared before him or them in obedience to the said Summons.

or issue Warrant in the first instance ;

or if Summons, having been duly served, be not obeyed, the Justices may proceed ex parte.

III. And be it enacted, That every such Warrant to apprehend a defendant, that he may answer to such information or complaint as aforesaid, 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 or other District within which the same is to be executed, without naming him, or to such Constable and to all other Constables within the County within which the Justice or Justices issuing such Warrant hath or have jurisdiction, or generally to all the Constables within such last mentioned County, and it shall state shortly the matter of the information or complaint on which it is founded, and shall name or otherwise describe the person against whom it has been issued, and it shall order the Constable or other person to whom it is directed to apprehend the said defendant, and to bring him before one or more Justice or Justices of the Peace (as the case may require) of the same County, to answer the said information or complaint, and to be further dealt with according to law, and that it shall not be necessary to make such Warrant returnable at any particular time, but the same may remain in full force until it shall be executed ; and such Warrant may be executed by apprehending the defendant at any place within the County ; and such of the provisions and enactments contained in a certain Act of Assembly made and passed in the present Session of Assembly, intituled *An Act to consolidate and improve the Laws relative to the administration of Criminal Justice*, as to the backing of any Warrant, and the endorsement thereon, by a Justice of the Peace or other officer, authorizing the person bringing such Warrant and all other persons to whom the same was originally directed to execute the same within the jurisdiction of the

Form of Warrant.

Certain provisions of 12 V. c. 30, as to backing Warrants, to extend to Warrants issued under this Act.

Justice

No objection allowed for want of form, or for any variance from evidence adduced.

Recognizance on adjournment.

Certificate of non-appearance.

Description of the property of partners, &c. ;

of the property of Counties ;

of the property in goods provided for the Poor ;

of the property in materials for Highways ;

Justice or officer so making such endorsement, as are applicable to the provisions of this Act, shall extend to all such Warrants and to all Warrants of Commitment issued under and by virtue of this Act, in as full and ample a manner as if the said several provisions and enactments were here repeated and made parts of this Act ; provided always, that no objection shall be taken or allowed to any such Warrant to apprehend a defendant, so issued upon any such information or complaint as aforesaid, under or by virtue of this Act, 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 informant or complainant as hereinafter mentioned ; but if any such variance shall appear to the Justice or Justices present and acting at such hearing to be such that the party so apprehended under such Warrant has been thereby deceived or misled, it shall be lawful for such Justice or Justices, upon such terms as he or they shall think fit, to adjourn the hearing of the case to some future day, and in the mean time to commit (D) the said defendant to the Common Gaol, Lock-up House, or place of security, or to such other custody as the said Justice or Justices shall think fit, or to discharge him upon his entering into a recognizance (E) with or without surety or sureties, at the discretion of such Justice or Justices, conditioned for his appearance at the time and place to which such hearing shall be so adjourned ; provided always, that in all cases where a defendant shall be discharged upon a recognizance as aforesaid, and shall not afterwards appear at the time and place in such recognizance mentioned, then the said Justice who shall have taken the said recognizance, or any Justice or Justices who may then be there present, upon certifying (F) upon the back of the said recognizance the non-appearance of the defendant, 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 defendant.

IV. And be it enacted, That any information or complaint, or the proceedings thereon, in which it shall be necessary to state the ownership of any property belonging to or in the possession of partners, joint tenants, parceners, or tenants in common, it shall be sufficient to name one of such persons, and to state the property to belong to the person so named, and another or others, as the case may be ; and whenever in any information or complaint, or the proceedings thereon, 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 manner aforesaid ; and whenever in any such information or complaint, or the proceedings thereon, it shall be necessary to describe the ownership of any work or building made, maintained or repaired at the expense of any County, or of any materials for the making, altering or repairing of the same, they may be therein described as the property of the inhabitants of such County ; and all goods provided by Parish Officers for the use of the Poor, may in any such information or complaint, or the proceedings thereon, be described as the goods of the Overseers of the Poor of the Parish, or Commissioners of the Alms House to whom the same belong, without naming any of them ; and all materials and tools provided for the repair of Highways at the expense of Parishes or other Districts in which such Highways may be situate, may be therein described as the property of the Surveyor or Surveyors, Commissioner or Commissioners, Supervisor or Supervisors of such Highways respectively, without naming him or them ; and all materials or tools provided for making or repairing any public Road, and buildings, gates, lamps, boards, stones, posts, fences or other things erected or provided for

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the purpose of any such public Road, may be described as the property of the Commissioners or Supervisors of such public Road, without naming them; and all property of the Commissioners of Sewers of any District, may be described as the property of such Commissioners, without naming them.

of the property of Commissioners of Sewers.

V. And be it enacted, That every person who shall aid, abet, counsel or procure the commission of any offence which is or hereafter shall be punishable on summary conviction, shall be liable to be proceeded against and convicted for the same, either together with the principal offender, or before or after his conviction, and shall be liable, on conviction, to the same forfeiture and punishment as such principal offender is or shall be by law liable, and may be proceeded against and convicted either in the County where such principal offender may be convicted, or in that in which such offence of aiding, abetting, counselling or procuring may have been committed.

Prosecution and punishment of aiders and abettors in the commission of offences.

VI. 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 in behalf of the prosecutor, or complainant or defendant, and will not voluntarily appear for the purpose of being examined as a witness, at the time and place appointed for the hearing of such information or complaint, such Justice may and is hereby required to issue his Summons (G) 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 matter of the said information or complaint; 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 (H) 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 (I) 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 upon 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 (K) 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.

Power to Justice to summons Witnesses to attend and give evidence;

If Summons be not obeyed, Justice may issue Warrant;

In certain cases may issue Warrant in the first instance.

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

VII.

Complaints for an order need not be in writing.

VII. And be it enacted, That in all cases of complaint upon which a Justice or Justices of the Peace may make an order for the payment of money or otherwise, it shall not be necessary that such complaint shall be in writing, unless it shall be required to be so by some particular Act of Assembly upon which such complaint shall be framed.

As to proceedings upon informations for offences punishable on summary convictions.

VIII. And be it declared and enacted, That in all cases of informations for any offences or acts punishable upon summary conviction, any variance between such information and the evidence adduced in support thereof, as to the time at which such offence or act shall be alleged to have been committed, shall not be deemed material, if it be proved that such information was in fact laid within the time limited by law for laying the same; and any variance between such information and the evidence adduced in support thereof, as to the Parish or Township in which the offence or act shall be alleged to have been committed, shall not be deemed material, provided that the offence or act be proved to have been committed within the jurisdiction of the Justice or Justices by whom such information shall be heard and determined; and if any such variance, or any variance in any other respect between such information and the evidence adduced in support thereof, shall appear to the Justice or Justices present and acting at the hearing, to be such, that the party charged by such information has been thereby deceived or misled, it shall be lawful for such Justice or Justices, upon such terms as he or they shall think fit, to adjourn the hearing of the case to some future day, and in the mean time to commit (D) the said defendant to the Common Gaol, Lock-up House, or place of security, or to such other custody as the said Justice or Justices shall think fit, or to discharge him upon his entering into a recognizance (E) with or without surety or sureties, at the discretion of such Justice or Justices, conditioned for his appearance at the time and place to which such hearing shall be so adjourned; provided always, that in all cases where a defendant shall be discharged upon recognizance as aforesaid, and shall not afterwards appear at the time and place in such recognizance mentioned, then the said Justice who shall have taken the said recognizance, or any Justice or Justices who may then be there present, upon certifying (F) upon the back of the said recognizance the non-appearance of the defendant, 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 defendant.

The party charged, if deceived by variation between information and evidence, may be committed, or discharged upon recognizance;

But if he fail to re-appear, the Justice may transmit the recognizance to the Clerk of the Crown.

Complaint need not be on oath.

IX. And be it enacted, That every such complaint upon which a Justice or Justices of the Peace is or are or shall be authorized by law to make an order, and that every information for any offence or act punishable upon summary conviction, unless some particular Act or Statute shall otherwise require, may respectively be made or laid without any oath or affirmation being made of the truth thereof, except in cases of informations where the Justice or Justices receiving the same shall thereupon issue his or their Warrant in the first instance to apprehend the defendant as aforesaid, and in every such case where the Justice or Justices shall issue his or their Warrant in the first instance, the matter of such information shall be substantiated by oath or affirmation of the informant, or by some witness or witnesses on his behalf, before any such Warrant shall be issued; and every such complaint shall be for one matter of complaint only, and not for two or more matters of complaint; and every such information shall be for one offence only, and not for two or more offences; and every such complaint or information may be laid or made by the complainant or informant in person, or by his Counsel or Attorney, or other person authorized in that behalf.

Exception.

X. And be it enacted, That the several fines imposed in and by the first and second Articles of Section two, Chapter one, and by the tenth, eleventh, twelfth, and thirteenth Articles of the eleventh Chapter of an Act made and passed in 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*, shall and may be recovered before any two of such Justices in the same manner in all respects as any other proceeding may be had under this Act for any fine or penalty.

Fines imposed by 1st & 2d arts. cap. 1, and 10th, 11th, 12th & 13th arts. cap. 11 of 12 V. c. 29, recoverable in same manner as fines under this Act.

XI. And be it enacted, That in all cases where no time is already or shall hereafter be specially limited for making any such complaint, or laying any such information, in the Act or Acts of Assembly relating to each particular case, such complaint shall be made, and such information shall be laid within six calendar months from the time when the matter of such complaint or information respectively arose.

Complaint must be made within six calendar months.

TRIAL.

XII. And be it enacted, That every such complaint and information shall be heard, tried, determined and adjudged by one or two, or more Justice or Justices of the Peace as shall be directed by the Act of Assembly or Statute upon which such complaint or information shall be framed, or such other Act or Statute as there may be in that behalf; and if there be no such direction in any such Act or Statute, then such complaint or information may be heard, tried, determined and adjudged by any one Justice of the Peace for the County where the matter of such information shall have arisen; and the room or place in which such Justice or Justices shall sit to hear and try any such complaint or information shall be deemed an open and public Court, to which the public generally may have access so far as the same can conveniently contain them; and the party against whom such complaint is made, or information laid, shall be admitted to make his full answer and defence thereto, and to have the witnesses examined and cross-examined by Counsel or Attorney on his behalf; and every complainant or informant in any such case shall be at liberty to conduct such complaint or information respectively, and to have the witnesses examined and cross-examined by Counsel or Attorney on his behalf.

As to the hearing of complaints and informations.

Place where Justices shall sit to hear complaints, &c., to be deemed an open Court.

Parties allowed to plead by Counsel or Attorney.

XIII. And be it enacted, That if at the day and place appointed in and by the Summons aforesaid for hearing and determining such complaint or information, the defendant against whom the same shall have been made or laid shall not appear when called, the Constable or other person who shall have served him with the Summons in that behalf, shall then declare upon oath in what manner he served the said Summons, and if it appear to the satisfaction of any Justice or Justices that he duly served the said Summons, in that case such Justice or Justices may proceed to hear and determine the case in the absence of such defendant; or the said Justice or Justices, upon the non-appearance of such defendant, as aforesaid, may, if he or they think fit, issue his or their Warrant in manner hereinbefore directed, and shall adjourn the hearing of the said complaint or information until the said defendant shall be apprehended; and when such defendant shall afterwards be apprehended under such Warrant, he shall be brought before the same Justice or Justices, or some other Justice or Justices of the same County, who shall thereupon, either upon his or their Warrant (L) commit such defendant to the Common Gaol, or other Prison, Lock-up House, or place of security, or if he or they shall think fit, verbally to the custody of the Constable or other person who shall have apprehended him, or to such other safe custody

If defendant does not appear, Justices may proceed to hear and determine, or issue Warrant, and adjourn the hearing till defendant is apprehended.

If defendant appear and complainant, &c. does not, Justice may dismiss the complaint, &c., or at discretion adjourn hearing, and commit or discharge defendant upon recognizance;

but if he fail to re-appear, the Justice may transmit the recognizance to the Clerk of the Crown.

If both parties appear, case to be proceeded with.

Proceedings on the hearing of complaints and informations.

as he or they shall deem fit, and order the said defendant to be brought up at a certain time and place before such Justice or Justices of the Peace as shall then be there, of which said order the complainant or informant shall have due notice; or if upon the day and at the place so appointed as aforesaid such defendant shall attend voluntarily, in obedience to the Summons in that behalf served upon him, or shall be brought before the said Justice or Justices by virtue of any Warrant, then, if the complainant or informant having had such notice as aforesaid, do not appear by himself, his Counsel or Attorney, the said Justice or Justices shall dismiss such complaint or information, unless for some reason he or they shall think proper to adjourn the hearing of the same unto some other day, upon such terms as he or they shall think fit, in which case such Justice or Justices may commit (D) the defendant in the mean time to the Common Gaol, Lock-up House, or place of security, or to such other custody as such Justice or Justices shall think fit, or may discharge him upon his entering into a recognizance (E) with or without surety or sureties, at the discretion of such Justice or Justices, conditioned for his appearance at the time and place to which such hearing shall be so adjourned; and if such defendant shall not afterwards appear at the time and place mentioned in such recognizance, then the said Justice who shall have taken the said recognizance, or any Justice or Justices who may then be there present, upon certifying (F) on the back of the recognizance the non-appearance of the defendant, 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 defendant; but if both parties appear, either personally or by their respective Counsel or Attornies, before the Justice or Justices who are to hear and determine such complaint or information, then the said Justice or Justices shall proceed to hear and determine the same.

XIV. And be it enacted, That where such defendant shall be present at such hearing, the substance of the information or complaint shall be stated to him, and he shall be asked if he have any cause to shew why he should not be convicted, or why an order should not be made against him, as the case may be; and if he thereupon admit the truth of such information or complaint, and shew no cause or no sufficient cause why he should not be convicted, or why an order should not be made against him, as the case may be, then the Justice or Justices present at the said hearing shall convict him, or make an order against him accordingly; but if he do not admit the truth of such information or complaint as aforesaid, then the said Justice or Justices shall proceed to hear the prosecutor or complainant, and such witnesses as he may examine, and such other evidence as he may adduce in support of his information or complaint respectively, and also to hear the defendant, and such witnesses as he may examine, and such other evidence as he may adduce in his defence, and also to hear such witnesses as the prosecutor or complainant may examine in reply, if such defendant shall have examined any witness or given any evidence other than as to his the defendant's general character; but the prosecutor or complainant shall not be entitled to make any observations in reply upon the evidence given by the defendant, nor shall the defendant be entitled to make any observations in reply upon the evidence given by the prosecutor or complainant in reply as aforesaid; and the said Justice or Justices having heard what each party shall have to say as aforesaid, and the witnesses and evidence so adduced, shall consider the whole matter and determine the same, and shall convict or make an order upon the defendant, or dismiss

dismiss the information or complaint, as the case may be; and if he or they convict or make an order against the defendant, a minute or memorandum thereof shall then be made, for which no fee shall be paid, and the Conviction (M N O) or Order (P Q R) shall afterwards be drawn up by the said Justice or Justices in proper form, under his or their hand and seal or hands and seals; and he or they shall cause the same to be lodged with the Clerk of the Peace, to be by him filed among the Records of the General Sessions of the Peace; or if the said Justice or Justices shall dismiss such information or complaint, it shall be lawful for such Justice or Justices, if he or they shall think fit, being required so to do, to make an order of dismissal of the same (S) and shall give the defendant in that behalf a certificate thereof, (T), which said certificate afterwards upon being produced without further proof shall be a bar to any subsequent information or complaint for the same matters respectively against the same party; provided always, that if the information or complaint in any such case shall negative any exemption, exception, proviso or condition in the Act on which the same shall be framed, it shall not be necessary for the prosecutor or complainant in that behalf to prove such negative, but the defendant may prove the affirmative thereof, in his defence, if he would have advantage of the same.

Order and certificate of dismissal.

XV. And be it enacted, That every prosecutor of any such information, not having any pecuniary interest in the result of the same, and every complainant in any such complaint as aforesaid, whatever his interest may be in the result of the same, shall be a competent witness to support such information or complaint respectively; and every witness at any such hearing as aforesaid, shall be examined upon oath or affirmation, and the Justice or Justices before whom any such witness shall appear for the purpose of being so examined, shall have full power and authority to administer to every such witness the usual oath or affirmation.

Prosecutors and complainants in certain cases to be deemed competent witnesses, and examined on oath, &c.

XVI. And be it enacted, That before or during such hearing of any such information or complaint, it shall be lawful for any one Justice, or for the Justices present, in their discretion, to adjourn the hearing of the same to a certain time and place to be then appointed and stated in the presence and hearing of the party or parties, or their respective attornies or agents then present, and in the mean time the said Justice or Justices may suffer the defendant to go at large, or may commit (D) him to the Common Gaol, Lock-up House, or place of security, in the County, or to such other safe custody as the said Justice or Justices shall think fit, or may discharge such defendant upon his entering into a recognizance (E) with or without surety or sureties, at the discretion of such Justice or Justices, conditioned for his appearance at the time and place to which such hearing or further hearing shall be adjourned; and if at the time or place to which such hearing or further hearing shall be so adjourned, either or both of the parties shall not appear personally, or by his or their Counsel or Attornies respectively, before the said Justice or Justices, or such other Justice or Justices as shall then be there, it shall be lawful for the Justice or Justices then there present to proceed to such hearing or further hearing as if such party or parties were present; or if the prosecutor or complainant shall not appear, the said Justice or Justices may dismiss such information or complaint, with or without costs, as to such Justices shall seem fit; provided always, that in all cases where a defendant shall be discharged on recognizance as aforesaid, and shall not afterwards appear at the time and place mentioned in such recognizance, then the said Justice or Justices who shall have taken the said recognizance, or any other Justice or Justices who may then be there present, upon certifying (F) on the back of the recognizance

Power to Justices to adjourn the hearing of cases, and commit defendant, or suffer him to go at large, or discharge him upon his own recognizance;

but if he fail to re-appear, the Justice may transmit the recognizance to the Clerk of the Crown.

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 defendant.

CONVICTION.

Forms of Convictions and Orders.

XVII. And be it enacted, That in all cases of conviction where no particular form of such conviction is or shall be given by the Act or Statute creating the offence or regulating the prosecution for the same, it shall be lawful for the Justice or Justices who shall so convict to draw up his or their conviction on paper, in such one of the forms of conviction (M N O) in the Schedule to this Act contained, as shall be applicable to such case, or to the like effect; and where an order shall be made, and no particular form of order is or shall be given by the Act or Statute giving authority to make such order, it shall be lawful for the Justice or Justices by whom such order is to be made to draw up the same in such one of the forms of orders (P Q R) in the Schedule to this Act contained as may be applicable to such case, or to the like effect; and in all cases where by any Act or Statute authority is given to commit a person to Prison, or to levy any sum upon his goods or chattels by distress, for not obeying any order of a Justice or Justices, the defendant shall be served with a copy of the minute of such order before any Warrant of Commitment or of Distress shall issue in that behalf, and such order or minute shall not form any part of such Warrant of Commitment or of Distress.

PROCEEDINGS AFTER CONVICTION.

Power to Justice to issue Warrant of Distress.

XVIII. And be it enacted, That where a conviction adjudges a pecuniary penalty or compensation to be paid, or where an order requires the payment of a sum of money, and by the Act or Statute authorizing such conviction or order, such penalty, compensation or sum of money is to be levied upon the goods and chattels of the defendant by distress and sale thereof, and also in cases where by the Act or Statute in that behalf no mode of raising or levying such penalty, compensation or sum of money, or of enforcing the payment of the same, is stated or provided, it shall be lawful for the Justice or Justices making such conviction or order, or for any Justice of the Peace for the same County, to issue his or their Warrant of Distress (U V) for the purpose of levying the same, which said Warrant of Distress shall be in writing, under the hand and seal of the Justice making the same; and if after delivery of such Warrant of Distress to the Constable or Constables to whom the same shall have been directed to be executed, sufficient distress shall not be found within the limits of the jurisdiction of the Justice granting such Warrant, then upon proof alone being made on oath of the handwriting of the Justice granting such Warrant, before any Justice of any other County, such Justice of such other County or place shall thereupon make an endorsement (W) on such Warrant signed with his hand, authorizing the execution of such Warrant within the limits of his jurisdiction, by virtue of which said Warrant and endorsement, the penalty or sum aforesaid, and costs, or so much thereof as may not have been before levied or paid, shall and may be levied by the person bringing such Warrant, or by the person or persons to whom such Warrant was originally directed, or by any Constable or other peace officer of such last mentioned County, by distress and sale of the goods and chattels of the defendant in such other County; provided always, that whenever it shall appear to any Justice of the Peace to whom application shall be made for any such Warrant of Distress

How Warrant to be backed.

Where issuing a Warrant would be ruinous to

as

as aforesaid, that the issuing thereof would be ruinous to the defendant and his family, or wherever it shall appear to such Justice, by the confession of the defendant or otherwise, that he hath no goods or chattels whereon to levy such distress, then and in every such case it shall be lawful for such Justice, if he shall deem it fit, instead of issuing such Warrant of Distress, to commit such defendant to the Common Gaol, there to be imprisoned with or without hard labour, for such time and in such manner as by law such defendant might be so committed in case such Warrant of Distress had issued, and no goods or chattels could be found whereon to levy such penalty or sum and costs aforesaid.

defendant, or where there are no goods, Justice may commit him to prison.

XIX. And be it enacted, That in all cases where a Justice of the Peace shall issue any such Warrant of Distress, it shall be lawful for him to suffer the defendant to go at large, or verbally or by a written Warrant in that behalf, to order the defendant to be kept and detained in safe custody, until return shall be made to such Warrant of Distress, unless such defendant shall give sufficient security by recognizance or otherwise to the satisfaction of such Justice, for his appearance before him at the time and place appointed for the return of such Warrant of Distress, or before such other Justice or Justices for the same County as may then be there; provided always, that in all cases where a defendant shall give security by recognizance as aforesaid, and shall not afterwards appear at the time and place in such recognizance mentioned, then the said Justice who shall have taken the said recognizance, or any Justice or Justices who may then be there present, upon certifying (F) on the back of the recognizance the non-appearance of the defendant, 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 defendant.

Justice, after issuing Warrant, may suffer defendant to go at large, or order him into custody until return be made, unless he gives security by recognizance;

but if he fail to re-appear, Justice may transmit the recognizance to the Clerk of the Crown.

XX. And be it enacted, That at the time and place appointed for the return of any such Warrant of Distress, the Constable who shall have had the execution of the same, shall return (X) that he could find no goods or chattels, or no sufficient goods or chattels whereon he could levy the sum or sums therein mentioned, together with the costs of or occasioned by the levying of the same, it shall be lawful for the Justice of the Peace before whom the same shall be returned, to issue his Warrant of Commitment (Y) under his hand and seal, directed to the same or any other Constable, reciting the conviction or order shortly, the issuing of the Warrant of Distress, and the return thereto, and requiring such Constable to convey such defendant to the Common Gaol of the County, and there to deliver him to the Keeper thereof, and requiring such Keeper to receive the defendant into such Gaol, and there to imprison him, or to imprison him and keep him to hard labour, in such manner and for such time as shall have been directed and appointed by the Act or Statute on which the conviction or order mentioned in such Warrant of Distress was founded, unless the sum or sums adjudged to be paid, and all costs and charges of the distress, and also the costs and charges of the commitment and conveying of the defendant to Prison, if such Justice shall think fit so to order, (the amount thereof being ascertained and stated in such commitment,) shall be sooner paid.

In default of sufficiency of distress, Justice may commit defendant to prison.

XXI. ' And whereas by some Acts or Statutes Justices of the Peace are authorized to issue Warrants of Distress to levy penalties or other sums recovered by them by distress and sale of the offender's goods, but no further remedy is thereby provided in case no sufficient distress be found whereon to levy such penalties; Be it therefore enacted, That in all such cases, and in all cases of convictions or orders where the Act or Statute on which the same are respectively founded

In all cases of penalties, convictions or orders, where the Statute provides no remedy in default of distress, Justice may commit defendant to prison.

founded provides no remedy in case it shall be returned to a Warrant of Distress thereon that no sufficient goods of the party against whom such Warrant shall have been issued can be found, it shall nevertheless be lawful for the Justice to whom such return is made, or to any other Justice of the Peace for the same County, if he shall think fit, by his Warrant as aforesaid, to commit the defendant to the Common Gaol as aforesaid, for any term not exceeding three calendar months, unless the sum or sums adjudged to be paid, and all costs and charges of the distress and of the commitment and conveying of the defendant to Prison, (the amount thereof being ascertained and stated in such commitment,) shall be sooner paid.

Power to Justices to order commitment in the first instance for non-payment of a penalty, or of a sum ordered to be paid.

XXII. And be it enacted, That in all cases where the Act or Statute by virtue of which a conviction for a penalty or compensation, or an order for the payment of money is made, makes no provision for such penalty or compensation or sum being levied by distress, but directs that if the same be not paid forthwith, or within a certain time therein mentioned or to be mentioned in such conviction or order, the defendant shall be imprisoned, or imprisoned and kept to hard labour for a certain time, unless such penalty, compensation or sum shall be sooner paid, in every such case such penalty, compensation or sum shall not be levied by distress; but if the defendant do not pay the same, together with costs, if awarded, forthwith or at the time specified in such conviction or order for the payment of the same, it shall be lawful for the Justice or Justices making such conviction or order, or for any other Justice of the Peace for the same County, to issue his or their Warrant of Commitment (Z A a) under his or their hand and seal or hands and seals, requiring the Constable or Constables to whom the same shall be directed, to take and convey such defendant to the Common Gaol for the County, and there to deliver him to the Keeper thereof, and requiring such Keeper to receive such defendant into such Gaol, and there to imprison him, or to imprison him and keep him to hard labour, as the case may be, for such time as the Act or Statute on which such conviction or order is founded as aforesaid shall direct, unless the sum or sums adjudged to be paid, and also the costs and charges of taking and conveying the defendant to Prison, if such Justice or Justices shall think fit so to order, shall be sooner paid.

Power to Justices to order commitment where the conviction is not for a penalty, nor the order for payment of money, and the punishment is by imprisonment, &c.

XXIII. And be it enacted, That where a conviction does not order the payment of any penalty, but that the defendant be imprisoned, or imprisoned and kept to hard labour for his offence, or where an order is not for the payment of money, but for the doing of some other act, and directs that in case of the defendant's neglect or refusal to do such act, he shall be imprisoned, or imprisoned and kept to hard labour, and the defendant neglects or refuses to do such act, in every such case it shall be lawful for such Justice or Justices making such conviction or order, or for some other Justice of the Peace for the same County, to issue his or their Warrant of Commitment (B b C c) under his or their hand and seal or hands and seals, and requiring the Constable or Constables to whom the same shall be directed, to take and convey such defendant to the Common Gaol for the same County, and there to deliver him to the Keeper thereof, and requiring such Keeper to receive such defendant into such Gaol, and there to imprison him, or to imprison him and keep him to hard labour, as the case may be, for such time as the Act or Statute on which such conviction or order is founded as aforesaid shall direct; and in all such cases where by such conviction or order any sum for costs shall be adjudged to be paid by the defendant, such sum may if the Justice or Justices shall think fit, be levied by Warrant of Distress (D d E e) in manner aforesaid, and in default of distress the defendant may, if such Justice or Justices shall

Costs may be levied by distress, and in default defendant may be committed for a further term.

shall think fit, be committed (Ff) to the Common Gaol in manner aforesaid, there to be imprisoned for any time not exceeding one calendar month, to commence at the termination of the imprisonment he shall then be undergoing, unless such sum for costs, and all costs and charges of the said distress, and also the costs and charges of the commitment and conveying of the defendant to Prison, if such Justice or Justices shall think fit so to order, shall be sooner paid.

XXIV. And be it enacted, That when a Justice or Justices of the Peace shall upon any such information or complaint as aforesaid, adjudge the defendant to be imprisoned, and such defendant shall then be in Prison undergoing imprisonment upon a conviction for any other offence, the Warrant of Commitment for such subsequent offence shall in every such case be forthwith delivered to the Gaoler to whom the same shall be directed ; and it shall be lawful for the Justice or Justices issuing the same, if he or they shall think fit, to award and order therein and thereby that the imprisonment for such subsequent offence shall commence at the expiration of the imprisonment to which such defendant shall have been previously adjudged or sentenced.

Imprisonment for a subsequent offence to commence at expiration of that for previous offence.

XXV. And be it enacted, That where any information or complaint shall be dismissed with costs pursuant to the Act or Statute, the sum which shall be awarded for costs in the order for dismissal, may be levied by distress (Gg) on the goods and chattels of the prosecutor or complainant, in manner aforesaid ; and in default of distress or payment, such prosecutor or complainant may be committed (Hh) to the Common Gaol, in manner aforesaid, for any time not exceeding one calendar month, unless such sum and all costs and charges of the distress, and of the commitment and conveying of such prosecutor or complainant to Prison, (the amount thereof being ascertained and stated in such commitment,) shall be sooner paid.

If information be dismissed, costs may be recovered by distress upon prosecutor, &c., who, in default, may be committed.

XXVI. And be it enacted, That in all cases where any person against whom a Warrant of Distress shall issue as aforesaid, shall pay or tender to the Constable having the execution of the same, the sum or sums in such Warrant mentioned, together with the amount of the expenses of such distress up to the time of such payment or tender, such Constable shall cease to execute the same ; and in all cases in which any person shall be imprisoned as aforesaid for the non-payment of any penalty or other sum, he may pay or cause to be paid to the Keeper of the Prison in which he shall be so imprisoned, the sum in the Warrant or Commitment mentioned, together with the amount of the costs, charges and expenses (if any) therein also mentioned, and the said Keeper shall receive the same and shall thereupon discharge such person if he be in his custody for no other matter.

On payment of penalty, &c., distress not to be levied, or the party if imprisoned for non-payment, shall be discharged.

GENERAL DIRECTIONS.

XXVII. And be it enacted, That in all cases of summary proceedings before a Justice or Justices of the Peace out of Sessions, upon any information or complaint as aforesaid, it shall be lawful for one Justice to receive such information or complaint, and to grant a Summons or Warrant thereon, and to issue his Summons or Warrant to compel the attendance of any Witnesses, and to do all other necessary acts and matters preliminary to the hearing, even in cases where by the Act or Statute in that behalf such information or complaint must be heard and determined by two or more Justices ; and after the case shall have been so heard and determined, one Justice may issue all Warrants of Distress or Commitment thereon ; and it shall not be necessary that the Justice who so acts before or after such hearing shall be the Justice or one of the Justices by whom the said case shall be heard and determined ; provided always, that in all cases

In cases of summary proceedings one Justice may issue Summons or Warrant, &c., and after conviction or order may issue Warrant of Distress, &c.

where

where by Act or Statute it is or shall be required that any such information or complaint shall be heard and determined by two or more Justices, or that a conviction or order shall be made by two or more Justices, such Justices must be present and acting together during the whole of the hearing and determination of the case.

PAYMENT OF PENALTIES.

Amount of distress
to be paid to
County Treasurer.

XXVIII. And be it enacted, That in every Warrant of Distress to be issued as aforesaid, the Constable or other person to whom the same shall be directed, shall be thereby ordered to pay the amount of the sum to be levied thereunder unto the County Treasurer; and if any person convicted of any penalty, or ordered by a Justice or Justices of the Peace to pay any sum of money, shall pay the same to any Constable or other person, such Constable or other person shall forthwith pay the same to such County Treasurer; and if any person committed to Prison upon any conviction or order as aforesaid for non-payment of any penalty, or of any sum thereby ordered to be paid, shall desire to pay the same and costs before the expiration of the time for which he shall be so ordered to be imprisoned by the Warrant for his commitment, he shall pay the same to the Gaoler or Keeper of the Prison in which he shall be so imprisoned, and such Gaoler or Keeper shall forthwith pay the same to the said County Treasurer; and all sums so received by the said County Treasurer shall belong to the contingent funds of the County for County purposes, except where any part thereof may be payable to any person informing or suing for the same, in which case such County Treasurer shall pay such portion to such party on demand, any thing in any Act to the contrary thereof in anywise notwithstanding.

PORTLAND POLICE ACT AND OTHER EXCEPTIONS.

This Act not to
affect the Portland
Police Act;

XXIX. And be it enacted, That nothing in this Act contained shall alter or affect in any manner whatsoever any of the powers, provisions or enactments contained in an Act passed in the eleventh year of the Reign of Her present Majesty, intituled *An Act for establishing and maintaining a Police Force in the Parish of Portland, in the City and County of Saint John.*

Nor extend to,

Lunatics,

Revenue,

Post Office,

Bastardy.

XXX. And be it enacted, That nothing in this Act shall extend or be construed to extend to any complaints or orders made with respect to Lunatics, or expenses incurred for the lodging, maintenance, medicine, clothing or care of any Lunatic or insane person, nor to any information or complaint or other proceeding under or by virtue of any of the Acts or Statutes relating to Her Majesty's Revenue or Customs or Post Office; nor shall any thing in this Act extend or be construed to extend to any complaints, orders or warrants in matters of Bastardy made against the putative father of any bastard child, save and except such of the provisions aforesaid as relate to the backing of Warrants, for compelling the appearance of such putative father, or Warrants of Distress, or to the levying of sums ordered to be paid, or to the imprisonment of a defendant for non-payment of the same.

PROTECTION OF JUSTICES.

For an act by a
Justice of Peace
within his jurisdic-
tion, the action
shall be on the case,
and it shall be
alleged to have been
done maliciously
and without prob-
able cause.

XXXI. 'And whereas it is expedient to protect Justices of the Peace in the execution of their duty;' Be it therefore enacted, That every action hereafter to be brought against any Justice of the Peace for any act done by him in the execution of his duty as such Justice, with respect to any matter within his jurisdiction as such Justice, shall be an action on the case as for a wrong; and in the declaration it shall be expressly alleged that such act was done maliciously and without

without reasonable and probable cause; and if at the trial of any such action, upon the general issue being pleaded, the plaintiff shall fail to prove such allegation, he shall be non-suited or a verdict shall be given for the defendant.

XXXII. And be it enacted, That for any act done by a Justice of the Peace in a matter of which by law he has not jurisdiction, or in which he shall have exceeded his jurisdiction, any person injured thereby, or by any act done under any conviction or order made, or Warrant issued by such Justice in any such matter, may maintain an action against such Justice in the same form as in the last section mentioned, without making any allegation in his declaration that the act complained of was done maliciously and without reasonable or probable cause; provided nevertheless, that no such action shall be brought for any thing done under such conviction or order, until after such conviction shall have been quashed either upon appeal or upon application to the Supreme Court; nor shall any such action be brought for any thing done under any such Warrant which shall have been issued by such Justice to procure the appearance of such party, and which shall have been followed by a conviction or order in the same matter, until after such conviction or order shall have been so quashed as aforesaid; or if such last mentioned Warrant shall not have been followed by any such conviction or order, or if it be a Warrant upon an information for an alleged indictable offence, nevertheless if a Summons were issued previously to such Warrant, and such Summons were 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, and he did not appear according to the exigency of such Summons, in such case no such action shall be maintained against such Justice for any thing done under such Warrant.

XXXIII. And be it enacted, That where a conviction or order shall be made by one or more Justice or Justices of the Peace, and a Warrant of Distress or Commitment shall be granted thereon by some other Justice of the Peace, bona fide and without collusion, no action shall be brought against the Justice who so granted such Warrant, by reason of any defect in such conviction or order, or for any want of jurisdiction in the Justice or Justices who made the same, but the action (if any) shall be brought against the Justice or Justices who made such conviction or order.

XXXIV. And be it enacted, That where any rate shall be made, allowed and published, and a Warrant of Distress shall issue against any person named and rated therein, no action shall be brought against the Justice or Justices who shall have granted such Warrant, by reason of any irregularity or defect in the said rate, or by reason of such person not being liable to be rated therein; and that in all cases where a discretionary power shall be given to a Justice of the Peace by any Act or Statute, no action shall be brought against such Justice for or by reason of the manner in which he shall have exercised his discretion in the execution of such power.

XXXV. 'And whereas it would conduce to the advancement of justice and render more effective and certain the performance of the duties of Justices, and give them protection in the performance of the same, if some simple means not attended with much expense were devised by which the legality of any act to be done by such Justices might be considered and adjudged by a Court of competent jurisdiction, and such Justice enabled and directed to perform it without risk of any action or other proceeding being brought or had against him;' Be it therefore enacted, That in all cases where a Justice or Justices of the Peace shall refuse to do any act relating to the duties of his or their office as such Justice or Justices, it shall be lawful for the party requiring such act to be done to apply

For an act done by him without jurisdiction, or exceeding his jurisdiction, an action may be maintained without such allegation;

but not for an act done under a conviction or order, until after such conviction or order shall have been quashed;

nor for an act done under a Warrant to compel appearance, if a Summons were previously served and not obeyed.

If one Justice make a conviction or order and another grant a Warrant upon it, the action must be against the former, not the latter, for a defect in the conviction or order.

No action for issuing a distress warrant for rates by reason of any defect or that the party is not rateable.

No action for acts in exercise of a discretionary power.

If a Justice refuse to do an act, the Supreme Court may by rule order him to do it, and no action shall be brought against him for doing it.

apply to the Supreme Court, upon an affidavit of the facts, for a Rule calling upon such Justice or Justices, and also the party to be affected by such act, to shew cause why such act should not be doné; and if after due service of such Rule good cause shall not be shewn against it, the said Court may make the same absolute, with or without or upon payment of costs, as to them shall seem meet; and the said Justice or Justices, upon being served with such Rule absolute, shall obey the same, and shall do the act required; and no action or proceeding whatsoever shall be commenced or prosecuted against such Justice or Justices for having obeyed such Rule and done such act so thereby required as aforesaid.

No action against Justices for defect in conviction or order confirmed on appeal.

XXXVI. And be it enacted, That in all cases where a Warrant of Distress or Warrant of Commitment shall be granted by a Justice of the Peace upon any conviction or order, which either before or after the granting of such Warrant shall have been or shall be confirmed upon appeal, no action shall be brought against such Justice who so granted such Warrant, for any thing which may have been done under the same by reason of any defect in such conviction or order.

Actions against Justices in defiance of this Act to be set aside.

XXXVII. And be it enacted, That in all cases where by this Act it is enacted that no action shall be brought under particular circumstances, if any such action shall be brought, it shall be lawful for a Judge of the Court in which the same shall be brought, upon application of the defendant, and upon an affidavit of facts, to set aside the proceedings in such action with or without costs as to him shall seem meet.

Limitation of action.

XXXVIII. And be it enacted, That no action shall be brought against any Justice of the Peace for any thing done by him in the execution of his office unless the same be commenced within six calendar months next after the act complained of shall have been committed.

Notice in writing of action to be the commencement.

XXXIX. And be it enacted, That no such action shall be commenced against any such Justice of the Peace until one calendar month at least after a notice in writing of such intended action shall have been delivered to him, or left for him at his usual place of abode by the party intending to commence such action, or his attorney or agent, in which said notice the cause of action and the Court in which the same is intended to be brought shall be clearly and explicitly stated; and upon the back thereof shall be endorsed the name and place of abode of the party so intending to sue and also the name and place of abode or of business of the said attorney or agent, if such notice have been served by such attorney or agent.

Venue.

XL. And be it enacted, That in every such action the venue shall be laid in the County where the act complained of was committed; and the defendant shall be allowed to plead the general issue therein, and to give any special matter of defence, excuse or justification under such plea at the trial of such action.

Tender and payment of money into Court.

XLI. And be it enacted, That in every such case after notice of action shall be so given as aforesaid, and before such action shall be commenced, such Justice to whom such notice shall be given, may tender to the party complaining or to his attorney or agent such sum of money as he may think fit as amends for the injury complained of in such notice; and after such action shall have been commenced and at any time before issue joined therein, such defendant, if he have not made such tender, or in addition to such tender, shall be at liberty to pay into Court such sum of money as he may think fit, and which said tender and payment of money into Court, or either of them, may afterwards be given in evidence by the defendant at the trial, under the general issue aforesaid; and if the Jury at the trial shall be of opinion that the plaintiff is not entitled to damages beyond the sum or sums so tendered or paid into Court, then they shall give a verdict

verdict for the defendant, and the plaintiff shall not be at liberty to elect to be non-suit, and the sum of money (if any) so paid into Court, or so much thereof as shall be sufficient to pay or satisfy the defendant's costs in that behalf, shall thereupon be paid out of Court to him, and the residue (if any) shall be paid to the plaintiff; or if where money is so paid into Court in any such action, the plaintiff shall elect to accept the same in satisfaction of his damages in the said action, he may obtain from any Judge of the Court in which such action shall be brought an order that such money shall be paid out of Court to him, and that the defendant shall pay him his costs to be taxed, and thereupon the said action shall be determined, and such order shall be a bar to any other action for the same cause.

XLII. And be it enacted, That if at the trial of any such action the plaintiff shall not prove that such action was brought within the time hereinbefore limited in that behalf, or that such notice as aforesaid was given one calendar month before such action was commenced, or if he shall not prove the cause of action stated in such notice, or if he shall not prove that such cause of action arose in the County or place laid as venue in the margin of the declaration, then and in every such case such plaintiff shall be non-suit, or the Jury shall give a verdict for the defendant.

Plaintiff to be non-suit in certain cases.

XLIII. And be it enacted, That in all cases where the plaintiff in any such action shall be entitled to recover, and he shall prove the levying or payment of any penalty or sum of money under any conviction or order as parcel of the damages he seeks to recover, or if he prove that he was imprisoned under such conviction or order, and shall seek to recover damages for any such imprisonment, he shall not be entitled to recover the amount of such penalty or sum so levied or paid, or any sum beyond the sum of two pence as damages for such imprisonment, or any costs of suit whatsoever, if it shall be proved that he was actually guilty of the offence of which he was so convicted, or that he was liable by law to pay the sum he was so ordered to pay, and (with respect to such imprisonment) that he had undergone no greater punishment than that assigned by law for the offence of which he was so convicted, or for non-payment of the sum he was so ordered to pay.

Plaintiff not to recover amount of penalty in certain cases.

XLIV. And be it enacted, That if the Plaintiff in any such action shall recover a verdict, or the defendant shall allow judgment to pass against him by default, such plaintiff shall be entitled to costs, in such manner as if this Act had not been passed; or if in such case it be stated in the declaration that the act complained of was done maliciously and without reasonable or probable cause, the plaintiff if he recover a verdict for any damages, or if the defendant allow judgment to pass against him by default, shall be entitled to his full costs of suit; and in every action against a Justice of the Peace for anything done by him in the execution of his office, the defendant if he obtain judgment upon verdict, or otherwise, shall in all cases be entitled to his full costs in that behalf.

Costs.

CONSTRUCTION OF TERMS.

XLV. And be it enacted, That wherever in this Act in describing or referring to the offence, or the subject matter on or with respect to which it shall be committed, or the offender, or the party intended to be affected by the offence, words shall be used importing the singular number or masculine gender, yet 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, unless it be otherwise specially provided, or there be something

Construction of Act.

Singular number. Masculine gender.

Corporate body included in party aggrieved.

Act or Statute.

County.

Property.

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 that the word ' Act or Statute ' shall include any Act of Assembly or of Parliament ; and the term ' County ' shall include City and County, and the word ' Property ' shall be deemed to denote every thing included under the words chattels, money, or valuable security.

FORMS.

Forms.

XLVI. And be it enacted, That the several Forms in the Schedule to this Act contained, or Forms to the like effect, shall be deemed good, valid and sufficient in law ; and that every information and complaint shall be according to the Form, or to the like effect, as set forth in the Schedule to the Act made and passed during the present Session of the Assembly, intituled *An Act to consolidate and improve the Law for the administration of Criminal Justice.*

Cap. 30.

SCHEDULE.

(A)

Summons to Defendant.

Summons to the Defendant upon an Information or Complaint.

To A. B. of [Labourer.]

Whereas information hath this day been laid [or complaint hath this day been made] before the undersigned, [one] of Her Majesty's Justices of the Peace in and for the said [County] of for that you [here state shortly the matter of the information or complaint] ; These are therefore to command you, in Her Majesty's name, to be and appear on at o'clock in the forenoon, at before such Justices of the Peace for the said County as may then be there, to answer to the said information [or complaint], 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.]

(B)

Warrant where Summons disobeyed.

Warrant where the Summons is disobeyed.

To the Constable of and to all other Peace Officers in the said County of Whereas on last past information was laid [or complaint was made] before the undersigned [one] of Her Majesty's Justices of the Peace in and for the said County of for that A. B. [&c. as in the Summons] ; and whereas I then issued my Summons unto the said A. B., commanding him, in Her Majesty's name, to be and appear on at o'clock in the forenoon, at before such Justices of the Peace for the said County as might then be there, to answer to the said information [or complaint], 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 so appointed in and by the said Summons, although it hath now been proved to me upon oath that the said Summons hath been 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 some one or more of Her Majesty's Justices of the Peace in and for the said County, to answer to the said information [or complaint], 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)

Warrant in the first instance.

Warrant in first instance.

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

Whereas information hath this day been laid before the undersigned, [one] of Her Majesty's Justices of the Peace in and for the said County of for that A. B. [*here state shortly the matter of the information,*] and oath being now made before me substantiating the matter of such information: These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A. B., and to bring him before some one or more of Her Majesty's Justices of the Peace in and for the said County, to answer to the said information, 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.]

(D)

Warrant of committal for safe custody during an adjournment of the hearing.

Warrant of Committal during an adjournment of hearing.

To W. T., Constable of and to the Keeper of the Common Gaol at

Whereas on last past, information was laid [*or complaint was made*] 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 the hearing of the same is adjourned to the day of instant, at o'clock in the forenoon, at , and it is necessary that the said A. B. should in the meantime be kept in safe custody: 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 at and there to deliver him into the custody of the Keeper thereof, together with the Precept; and I hereby command you the said Keeper, to receive the said A. B. into your custody in the said Common Gaol, and there safely keep him until the day of instant, when you are hereby required to convey and have him, the said A. B., at the time and place to which the said hearing is so adjourned as aforesaid, before such Justices of the Peace for the said County, as may then be there, to answer further to the said information [*or complaint*], 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)

Recognizance for the appearance of the Defendant where the case is adjourned, or not at once proceeded with.

Recognizance for appearance of Defendant in delayed cases.

Be it remembered, that on A. B. of *Labourer*, and L. M. of *Grocer*, personally came before one of the undersigned, [one] of Her Majesty's Justices of the Peace in and for the said County of and severally acknowledged themselves to owe to our Sovereign Lady the Queen the several sums following, (that is to say): The said A. B. the sum of and the said L. M. of the sum of 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 he the said A. B. shall fail in the condition endorsed.—Taken and acknowledged the day and year first above mentioned, at before me.

J. S.

The

The condition of the within written recognizance is such, that if the said A. B. shall personally appear on the _____ day of _____ instant, at _____ o'clock in the forenoon, at _____ before such Justices of the Peace for the said County as may then be there, to answer further to the information [or complaint] of C. D., exhibited against the said A. B., 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.

(F)

Certificate of non-appearance.

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

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

J. S.

(G)

Summons of a Witness.

Summons of a Witness.

To E. F. of _____ in the said County of _____

Whereas information was laid [or complaint was made] 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 hath been made to appear to me upon [oath] that you are likely to give material evidence on behalf of the [prosecutor or complainant, or defendant] in this behalf: These are therefore to require you to be and appear on _____ at _____ o'clock in the forenoon, at _____ before such Justices of the Peace for the said County as may then be there, to testify what you shall know concerning the matter of the said information [or complaint]. — 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 where Witness has not obeyed a Summons.

Warrant where a Witness has not obeyed a Summons.

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

Whereas information was laid [or complaint was made] 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 _____ in the said County, [Labourer,] was likely to give material evidence on behalf of the prosecutor, I did duly issue my Summons to the said E. F., requiring him to be and appear on _____ at _____ o'clock in the forenoon of the same day, at _____ before such Justices of the Peace for the said County as might then be there, to testify what he should know concerning the said A. B., or the matter of such information [or complaint]; 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 of a reasonable sum having been paid [or tendered] to him for his costs and expenses in that behalf; and whereas the said E. F. hath neglected to appear at the time and place appointed by the said Summons, and no just excuse hath been offered for such neglect: These are therefore to command you to take the said E. F., and to bring and have him on _____ at _____ o'clock in the forenoon at _____ before such Justices of the Peace for the said County as may then be there, to testify what he shall know concerning the _____ matter

matter of the said information [or complaint].—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)

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

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

Whereas information was laid [or complaint was made] 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 being made to appear before me upon oath, that E. F. of [Labourer] is likely to give material evidence on behalf of the [prosecutor] in this matter, and 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 Justices of the Peace for the said County as may then be there, to testify what he shall know concerning the matter of the said information [or complaint].—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)

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

To W. T., Constable of in the said County of and to the Keeper of the Common Gaol at

Whereas information was laid [or complaint was made] 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 one E. F. now appearing before me, such Justice as aforesaid, on at and being required by me to make oath or affirmation as a witness in that behalf, hath now refused so to do [or being now here duly sworn as a witness in the matter of the said information or complaint, doth refuse to answer certain questions concerning the premises which are now 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 convey to the Common Gaol at 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 Common Gaol, to receive the said E. F. into your custody in the said Common Gaol, and there imprison him for such his contempt for the space of days, 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.]

(L)

*Warrant to remand a Defendant when apprehended.*Warrant to remand
a Defendant.

To W. T., Constable of and to the Keeper of the Common Gaol at

Whereas information was laid [or complaint was made] 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 or Warrant*], and whereas the said hath been apprehended

apprehended under and by virtue of a Warrant upon such information [*or complaint*], and is now brought before me as such Justice as aforesaid: 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 at _____ and there to deliver him to the said Keeper thereof, together with this Precept; and I do hereby command you the said Keeper to receive the said A. B. into your custody in the said Common Gaol, and there safely keep him until _____ next the _____ day of _____ instant, when you are hereby commanded to convey and have him at _____ at _____ o'clock in the forenoon of the same day, before such Justices of the Peace of the said County as may then be there, to answer to the said information [*or complaint*], 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.]

(M)

Conviction for a penalty to be levied by distress, and on default, by imprisonment.

Conviction for a penalty to be levied by Distress, and in default of sufficient distress, imprisonment.

To-wit. } Be it remembered, that on the _____ day of _____ in the year of our Lord _____ at _____ in the said County, A. B. is convicted before the undersigned, [*one*] of Her Majesty's Justices of the Peace for the said County, for that [*he the said A. B. &c. stating the offence and the time and place when and where committed*]; and I adjudge the said A. B. for his said offence, to forfeit and pay the sum of _____ [*stating the penalty, and also the compensation, if any*] to be paid and applied according to law, and also to pay to the said C. D. the sum of _____ for his costs in this behalf; and if the said several sums be not paid forthwith, [*on or before _____ next*], * I order that the same be levied by distress and sale of the goods and chattels of the said A. B., and in default of sufficient distress * I adjudge the said A. B. to be imprisoned in the Common Gaol at _____ in the said County [*there to be kept to hard labour*] for the space of _____ unless the said several sums and all costs and charges of the said distress [*and of the commitment and conveying of the said A. B. to the said Common Gaol*] shall be sooner paid.—Given under my hand and seal the day and year first above mentioned, at _____ in the County aforesaid.

J. S. [L. s.]

* Or where the issuing of a Distress Warrant would be ruinous to the defendant or his family, or it appears that he has no goods whereon to levy a distress, then instead of the words between the asterisks * *, say,—then inasmuch as it hath now been made to appear to me [*that the issuing of a Warrant of Distress in this behalf would be ruinous to the said A. B. and his family, or that the said A. B. hath no goods or chattels whereon to levy the said sums by distress,*] I adjudge, &c. as above, to the end.

(N)

Conviction for a penalty, and in default of payment, imprisonment.

Conviction for a penalty, and in default of payment, imprisonment.

To-wit. } Be it remembered, that on the _____ day of _____ in the year of our Lord _____ at _____ in the said County, A. B. is convicted before the undersigned, [*one*] of Her Majesty's Justices of the Peace for the said County, for that [*he the said A. B., &c., stating the offence and the time and place when and where it was committed*]; and I adjudge the said A. B. for his said offence, to forfeit and pay _____

pay the sum of [stating the penalty and compensation if any] to be paid and applied according to law, and also to pay to the said C. D. the sum of for his costs in this behalf; and if the said several sums be not paid forthwith [or on or before next,] I adjudge the said A. B. to be imprisoned in the Common Gaol at in the said County, [and there to be kept to hard labour] for the space of unless the said several sums [and the costs and charges of conveying the said A. B. to the said Common Gaol,] shall be sooner paid.—Given under my hand and seal, the day and year first above mentioned, at in the County aforesaid.

J. S. [L. s.]

(O)

Conviction when the punishment is by imprisonment, &c.

Conviction when the punishment is by imprisonment, &c.

To-wit. { Be it remembered, that on the day of in the year of our Lord in the said County, A. B. is convicted before the undersigned, [one] of Her Majesty's Justices of the Peace for the said County, for that [he the said A. B., &c., stating the offence, and the time and place when and where committed]; and I adjudge the said A. B. for the said offence to be imprisoned in the Common Gaol at in the said County [and there kept to hard labour] for the space of ; and I also adjudge the said A. B. to pay the said C. D. the sum of for his costs in this behalf; and if the said sum for costs be not paid forthwith [or on or before next,] then * I order that the said sum be levied by distress and sale of the goods and chattels of the said A. B. ; and in default of sufficient distress in that behalf,* I adjudge the said A. B. to be imprisoned in the said Common Gaol [and there kept to hard labour] for the space of to commence at and from the termination of his imprisonment aforesaid, unless the said sum for costs shall be sooner paid.—Given under my hand and seal the day and year first above mentioned, at in the County aforesaid.

J. S. [L. s.]

* Or where the issuing of a Distress Warrant would be ruinous to the defendant or his family, or it appears that he has no goods whereon to levy a distress, then instead of the words between the asterisks * * say,—inasmuch as it hath now been made to appear to me (that the issuing of a Warrant of Distress in this behalf would be ruinous to the said A. B. and his family, or that the said A. B. hath no goods or chattels whereupon to levy the said sum for costs by distress) ; I adjudge, &c.

(P)

Order for payment of Money to be levied by Distress, and in default of distress, imprisonment.

Order for payment of money by distress, and in default, imprisonment.

To-wit. { Be it remembered, that on complaint was made before the undersigned, [one] of Her Majesty's Justices of the Peace in and for the said County of for that [stating the facts entitling the complainant to the order, with the time and place when and where they occurred]; and now, on this day, to-wit, on at the parties aforesaid appear before me the said Justice, [or the said C. D. appears before me the said Justice,] but the said A. B. although duly called doth not appear, by himself, his Counsel, or Attorney, and it is now satisfactorily proved to me on oath that the said A. B. has been duly served with the summons in this behalf, which required him to be and appear here at this day before such Justice of the Peace for this said County as should now be here, to answer

answer the said complaint, and to be further dealt with according to law, and now having heard the matter of the said complaint, I do adjudge the said A. B. [to pay to the said C. D. the sum of forthwith, *or on or before* next, *or as the Statute may require*]; and also to pay to the said C. D. the sum of for his costs in this behalf; and if the said several sums be not paid forthwith, [*or on or before* next,] * I hereby order that the same be levied by sale and distress of the goods and chattels of the said A. B.; and in default of sufficient distress in that behalf,* I adjudge the said A. B. to be imprisoned in the Common Gaol at in the said County [*and there kept to hard labour*] for the space of unless the said several sums, and all costs and charges of the said distress, [*and of the commitment and conveying of the said A. B. to the said Common Gaol*], shall be sooner paid.—Given under my hand and seal the day of in the year of our Lord at in the County aforesaid.

J. S. (L. s.)

* Or where the issuing of a Distress Warrant would be ruinous to the defendant or his family, or it appears that he has no goods whereon to levy a distress, then, instead of the words between the asterisks, * * say,—then inasmuch as it hath now been made to appear to me [that the issuing of a Warrant of Distress in this behalf would be ruinous to the said A. B. and his family, or that the said A. B. hath no goods or chattels whereon to levy the said sums by distress]; I adjudge, &c.

(Q)

Order for payment of Money, and in default of payment, imprisonment.

Order for payment of money, and in default of payment, imprisonment.

To-wit. } Be it remembered, that on complaint was made before the under-
signed, [one] of Her Majesty's Justices of the Peace in and for the said County of for that [*stating the facts entitling the complainant to the Order, with the time and place and when and where they occurred,*] and now at this day, to-wit, on at the parties aforesaid appear before me the said Justice, [*or the said C. D. appears before me the said Justice, but the said A. B., although duly called doth not appear by himself, his Counsel, or Attorney, and it is now satisfactorily proved to me on oath that the said A. B. has been duly served with the Summons in this behalf, which required him to be and appear here on this day, before such Justices of the Peace for the said County as should now be here, to answer the said complaint, and to be further dealt with according to law*]; and now, having heard the matter of the said complaint, I do adjudge the said A. B. to pay to the said C. D. the sum of forthwith, [*or on or before* next, *or as the Statute may require,*] and also to pay to the said C. D. the sum of for his costs in this behalf; and if the said several sums be not paid forthwith, [*or on or before* next,] I adjudge the said A. B. to be imprisoned in the Common Gaol at in the said County, there to be kept to hard labour for the space of unless the said several sums, [*and the costs and charges of conveying the said A. B. to the said Common Gaol,*] shall be sooner paid.—Given under my hand and seal this day of in the year of our Lord at in the County aforesaid.

J. S. (L. s.)

(R)

(R)

Order for any other matter where the disobeying of it is punishable with imprisonment.

To-wit. } Be it remembered, that on complaint was made before the undersigned, [one] of Her Majesty's Justices of the Peace in and for the said County of for that [stating the facts entitling the complainant to the Order, with the time and place and when and where they occurred,] and now at this day, to-wit, on at the parties aforesaid appear before me the said Justice, [or the said C. D. appears before me the said Justice,] but the said A. B., although duly called, doth not appear by himself, his Counsel, or Attorney, and it is now satisfactorily proved to me upon oath that the said A. B. has been duly served with the Summons in this behalf, which required him to be and appear here at this day, before such Justices of the Peace for the said County as shall now be here, to answer to the said complaint, and to be further dealt with according to law; and now having heard the matter of the said complaint, I do therefore adjudge the said A. B. to [here state the matter required to be done,] and if upon a copy of a minute of this Order being served upon the said A. B., either personally or by leaving the same for him at his last or most usual place of abode, he shall neglect or refuse to obey the same, in that case I adjudge the said A. B., for such his disobedience, to be imprisoned in the Common Gaol at in the said County, [there to be kept to hard labour,] for the space of [unless the said order be sooner obeyed if the Statute authorize this]; and I do also adjudge the said A. B. to pay to the said C. D. the sum of for the costs in this behalf; and if the said sum for costs be not paid forthwith, [or on or before next,] I do order the same to be levied by distress and sale of the goods and chattels of the said A. B.; and in default of sufficient distress in that behalf, I adjudge the said A. B. to be imprisoned in the said House of Correction [and there kept to hard labour,] for the space of to commence at and from the termination of his imprisonment aforesaid, unless the said sum of shall be sooner paid.—Given under my hand and seal this day of in the year of our Lord at in the County aforesaid.

Order for other matters where disobedience is punishable by imprisonment.

J. S. (L. s.)

(S)

Order of dismissal of an Information or Complaint.

To-wit. } Be it remembered, that on information was laid [or complaint was made] 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 defendant,] and now at this day, to-wit, on at both the said parties appear before me in order that I should hear and determine the said information [or complaint] [or the said A. B. appeareth before me, but the said C. D., although duly called, doth not appear,] whereupon the matter of the said information [or complaint] being by me duly considered, [it manifestly appears to me that the said information [or complaint] is not proved, and *] I do therefore dismiss the same, and do adjudge that the said C. D. do pay to the said A. B. the sum of for his costs incurred by him in his defence in this behalf; and if the said sum for costs be not paid forthwith, [or on or before] I order that the same be levied by distress and sale of the goods and chattels of the said C. D.; and in default of sufficient distress in that behalf, I adjudge the said C. D. to be imprisoned in the Common Gaol at in the said County, [and there kept to hard labour] for the space of unless the said sum for costs, and all costs and charges of

Order of dismissal of an information or complaint.

the said distress, [*and of the commitment and conveying of the said C. D. to the said Common Gaol,*] shall be sooner paid.—Given under my hand and seal this day of in the year of our Lord at in the County aforesaid.

J. S. (L. S.)

* If the informant or complainant do not appear, these words may be omitted.

(T)

Certificate of Dismissal.

Certificate of
dismissal.

I hereby certify, that an information [*or complaint*] preferred by C. D. against A. B. for that [*&c. as in the Summons*], was this day considered by me, [*one*] of Her Majesty's Justices of the Peace in and for the County of and was by me dismissed [*with costs*].—Dated this day of 184 .

J. S.

(U)

Warrant of Distress upon a conviction for a penalty.

Warrant of distress
upon conviction
for a penalty.

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

Whereas A. B. late of *Labourer*, was on this day, [*or on* last past] duly convicted before the undersigned, [*one*] of Her Majesty's Justices of the Peace in and for the said County of for that [*stating the offence as in the conviction,*] and it was thereby adjudged that the said A. B. should for such his offence forfeit and pay [*&c. as in the conviction,*] and should also pay to the said C. D. the sum of for his costs in that behalf, and it was thereby ordered that if the said several sums should not be paid [*forthwith*] the same should be levied by distress and sale of the goods and chattels of the said A. B.; and it was also thereby adjudged that in default of sufficient distress the said A. B. should be imprisoned in the Common Gaol at in the said County [*and there kept to hard labour*] for the space of unless the said several sums, and all costs and charges of the said distress, and of the commitment and conveying of the said A. B. to the said Common Gaol, should be sooner paid *; and whereas the said A. B., being so convicted as aforesaid, and being [*now*] required to pay the said sums of and hath not paid the same or any part thereof, but therein hath made default: These are therefore to command you in Her Majesty's name, forthwith to make distress of the goods and chattels of the said A. B.; and if within the space of days next after the making of such distress, the said sums, together with the reasonable charges of taking and keeping the distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising by such sale unto the Treasurer of the said County, that he may pay and apply the same as by law is directed, and may render the overplus, if any, on demand, to the said A. B.; and if no such distress can be found, then that you certify the same unto me to the end that such further proceedings may be had thereon, as to the law doth appertain.—Given under my hand and seal this day of in the year of our Lord at in the County aforesaid.

J. S. (L. S.)

(V)

(V)

*Warrant of Distress upon an Order for the payment of money.*Warrant of distress
upon an order for
payment of money.

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

Whereas on _____ last past, a complaint was made 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 Order,) and afterwards, to-wit, on _____ at _____ the said parties appeared before me (or as in the Order) and thereupon having considered the matter of the said complaint, I adjudged the said A. B. to (pay to the said C. D. the sum of _____ on or before the _____ then next,) and also to pay to the said C. D. the sum of _____ for his costs in that behalf, and I thereby ordered that if the said several sums should not be paid on or before the said _____ then next, the same should be levied by distress and sale of the goods and chattels of the said A. B.; and it was adjudged that in default of sufficient distress in that behalf, the said A. B. should be imprisoned in the Common Gaol at _____ in the said County, (and there kept to hard labour) for the space of _____ unless the said several sums and all costs and charges of the distress (and of the commitment and conveying of the said A. B. to the said Common Gaol,) should be sooner paid; * and whereas the time in and by the said Order appointed for the payment of the said several sums of _____ and _____ hath elapsed, but the said C. D. hath not paid the same or any part thereof, but therein hath made default: These are therefore to command you in Her Majesty's name forthwith to make distress of the goods and chattels of the said A. B., and if within the space of _____ days after the making of such distress, the said last mentioned sums, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale unto the Treasurer for the said County, that he may pay and apply the same as by law directed, and may render the overplus, if any, on demand, to the said A. B., and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein as to the law doth appertain.—Given under my hand and seal this _____ day of _____ in the year of our Lord _____ at _____ in the County aforesaid.

J. S. (L. s.)

(W)

*Endorsement in backing a Warrant of Distress.*Endorsement in
backing a Warrant
of distress.

To-wit. } Whereas proof upon oath hath this day been made before me, one of
 } Her Majesty's Justices of the Peace in and for the said County of _____
 that the name of J. S. to the within Warrant subscribed, is of the hand-
 writing of the Justice of the Peace within mentioned; I do therefore authorize
 W. T. who bringeth to me this Warrant, as originally directed, or by whom the
 same may be lawfully executed, and also all Constables and other Peace Officers
 of the said County of _____ to execute the same within the said County of _____
 —Given under my hand this _____ day of _____ 184

J. B.

(X)

*Constable's Return to a Warrant of Distress.*Constable's return
to a Warrant
of distress.

I, W. T., Constable of _____ in the County of _____ do hereby certify to J. S., Esquire, one of Her Majesty's Justices of the Peace for the said County, that by virtue of this Warrant I have made diligent search for the goods and chattels of the _____ the

the within mentioned A. B., and that I can find no sufficient goods or chattels of the said A. B. whereon to levy the sums within mentioned.—Witness my hand this day of 184

W. T.

(Y)

Warrant of a Commitment for want of Distress.

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

Whereas [*&c. as in either of the foregoing Distress Warrants U V to the asterisks * and then thus*]: And whereas afterwards on the day of in the year aforesaid, I, the said Justice, issued a Warrant to the Constable of commanding him to levy the said sums of • and by distress and sale of the goods and chattels of the said A. B.; and whereas it appears to me, as well by the return of the said Constable to the said Warrant of Distress as otherwise, that the said Constable hath made diligent search for the goods and chattels of the said A. B., but that no sufficient distress whereon to levy the sums above mentioned could be found: 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 deliver him to the said Keeper, 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, there to imprison him [*and keep him to hard labour*] for the space of unless the said several sums and all the costs and charges of the said distress [*and of the commitment and conveying of the said A. B. to the said Common Gaol,*] amounting to the further sum of shall be sooner paid unto you the said Keeper, 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.)

(Z)

Warrant of Commitment upon a conviction for a Penalty in the first instance.

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

Whereas A. B. late of [*Labourer*] was on this day duly convicted before the undersigned, [*one*] of Her Majesty's Justices of the Peace in and for the said County, for that [*stating the offence as in the conviction*]; and it was thereby adjudged that the said A. B. for his said offence should forfeit and pay the sum of [*&c. as in the conviction*] and should pay to the said C. D. the sum of for his costs in that behalf; and it was thereby further adjudged that if the said several sums should not be paid [*forthwith*] the said A. B. should be imprisoned in the Common Gaol at in the said County [*and there kept to hard labour*] for the space of unless the said several sums [*and the costs and charges of conveying the said A. B. to the said Common Gaol*] should be sooner paid; and whereas the time in and by the said conviction appointed for the payment of the said several sums hath elapsed, but the said A. B. hath not paid the same, or any part thereof, but therein hath made default: These are therefore to command you the said Constable of to take the said A. B. and him safely to 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

Warrant of commitment for want of distress.

Warrant of commitment for a penalty.

the said Common Gaol, to receive the said A. B. into your custody in the said Common Gaol, there to imprison him [*and keep him to hard labour*] for the space of unless the said several sums [*and the costs and charges of conveying him to the said Common Gaol, amounting to the further sum of*] shall be sooner paid, and for 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.)

(A a)

Warrant of Commitment on an Order in the first instance.

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

Warrant of commitment on an order.

Whereas on last past, complaint was made 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 Order*], and afterwards to wit on at the parties appeared before [*me*] the said Justice, [*or as it may be in the Order*] and thereupon having considered the matter of the said complaint, I adjudged the said A. B. to pay to the said C. D. the sum of on or before the day of then next, and also to pay to the said C. D. the sum of for his costs in that behalf; and I also thereby adjudged that if the said several sums should not be paid on or before the day of then next, the said A. B. should be imprisoned in the Common Gaol at in the said County [*and there kept to hard labour*] for the space of unless the said several sums [*and the costs and charges of conveying the said A. B. to the said Gaol*] should be sooner paid; and whereas the time in and by the said order appointed for the payment of the said several sums of money hath elapsed, but the said A. B. hath not paid the same or any part thereof, but therein hath made default: These are therefore to command you the said Constable of to take the said A. B. and him safely convey to the said 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, there to imprison him [*and keep him to hard labour*] for the space of unless the said several sums [*and the costs and charges of conveying him to the said Common Gaol amounting to the further sum of*] shall be sooner paid unto you the said Keeper; 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.)

(B b)

Warrant of Commitment on a conviction where the punishment is by imprisonment.

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

Warrant of commitment on a conviction where punishment is by imprisonment.

Whereas A. B. late of [*Labourer*] was this day duly convicted before the undersigned, [*one*] of Her Majesty's Justices of the Peace in and for the said County of for that [*stating the offence as in the conviction*], and it was thereby adjudged that the said A. B. for his said offence should be imprisoned in the Common Gaol at in the said County [*and there kept to hard labour*] for the space of : 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

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, there to imprison him (*and keep him to hard labour*) for the space of _____; 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.)

(Cc)

Warrant of Conviction on an Order where the disobeying of it is punishable by imprisonment.

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

Whereas on _____ last past complaint was made before the undersigned, [one] of Her Majesty's Justices of the Peace in and for the County of _____ for that [*&c. as in the order,*] and afterwards, to-wit, on _____ at _____ the said parties appeared before me, [*or as it may be in the order,*] and thereupon having considered the matter of the said complaint, I adjudged the said A. B. to [*&c. as in the order*] and that if upon a copy of the minute of that order being duly served upon the said A. B., either personally or by leaving the same for him at his last or most usual place of abode, he should neglect or refuse to obey the same, that in such case the said A. B. for such his disobedience should be imprisoned in the Common Gaol at _____ in the said County, [*and there kept to hard labour*] for the space of _____ [*unless the said order should be sooner obeyed*]; and whereas it is now proved to me that after the making of the said order a copy of the minute thereof was duly served upon the said A. B., but he then refused [*or neglected*] to obey the same, and hath not as yet obeyed the said order: These are therefore to command you the said Constable of _____ to take the said A. B. and him safely to 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, there to imprison him [*and keep him to hard labour*] for the space of _____ and for 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.)

(Dd)

Warrant of Distress for costs upon a conviction where the offence is punishable with imprisonment.

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

Whereas A. B. of _____ [*Labourer*] was on _____ last past duly convicted before the undersigned, [one] of Her Majesty's Justices of the Peace in and for the said County, for that [*stating the offence as in the conviction*] and it was thereby adjudged that the said A. B. for his said offence should be imprisoned in the Common Gaol at _____ in the said County [*and there kept to hard labour*] for the space of _____ and it was also thereby adjudged that the said A. B. should pay to the said C. D. the sum of _____ for his costs in that behalf; and it was thereby ordered that if the said sum of _____ for costs should not be paid [*forthwith*] the same shall be levied by distress and sale of the goods and chattels of the said A. B. [and it was adjudged that in default of sufficient distress in that behalf the said

A. B.

Warrant of commitment on an order where disobedience punishable by imprisonment.

Warrant of distress for costs where offence is punishable by imprisonment.

A. B. should be imprisoned in the said Common Gaol [*and there kept to hard labour*] for the space of _____ to commence at and from the termination of his imprisonment aforesaid, unless the said sum for costs, and all costs and charges of the said distress and of the commitment and conveying of the said A. B. to the said Common Gaol should be sooner paid *; and whereas the said A. B. being so convicted as aforesaid, and being required to pay the said sum of _____ for costs, hath not paid the same or any part thereof, but therein hath made default: These are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said A. B., and if within the space of _____ days next after the making of such distress the said last mentioned sum, together with the reasonable charges of taking and keeping the said distress shall not be paid, then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale to the County Treasurer for the use of the said County, that he may pay the same as by law directed, and may render the surplus, if any, on demand, to the said A. B., and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein as to the law doth appertain.—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 e)

Warrant of Distress for costs upon an Order where the disobeying of the Order is punishable with imprisonment.

Warrant of distress for costs on an order where disobedience is punishable with imprisonment.

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

Whereas on _____ last past complaint was made 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 order*] and afterwards, to-wit, on _____ at _____ the said parties appeared before me as such Justice as aforesaid [*or as it may be in the order*] and thereupon having considered the matter of such complaint, I adjudged the said A. B. to [*&c. as in the order*] and that if upon a copy of the minute of that order being served upon the said A. B., either personally or by leaving the same for him at his last or most usual abode, he should neglect or refuse to obey the same, I adjudged that in such case the said A. B., for such his disobedience, should be imprisoned in the Common Gaol at _____ in the said County [*and there kept to hard labour*] for the space of _____ unless the said order should be sooner obeyed; and I thereby also adjudged the said A. B. to pay to the said C. D. the sum of _____ for his costs in that behalf; and I ordered that if the said sum for costs should not be paid [*forthwith*] the same should be levied of the goods and chattels of the said A. B., and in default of sufficient distress in that behalf, I thereby adjudged that the said A. B. should be imprisoned in the said Common Gaol [*and there kept to hard labour*] for the space of _____ to commence at and from the termination of his imprisonment aforesaid, unless the said sum for costs, and all costs and charges of the said distress, and of the commitment and conveying of the said A. B. to the said Common Gaol, should be sooner paid *; and whereas after the making of the said order, a copy of the minute thereof was duly served upon the said A. B., but the said A. B. did not then pay, nor hath he paid the sum of _____ for costs or any part thereof, but therein hath made default: These are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said A. B., and if within the space of _____ days next after the making of such distress, the said last mentioned sum, together with the reasonable charges of taking and keeping the said distress shall not be paid,

paid, that then you do sell the goods and chattels so by you distrained, and do pay the money arising from such sale to the Treasurer of the said County, that he may pay the same as by law directed, and may render the overplus, if any, on demand, to the said A. B., and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein as to the law doth appertain.—Given under my hand and seal this day of in the year of our Lord at in the County aforesaid.

J. S. [L. s.]

(F f)

Warrant of Commitment for want of Distress in either of the last two cases.

Warrant of commitment for want of distress.

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

Whereas [*&c.*, as in the last two forms respectively to the asterisk * and then thus] and whereas afterwards, on the day of in the year aforesaid, I the said J. S. issued a Warrant to the Constable of commanding him to levy the said sum of for costs by distress and sale of the goods and chattels of the said A. B.; and whereas it appears to me, as well by the return of the said Constable to the said Warrant of Distress as otherwise, that the said Constable hath made diligent search for the goods and chattels of the said A. B., but that no sufficient distress whereon to levy the sum above mentioned could be found: These are therefore to command you the said Constable of to take the said A. B. and him safely to convey to the Common Gaol at aforesaid, and there 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, there to imprison him [*and keep him to hard labour*] for the space of unless the said sum and all costs and charges of the said distress, [*and of the commitment and conveying of the said A. B. to the said Gaol,*] amounting to the further sum of shall be sooner paid unto you the said Keeper, 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.]

(G g)

Warrant of Distress for costs upon an Order for dismissal of an Information or Complaint.

Warrant of distress for costs upon an order for dismissal of an information or complaint.

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

Whereas on last past information was laid [*or complaint was made*] before the undersigned, [*one*] of Her Majesty's Justices of the Peace in and for the said County, for that [*&c.* as in the Order of Dismissal,] and afterwards, to-wit, on at both parties appearing before me, in order that I should hear and determine the same, and the several proofs adduced to me in that behalf, being by me duly heard and considered, and it manifestly appearing to me that the said information [*or complaint*] was not proved, I therefore dismissed the same, and adjudged that the said C. D. should pay to the said A. B. the sum of for his costs incurred by him in his defence in that behalf; and I ordered that if the said sum for costs should not be paid [*forthwith*] the same should be levied of the goods and chattels of the said C. D.; [and I adjudged that in default of sufficient distress in that behalf, the said C. D. should be imprisoned in the Common Gaol at in the said County, and there kept to hard labour for the space of unless the

the

the said sum for costs, and all costs and charges of the said distress, and of the commitment and conveying of the said C. D. to the said Common Gaol, should be sooner paid] *; and whereas the said C. D. being now required to pay unto the said A. B. the said sum for costs, hath not paid the same or any part thereof, but therein hath made default: These are therefore to command you in Her Majesty's name forthwith to make distress of the goods and chattels of the said C. D.; and if within the space of _____ days next after the making of such distress, the said last mentioned sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale to the Treasurer of the said County, that he may pay and apply the same as by law directed, and may render the overplus, if any, on demand, to the said C. D.; and if no such distress can be found, then that you certify the same unto me to the end that such proceedings may be had therein as to the law doth appertain.—Given under my hand and seal this _____ day of _____ in the year of our Lord _____ at _____ in the County aforesaid.

J. S. [L. s.]

(Hh)

Warrant of Commitment for want of Distress in the last case.

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

Warrant of commitment for want of distress in the last case.

Whereas [*&c., as in the last form to the asterisk * and then thus*]: and whereas afterwards on the _____ day of _____ in the year aforesaid, I the said Justice issued a Warrant to the Constable of _____ commanding him to levy the said sum of _____ for costs by distress and sale of the goods and chattels of the said C. D.; and whereas it appears to me as well by return of the said Constable to the said Warrant of Distress as otherwise that the said Constable hath made diligent search for the goods and chattels of the said C. D., but that no sufficient distress whereon to levy the sum above mentioned could be found: These are therefore to command you the said Constable of _____ to take the said C. D. and him safely convey to the Common Gaol at _____ aforesaid, and there deliver him to the said Keeper together with this Precept: and I do hereby command you the said Keeper of the said Common Gaol to receive the said C. D. into your custody in the said Common Gaol, there to imprison him [*and keep him to hard labour*] for the space of _____ unless the said sum, and all costs and charges of the said distress, [*and of the commitment and conveying of the said C. D. to the said Common Gaol,*] amounting to the further sum of _____ shall be sooner paid unto you the said Keeper, 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.]

TABLE OF FEES IN SUMMARY PROCEEDINGS.

Table of Fees.

<i>Justices' Fees.</i>					
For every	Information or Complaint in writing,	....	....	....	£0 1 0
" "	Summons for Defendant or a Witness,	....	....	....	0 1 0
" "	Warrant to arrest,	....	....	....	0 1 6
" "	Backing a Warrant,	....	....	....	0 1 0
" "	Recognizance from each party,	....	....	....	0 0 6
" "	Warrant of Distress,	....	....	....	0 2 0

For every Warrant of Imprisonment,	£0 2 0
“ administering Oath or Affirmation,	0 1 0
“ the first folio of 100 words on a Trial taken down in writing,	0 1 0
“ every folio beyond the first,	0 0 6
“ “ copy of Summons or other necessary paper, half the allowance for the original.	0 0 6
“ “ Trial or Conviction,	0 3 6

Constables.

For serving a Summons and making return thereto, either against a party or Witness,	0 1 0
“ serving a Warrant to arrest,	0 1 6
In addition to these services to have <i>three pence</i> per mile going and coming, to be charged according to the number of miles actually travelled.	
“ getting Warrant backed,	0 1 0
“ serving Warrant of Distress,	0 1 0
And Poundage 1s. per £1.	
“ serving Warrant of Imprisonment,	0 2 0
In addition, travel as above.	

CAP. XXXII.

An Act to appropriate a part of the Public Revenue for the payment of the Ordinary Services of the Province.

Passed 14th April 1849.

I. **B**E it enacted by the Lieutenant Governor, Legislative Council and Assembly, That there be allowed and paid out of the Treasury of the Province for the services hereinafter mentioned, the following sums, to-wit :

Chaplains.

To the Chaplain of the Legislative Council in General Assembly twenty pounds.

To the Chaplain of the House of Assembly twenty pounds.

Sergeants at Arms.

To the Sergeant at Arms attending the Legislative Council in General Assembly fifteen shillings per diem during the present Session.

To the Sergeant at Arms attending the House of Assembly fifteen shillings per diem during the present Session.

Clerks of Council and Assembly.

To the Clerk of the Legislative Council in General Assembly two hundred pounds in full for his services during the present Session.

To the Clerk of the House of Assembly two hundred pounds in full for his services during the present Session.

Clerks Assistant of Council and Assembly.

To the Clerk Assistant of the Legislative Council in General Assembly one hundred pounds in full for his services during the present Session.

To the Clerk Assistant of the House of Assembly one hundred pounds in full for his services during the present Session.

Doorkeepers and Messengers.

To the Doorkeepers attending the Legislative Council and Assembly ten shillings each per diem during the present Session.

To the Messengers attending the Legislative Council and Assembly seven shillings and six pence each per diem during the present Session.

Parish Schools.

To His Excellency the Lieutenant Governor or Administrator of the Government for the time being, ten thousand pounds towards the encouragement of Parish Schools, agreeably to a Law of this Province.

Apprehension of Deserters.

To His Excellency the Lieutenant Governor or Administrator of the Government for the time being, a sum not exceeding one hundred pounds to be applied in

in