

## CAP. XXXIX.

An Act to consolidate and amend various Acts of Assembly relating to the further amendment of the Law.

Passed 14th April 1849.

Preamble.

‘WHEREAS it is expedient that several Acts of Assembly relating to the ‘amendment of the Law should be amended and consolidated into one ‘Act;’

Repeal of the following Statutes and parts of Statutes :

26 G. 3, c. 21,

26 G. 3, c. 25,

4 G. 4, c. 17,

8 G. 4, c. 4,

9 & 10 G. 4, c. 1,

9 & 10 G. 4, c. 11,

5 W. 4, c. 26,

5 W. 4, c. 37, s. 9,

6 W. 4, c. 33, s. 6,

7 W. 4, c. 14,

1 V. c. 13,

4 V. c. 4,

6 V. c. 33, s. 1,

10 V. c. 60,

11 V. c. 14.

Reservations from the effect of the repeal.

I. Be it therefore enacted by the Lieutenant Governor, Legislative Council and Assembly, That the several Acts and parts of Acts hereinafter mentioned be and the same are hereby repealed, (save as hereinafter otherwise is provided,) that is to say: An Act made and passed in the twenty sixth year of the Reign of His Majesty King George the Third, intituled *An Act to prevent unnecessary expense in actions on the case on judgment by default*; also an Act made and passed in the twenty sixth year of the same Reign, intituled *An Act to prevent frivolous and vexatious arrests*; also an Act made and passed in the fourth year of the Reign of King George the Fourth, intituled *An Act to provide for the surrender of the principal in discharge of Bail in actions pending in the Supreme Court of Judicature of this Province*; also an Act made and passed in the eighth year of the same Reign, intituled *An Act for the more easy assessment of damages in actions on Bonds payable by instalments and other similar instruments, and for the more convenient service of Writs of scire facias*; also an Act made and passed in the ninth and tenth years of the same Reign, intituled *An Act to prevent the failure of justice by reason of variances between Records and Writings produced in evidence in support thereof*; also an Act made and passed in the same years of the same Reign, intituled, *An Act to continue and amend an Act, intituled “An Act to provide for the surrender of the principal in discharge of Bail in actions pending in the Supreme Court of Judicature in this Province;”* also an Act made and passed in the fifth year of the Reign of His late Majesty William the Fourth, intituled *An Act to make perpetual the Acts of the General Assembly relating to the surrender of the principal in discharge of Bail*; also the ninth Section of an Act made and passed in the same year of the same Reign, intituled *An Act to provide for the more convenient administration of Justice in the Supreme Court*; also the sixth Section of an Act made and passed in the sixth year of the same Reign, intituled *An Act to prescribe certain general regulations in respect to Corporations*; also an Act made and passed in the seventh year of the same year, intituled *An Act for the amendment of the Law and the better advancement of Justice*; also an Act made and passed in the first year of the Reign of Her present Majesty, intituled *An Act for the further amendment of the Law*; also an Act made and passed in the fourth year of the same Reign, intituled *An Act in further amendment of the Law*; also the first Section of an Act made and passed in the sixth year of the same Reign, intituled *An Act to amend the Law relating to the practice in the Inferior Court of Common Pleas, and render the same uniform in the several Counties*; also an Act made and passed in the tenth year of the same Reign, intituled *An Act for the further amendment of the Law and the better advancement of Justice*; also an Act made and passed in the eleventh year of the same Reign, intituled *An Act in further amendment of the Law*: Provided always, that nothing in this Act contained shall extend to repeal any of the said recited Acts so far as they or any of them repeal any former Acts, or so far as respects any act, matter or thing heretofore done under and by virtue of the said recited Acts; provided also, that any Rules of Court or regulations heretofore made under and by virtue of any authority given in and by the said recited Acts, shall be and still continue valid, effectual and applicable to the provisions

provisions of this Act, so far as consistent with the same, until such rules or regulations may from time to time be altered; and provided also, that all actions commenced in the said Courts, under the provisions of the said recited Acts, before the passing of this Act, may still be proceeded with to their final termination, in the same manner as if this Act had not been made and passed.

#### ABATEMENT.

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

Restriction as to pleas in abatement for non-joinder of any person as a co-defendant.

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

Plaintiff may recover in a new action against original defendants and parties named in a plea in abatement, although defendants named in the plea be found not liable.

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

Misnomer not pleadable in abatement in personal actions;

Where by law pleadable, declaration may be amended, upon a Judge's summons.

#### AMENDMENT.

V. 'And whereas great expense is often incurred, and delay or failure of justice takes place at trials by reason of variances as to some particular or particulars between the proof and the record, or setting forth on the record or document on which the trial is had, of writings, contracts, customs, prescriptions, names, and other matters or circumstances not material to the merits of the case, and by the mis-statement of which the opposite party cannot have been prejudiced: And whereas it is expedient to allow amendments, as hereinafter mentioned, to be made on the trial of the cause;' Be it therefore enacted, That it shall be lawful for any Court of Record in this Province, or any Judge thereof, on the trial of the cause, if such Court or Judge shall see fit so to do, to cause the record, writ or document on which any trial may be pending before any such Court or Judge in any civil action, or in any information in the nature of a quo warranto or proceeding on a mandamus in the Supreme Court, when any variance shall appear

Amendments may be made by order of Court or Judge, in the record or document in which a trial is pending, in certain cases.

appear between the proof and the recital or setting forth on the record, writ or document on which the trial is proceeding, of any writing, contract, custom, prescription, name, or other matter, in any particular or particulars, in the judgment of such Court or Judge not material to the merits of the case, and by which the opposite party cannot have been prejudiced in the conduct of his action, prosecution or defence, to be forthwith amended by some officer of the Court or otherwise, both in the part of the pleadings where such variance occurs, and in every other part of the pleadings which it may become necessary to amend; on such terms as to payment of costs to the other party, or postponing the trial to be had before the same or another Jury, or both payment of costs and postponement, as such Court or Judge shall think reasonable; and in case such variance shall be in some particular or particulars, in the judgment of such Court or Judge, not material to the merits of the case, but such as that the opposite party may have been prejudiced thereby in the conduct of his action, prosecution, or defence, then such Court or Judge shall have power to cause the same to be amended, upon payment of cost to the other party, and withdrawing the record or postponing the trial as aforesaid, as such Court or Judge shall think reasonable; and after any such amendment the trial shall proceed, in case the same shall be proceeded with, in the same manner in all respects, both with respect to the liability of witnesses to be indicted for perjury and otherwise, as if no such variance had appeared; and in case such trial shall be had at Nisi Prius, the order for the amendment shall be endorsed on the postea or the writ, as the case may be, and returned together with the record or writ, and thereupon such papers, rolls and other records as it may be necessary to amend, shall be amended accordingly; provided that it shall be lawful for any party who is dissatisfied with the decision of any Judge of the Supreme Court at Nisi Prius, respecting his allowance of any such amendment, to apply to the Court in banc for a new trial upon that ground; and in case such Court shall think such amendment improper, a new trial shall be granted accordingly, on such terms as the Court shall think fit, or the Court shall make such other order as to them may seem meet.

Court or Judge may direct the Jury to find the facts according to the evidence, and may afterwards give judgment according to justice.

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

#### ARBITRATION.

Submission to arbitration by Rule of Court, &c., not to be revoked without leave.

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

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

Attendance and examination of persons and production of documents may be enforced by a rule or order.

IX. And be it enacted, That when in any rule or order of reference it shall be ordered or agreed that the witnesses upon such reference shall be examined upon oath, it shall be lawful for the arbitrators, or any one of them, and he or they are hereby authorized and required to administer an oath to such witnesses, or to take their affirmation in cases where affirmation is allowed by law instead of an oath; and if upon such oath or affirmation any person making the same shall wilfully and corruptly give any false evidence, every person so offending shall be deemed and taken to be guilty of perjury, and shall be prosecuted accordingly.

Arbitrators may administer an oath when by the order of reference it is ordered that the witnesses shall be so examined.

X. And be it enacted, That in any case in which a reference to arbitration shall be made at Nisi Prius, and it shall be ordered that the award of the arbitrators shall be returned on the postea as the verdict of a Jury, and the award shall be filed with the officer who returns the postea, after the last day of the sitting of the Court, such officer shall set down on the margin thereof the day on which such award shall be so filed with him, instead of the last day of the sitting of the Court; and no rule for judgment on the postea shall be entered until the expiration of twenty days after the day so set down; and any Judge of the said Court in any such case in which justice may appear so to require, may either upon Summons or not, according to the circumstances of the case, order the returning of the postea and the entry and signing of judgment to be stayed until the Court shall make order in the matter at the next succeeding Term.

In references to arbitration made at Nisi Prius, &c., officer returning the postea to set down date of filing the award on the margin.

#### BAIL.

XI. And be it enacted, That no person shall be held to special Bail upon any process issuing out of any Court of Record in this Province where the cause of action shall not amount to upwards of five pounds, and affidavit thereof made and filed as heretofore accustomed; which affidavit may be made before any Judge of the Court out of which the process may issue, or before any Commissioner appointed to take affidavits to be read in the Supreme Court, or the officer who issues such process or his deputy, and in cases where the plaintiff shall reside out of the Province in any of Her Majesty's Plantations or Provinces, before any Judge of the Supreme or Superior Court in such Plantation or Province; and the sum or sums specified in such affidavit shall be endorsed on the back of the writ or process, for which sum or sums so endorsed, the Sheriff or other officer to whom such writ or process shall be directed, shall take bail and for no more.

No person to be held to special bail when cause of action does not amount to more than £5, on affidavit.

XII. And be it enacted, That in all suits wherein the writ or process shall not be so endorsed for bail, the defendant shall not be arrested, but shall be served

Amount in affidavit to be endorsed on the writ.

Defendant not to be arrested when endorsement is not made on the writ,

with

but plaintiff may proceed on affidavit of due service.

with a copy of the process within the jurisdiction of the Court issuing such process, in manner heretofore accustomed; and if such defendant shall not appear or file common bail at the return of such writ, or within twenty days after such return, it shall be lawful for the plaintiff, upon affidavit of the due service of such writ or process, as hereinafter directed, to enter a common appearance or file common bail for the defendant, and to proceed thereon as if such defendant had entered his appearance or filed common bail.

Defendant at large on bail may be rendered in discharge of his bail in the Supreme Court.

XIII. And be it enacted, That a defendant who shall have been held to bail upon any mesne process issued out of the Supreme Court in this Province, may be rendered in discharge of his bail, to the common gaol of any County in which he may be, and the render to such County gaol shall be effected in manner following, that is to say: The defendant, or his bail, or one of them, shall for the purpose of such render obtain an order of a Judge of the said Court, and shall lodge such order with the gaoler of such gaol to which the render may be made, and a notice in writing of the lodgment of such order, and of the defendant's being actually in custody of such gaoler by virtue of such order, signed by the defendant, or the bail, or either of them, or by the Attorney of either of them, shall be delivered to the plaintiff's Attorney, and the Sheriff of such County shall, on such render so perfected, be duly charged with the custody of such defendant, and the said bail shall be thereupon wholly exonerated from liability as such; provided always, that in any County in which there may not be a Judge of the said Court at the time of any render so to be made, an order for such render may be obtained from any Commissioner for taking bail in such Court for such County, which order such Commissioner is hereby authorized in such case to grant.

May be rendered when already in custody.

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

Foregoing provisions for render of bail extended to the Inferior Courts of Common Pleas.

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

#### CORPORATIONS.

Proceeding by original against a Corporation abolished.

First process to be a Summons.

XVI. And be it enacted, That the proceeding by original against any Corporation shall be abolished, and the first process in every action to be brought against any Corporation shall be by Writ of Summons according to the form or to the effect following, that is to say:

'VICTORIA, ss. To the Sheriff of Greeting.

'We command you that you summon [*here insert the name of Corporation*] that they be before, &c., to answer A. B. of a plea, [*&c. as the case may be,*] and 'have then there this Writ. Witness, &c.'

And

And every such Writ of Summons may be served on the Mayor, President or other head officer, or on the Secretary, Clerk, Treasurer or Cashier of such Corporation; and in the case of a Foreign Corporation, or of any body politic or corporate, not being established or incorporated within this Province, and which may enter into any contract or engagement, or transact any business therein by their known or accredited agent or officer, every such Writ or Summons may be served on such accredited agent or officer, or on the person who at the time of such service may be the accredited agent or officer of such Corporation or body politic or corporate within this Province; and such service shall have the like effect in every respect as the service of such Summons on the officers of any Corporation, as is hereinbefore provided.

Service may be made on certain officers.

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

Plaintiff may enter appearance for a Corporation duly served with Summons and not appearing.

#### COSTS.

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

Executors or Administrators, suing as such, to be liable to costs when non-sued, &c.

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

Defendants having a nolle prosequi entered as to them or a verdict, to have costs.

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

Also, where nolle prosequi entered upon any count, &c.

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

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

XXII. And whereas it is provided in and by an Act passed in the twenty sixth year of the Reign of His late Majesty King George the Third, intituled 'An Act for regulating Juries and declaring the qualification of Jurors, that the party who shall apply for a special Jury shall pay the fees for striking such Jury, and all the expenses occasioned by the trial of the cause by the same, and shall not have any further or other allowance for the same, upon taxation of costs, than such party would be entitled unto in case the cause had been tried by a common

Costs of special Juries in cases of non-suit.

26 G. 3, c. 6.

‘ common Jury, unless the Judge before whom the cause is tried, shall immediately  
 ‘ after the trial certify under his hand, upon the back of the record, that the same  
 ‘ was a cause proper to be tried by a special Jury : And whereas the said provision  
 ‘ does not apply to cases in which the plaintiff has been non-suited ; and it is expe-  
 ‘ dient that the Judge should have such power of certifying, as well when a plaintiff  
 ‘ is non-suited, as when he has a verdict against him ;’ Be it therefore enacted,  
 That the said provision of the said last mentioned Act, and every thing therein con-  
 tained, shall apply to cases in which the plaintiff shall be non-suited, as well as  
 to cases in which a verdict shall pass against him.

#### CONSTRUCTION CLAUSE.

Construction of  
words.

‘ Person.’

Words importing  
singular or plural  
number.

Masculine gender.

Exception.

XXIII. And be it enacted, That in any Act of the General Assembly of this Province which may have been passed during or since the first year of Her present Majesty’s Reign, or which may be passed at the present or any future Session, the word “person” shall extend to a body politic or corporate, as well as to an individual ; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing ; and every word importing the plural number shall extend and be applied to one person or thing as well as to several persons or things ; and every word importing the masculine gender only, shall extend and be applied to a female as well as to a male ; provided always, that those words and expressions occurring in this clause to which more than one meaning is to be attached, shall not have the different meanings given to them by this clause in those cases in which there may be any thing in the subject or context repugnant to such construction, and in which such construction could not reasonably be supposed to have been intended.

#### DAMAGES.

In actions on  
promises, debt,  
bonds, &c., and

for penal sums, &c.,

where judgment is  
given for the plain-  
tiff upon demurrer,  
&c., the damages  
may be assessed by  
the Court in term,  
or by a Judge in  
vacation.

On production of  
assessment, Clerk  
to tax costs and  
sign judgment.

Twenty days to  
elapse in vacation  
before the assess-  
ment be made.

Judge may order  
assessment to be  
made by a Jury.

XXIV. And be it enacted, That in all actions in any of Her Majesty’s Courts of Record in this Province on the case upon promises, action of debt, action upon any bond conditioned for the payment of money by instalments, or for the performance of agreements or awards where such agreements or awards are expressed only for the payment of any sum or sums of money, and in all actions for any penal sums for not performing any covenants or agreements in any indenture, deed or writing contained, where such covenants or agreements are only for the payment of money, actions of covenant for the payment of any certain sum or sums of money, in which judgment shall be given for the plaintiff upon demurrer or by confession, or by nihil dicit, damages may be assessed, or the truth of all breaches assigned or suggested on the record may be inquired of, and the damages thereupon assessed by the Court in term time, or by some Judge of the Court wherein the action is brought in vacation, without the intervention of a Jury ; provided always, that nothing herein contained shall extend to actions on bonds conditioned for the payment of a single sum of money not payable by instalments ; and upon the production of such assessment, signed by any such Judge, it shall be lawful for the Clerk of the Court to tax the costs and sign judgment, whereupon execution may issue forthwith ; provided always, that no such assessment or inquiry and assessment shall be made in Vacation until the expiration of twenty days after the day on which judgment on demurrer or confession or nihil dicit shall have been entered ; provided also, that the defendant in any such action may upon due application therefor, have such assessment or inquiry and assessment made by a Jury, and that the Judge who may be applied to in vacation to make such inquiry and assessment, shall have power to order the same to be  
made

made by a Jury in the usual manner, when the same may appear proper or expedient.

XXV. Provided always and be it enacted, That in each case such judgment shall as now accustomed, remain, continue and be as a further security to answer to the plaintiff, and his executors or administrators, such damages as shall or may be sustained for further breach of any condition or covenant in the bond, indenture, deed or writing contained, upon which the plaintiff may have a scire facias upon the said judgment against the defendant, or against his heirs, terretenants, or his executors or administrators, suggesting such other breach or breaches, and to summon him or them respectively, to shew cause why execution shall not be had or awarded upon the said judgment, and if no appearance be entered by the defendant upon such scire facias, the Courts in which such actions have been brought are respectively authorized and empowered to assess such further damages and to award execution for such damages, together with the costs and charges of such proceedings, in manner as hereinbefore directed, and so in case of any further breaches a further assignment or suggestion may be made, and the like proceedings may be had as hereinbefore directed.

Judgment to remain as a security for further breaches upon which a scire facias may issue.

On failure of appearance to the scire facias, the Court may assess the further damages and award execution.

XXVI. Provided nevertheless, and be it enacted, That nothing in this Act contained shall extend or be construed to prevent the defendant from having a Jury summoned to assess the damages upon the breaches assigned, in the manner heretofore accustomed, provided he give notice to the plaintiff of such wish or intention within ten days after judgment is signed in the action, or such scire facias served; and provided also, that the Court in which such action is brought shall have full power to order and direct the damages to be assessed by a Jury in any case where the same may appear proper or expedient, and to award execution thereupon.

Act not to prevent a Jury being summoned by defendant on notice given within ten days after judgment signed.

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

Jury or Court or Judge may allow interest on debts in certain cases.

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

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

XXIX. And be it enacted, That in all cases where any verdict or assessment of any debt or damages may be given or made for any party in any suit in any such Courts in which interest is or may have been included, under the provisions of this Act or otherwise, and the final judgment of the Court thereupon may have been delayed by the opposite party, either by a rule nisi, demurrer or otherwise, it shall be lawful for such Court in its discretion, when such verdict or assessment is sustained, to allow interest thereupon, at a rate not exceeding six per cent. per annum from the time of such verdict or assessment until the rendering of final judgment therefor.

Court may allow interest on certain verdicts or assessments where the verdict or assessment is sustained after suspension by rule nisi, &c.



Court may prescribe form of entry of judgment &c. in such cases.

XXX. And be it enacted, That any of the said Courts may, by general rule, prescribe the form of entry of judgment and execution in cases where such further interest may be so allowed.

#### EXECUTORS.

Executors of lessor may distrain for arrears in his life time.

XXXI. And be it enacted, That it shall be lawful for the executors or administrators of any lessor or landlord to distrain upon the lands demised for any term, or at will, for the arrearages of rent due to such lessor or landlord in his lifetime, in like manner as such lessor or landlord might have done in his lifetime.

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

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

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

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

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

#### EXECUTION.

Execution may be issued in the first instance as if the venue had been laid in the County where the execution is to be executed; and the testatum clause may be omitted.

XXXIV. 'Whereas the practice in the Supreme Court of requiring an execution, issuing on any judgment in such Court in the first instance, to be directed to the Sheriff or other officer in the County where the venue is laid, (excepting in proceedings to fix bail,) and also the practice of requiring a testatum clause in any execution, are considered useless and unnecessary;' Be it therefore enacted, That any such execution may upon any judgment obtained after the passing of this Act, be in the same form and issued in the first instance as if the venue had been laid in the County where such execution is directed to be executed, and that the omission of the usual testatum clause in any such execution shall no longer be considered an irregularity, provided that nothing in this Act contained shall be construed to affect the ordinary proceedings to fix bail.

Execution may be issued on any final judgment within five years thereof.

XXXV. 'And whereas it is expedient to enlarge the time within which an execution may be issued on any final judgment obtained in any Court of Record in this Province;' Be it therefore enacted, That execution on any such judgment may be issued at any time within the period of five years from the time of signing such

such judgment ; and for the purpose of preventing the necessity of any scire facias to revive such judgment, the issue of such execution within such period shall be deemed as regular and effectual as if the same had been issued within a year and a day from the time of signing such judgment.

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

No goods, &c., to be taken in execution, &c., unless the party before removal of the goods, &c., pay arrears of rent, not exceeding one year's.

XXXVII. Provided always and be it enacted, That nothing in the foregoing Section contained shall be construed to extend to hinder or prejudice Her Majesty, Her Heirs or Successors, in levying, recovering, or seizing any debts, fines, penalties or forfeitures due or payable to Her Majesty, Her Heirs or Successors, but that it shall and may be lawful for Her Majesty, Her Heirs and Successors, to levy, recover and seize such debts, fines, penalties or forfeitures in the same manner as if this Act had not been passed.

Preceding section not to prevent levying debts, &c., due the Crown.

INITIALS.

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

In affidavit to hold to bail, &c., initials may be used.

MONEY PAID INTO COURT.

XXXIX. And be it enacted, That it shall and may be lawful for the defendant in all personal actions pending or to be brought in any Court of Record in this Province, (except actions for assault and battery, false imprisonment, libel, slander, malicious arrest or prosecution, criminal conversation or debauchery of the plaintiff's daughter or servant,) by leave of the Court, or a Judge of the Court in which the action is brought, to pay into the said Court a sum of money by way of compensation or amends, in such manner and under such regulations as to the payment of costs and the form of pleading, as the Supreme Court shall, by any rule or orders by them to be from time to time made, order and direct.

Defendants in certain personal actions may by leave pay into Court money as compensation.

NOTES.

XL. And be it enacted, That all Notes in writing, payable in specific articles, whether for a sum certain or otherwise, shall be deemed and held prima facie to import that they were given for a valuable consideration, in like manner as promissory notes for the payment of money.

Valuable consideration to be implied in Notes payable in specific articles.

PARTICULARS.

## PARTICULARS.

Written demand of particulars duly served, to have the effect of a Judge's order.

XLI. ' And whereas it is considered expedient that a demand of particulars in writing, duly served on the opposite party or his Attorney, should have the like effect as a Judge's order for the same ;' Be it therefore enacted, That in all actions brought or hereafter to be brought in any Court of Record in this Province, wherein by law particulars may now be required, a demand in writing duly served on the opposite party or his attorney, shall from the time of such service have the like effect as a Judge's order, that is to say, where served on the plaintiff or his attorney, such demand of particulars shall operate as a stay of proceedings until the same be given, and where served on the defendant or his attorney shall, unless the particulars of set off be given within six days after service of the demand, preclude the defendant from giving evidence of his set off on the trial of the cause ; provided that where either party may be dissatisfied with the particulars given in pursuance of such demand, an order of a Judge may be obtained for further particulars as in ordinary cases ; and provided also, that either party may obtain the order of a Judge of the Court in which the action may be, to set aside such demand, or to enlarge the time for giving the particulars, or for such other order in regard to such demand or particulars as the justice of the case may require.

On dissatisfaction with particulars given, Judge's order may be obtained for further particulars.

## SEVERAL MATTERS.

Several matters may be pleaded without actually obtaining a Rule of Court.

XLII. ' Whereas the practice of requiring a Rule of Court to be taken out for pleading several matters in any cause brought in any Court of Record in this Province, is found inconvenient, and may be abolished, leaving to the Court or any Judge the power to set aside any improper or inconsistent pleas as heretofore accustomed ;' Be it therefore enacted, That in all cases where by the law or practice of the Court a party may be authorized or required to take out a rule to plead several matters, such party may plead such several matters without actually obtaining such rule ; and the leave of the Court to plead such several matters, agreeably to the directions of the Statute in such case made and provided, shall always be presumed to have been given ; provided that any pleas may be set aside by the Court or Judge, either on the ground of inconsistency, or any other grounds, (except for not taking out such rule,) where by law or the practice of the Court pleas can now be set aside.

## SPECIAL CASE.

Parties may by consent of Court state their case specially, and agree that judgment may be entered on decision.

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

## WRITS, SERVICE OF.

Non-bailable Writs to be served personally, or by leaving a copy with defendant's wife, &c., at his usual place of abode.

XLIV. And be it enacted, That the service of any non-bailable writ or process issued out of any Court of Record in this Province may be made by the defendant being personally served with a true copy of the process within the jurisdiction of the Court issuing such process, and affidavit thereof duly made as heretofore accustomed, or in case the defendant has a known place of abode within the jurisdiction of the Court from which such writ or process may have issued and shall then be within the same, such writ or process may be served at the usual place

place of abode of such defendant, by delivering a copy of the writ or process with any requisite notice to the wife of such defendant, or to an adult person residing in the house, being a member or inmate of the family of such defendant; provided that such last mentioned service shall not be deemed a good service without the order of the Court out of which the writ or process issued, or a Judge thereof, upon affidavit shewing to the satisfaction of such Court or Judge the circumstances of such service, and that the place where the writ or process was served was at the time of such service the usual place of abode of such defendant.

## WITNESSES.

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

Witnesses cannot by law refuse to answer relevant questions which have no tendency to self accusation, &c.

XLVI. And be it enacted, That throughout this Act, in the construction thereof, (except there be something in the subject or context inconsistent with or repugnant to such construction,) the words or expression "any Court of Record," shall extend to and mean the Supreme Court, any Inferior Court of Common Pleas, and the Mayor's Court in and for the City and County of Saint John.

Construction of term 'Court of Record.'

## CAP. XL.

An Act to consolidate and amend the several Acts of Assembly relating to Summary Actions.

Passed 14th April 1849.

**W**HEREAS it is considered expedient that the several Acts of Assembly relating to Summary Actions, both in the Supreme and Inferior Courts of Common Pleas, should be arranged and consolidated into one Act;

Preamble.

I. Be it therefore enacted by the Lieutenant Governor, Legislative Council and Assembly, That the several Acts and parts of Acts hereinafter mentioned shall be and the same are hereby repealed, (save as hereinafter otherwise is provided,) that is to say: The fifth, sixth, seventh and eighth Sections of an Act made and passed in the thirty fifth year of the Reign of His Majesty King George the Third, intituled *An Act to regulate the Terms of the Sittings of the Inferior Courts of Common Pleas in this Province, and to enlarge the jurisdiction of the same, and for the summary trials of certain actions*; also an Act made and passed in the forty second year of the same Reign, intituled *An Act in addition to an Act to regulate the Terms of the Sittings of the Inferior Courts of Common Pleas in this Province, and to enlarge the jurisdiction of the same, and for the summary trial of actions*; also an Act made and passed in the fourth year of the Reign of His late Majesty William the Fourth, intituled *An Act to establish and regulate a Summary Practice in the Supreme Court*; also an Act made and passed in the fifth year of the same Reign, intituled *An Act to amend the Law relating to a Summary Practice in the Supreme Court*; also an Act made and passed in the sixth year of the same Reign, intituled *An Act to amend the Law relating to the Summary Practice in the Inferior Courts of Common Pleas*; also the second and subsequent Sections of an Act made and passed in the sixth year of the Reign of Her present Majesty, intituled

The following Acts and parts of Acts repealed:

35 G. 3, c. 2,  
s. 5, 6, 7 & 8.

42 G. 3, c. 7.

4 W. 4, c. 41.

5 W. 4, c. 39.

6 W. 4, c. 48.