

subject to a penalty of ten pounds currency, to be recovered with costs by summary process before any one or more Justices of the peace, for the division or district in which such Town, Township or Place may lie.

VI. And be it enacted, that all proceedings in any suit, action or prosecution, which before the passing of this Act, may, under the provisions of the Provincial Act herein first above cited, have been commenced against any such Quaker, Mennonist or Tunker, as aforesaid, for the recovery of any penalty imposed by the said Act, shall cease and be discontinued from and after the passing of this Act.

Prosecution pending against Quakers, Mennonists, or Tunkers, for penalties imposed by the Act first cited, to be discontinued.

### C A P . III.

An Act to repeal the Laws now in force in that part of this Province, formerly Upper Canada, for the recovery of Small Debts, and to make other provisions therefor.

[27th August, 1841.]

**W**HEREAS the system and practice of the Courts of Requests established under and by virtue of certain Acts of the Parliament of the late Province of Upper Canada, require to be amended: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, intituled, *An Act to Re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*; and it is hereby enacted by the authority of the same, that from and after the first day of December next ensuing, a certain Act of the Parliament of the said late Province of Upper Canada, passed in the third year of the Reign of His late Majesty King William the Fourth, intituled, *An Act to repeal part of, amend and reduce to one Act of Parliament, the several Laws now in force in this Province for the recovery of Small Debts, and to extend the jurisdiction of the Court of Requests within the same*; and also a certain other Act of the Parliament of the said late Province, passed in the seventh year of the Reign of His late Majesty King William the Fourth, intituled, *An Act to amend the Law relating to the Court of Requests*, shall be and the same are hereby repealed, and all the powers and authorities given by the said Acts or by any other Acts of the Parliament of the said Province, to any Courts

Preamble.

Certain Acts of the Legislature of Upper Canada relating to Courts of Requests, repealed after a certain day.

The powers granted to any Courts of Requests by any other Act to cease from the said day.

B

of

Judgments and orders of discontinued Courts to remain in force.

How and by whom the same shall be enforced and executed.

Each District in Canada West to be divided into divisions by the Justices of the Peace in Quarter Sessions.

And a Court to be holden in each such division, for the purposes of this Act.

Orders made by such Justices in the behalf aforesaid to be recorded, and a copy transmitted to the Governor.

How Division Courts in each District shall be distinguished.

The Judges of the District Courts to preside over the Division Courts, and to

of Requests, and to the several Commissioners thereof, shall then cease and determine: Provided always, that all orders, decisions and judgments of any Court discontinued by virtue of this Act, shall remain and be of the same force as if this Act had not been made, except that when any such order or judgment shall have been made for the payment of money to, or shall have authorized money to be collected by any officer of such discontinued Court, such order or judgment shall stand in force for payment of such money to the Clerk or other officer appointed to receive the same, of the Court created by this Act, and holden for the division including the place in which such discontinued Court was holden; and it shall be lawful for the Judge of the District Court to enforce all orders, decisions or judgments of such discontinued Court, which are unperformed or in course of being performed (employing for that purpose the proper officers of his Division Court) as fully and in like manner as if such orders had been made by the authority of the said Judge.

II. And be it enacted, that it shall and may be lawful for the Justices of the Peace of each District, now or hereafter to be erected in *Canada West*, at the first General Quarter Sessions which shall be holden after the passing of this Act, to declare and appoint the limits and extent of six divisions within their respective Districts, and also, from time to time, in like manner to alter the limits and extent of such divisions; and that a Court shall be holden under this Act once in two months in and for every such division; and that it shall and may be lawful for the said Judge of the said Court to fix and appoint the times and the places within such divisions, when and at which such Courts shall be holden, and in like manner from time to time, to alter the same.

III. And be it enacted, that the divisions of each District so declared and appointed, and the times and places of holding such Courts, and all alterations that may be from time to time made therein as aforesaid, shall be entered and recorded by the Clerk of the Peace, in a book to be by him kept for that purpose; and that it shall be his duty to transmit to the Governor of this Province, a copy of every such entry and record as soon as the same shall have been made.

IV. And be it enacted, that the Justices so assembled as aforesaid, shall be required to number the said divisions, beginning at number one; and that the Court to be held in each division shall be known by the name and style of *The* (first or other as the case may be) *Division Court for the District of*

V. And be it enacted, that the Judges of the District Courts of the several Districts in this Province, shall preside over the Division Courts within their respective Districts, and no such Judge shall during the continuance of his appointment,

pointment, be capable of being elected or of sitting as a Member of the Legislative Assembly of this Province.

be ineligible as members of the Legislative Assembly.

VI. And be it enacted, that in case of the illness or unavoidable absence of the Judge of any such District Court, it shall be lawful for such Judge to appoint some other person who would be otherwise qualified to be appointed a Judge of such District Court, to act as his Deputy, and every person so appointed, shall, during the time for which he shall be so appointed, have all the powers and privileges, and be subject to all the duties of the Judge by whom he shall have been so appointed: and notice of every such appointment shall be forthwith sent by the Judge or Deputy Judge to the Governor of this Province, and such notice shall specify the name, residence and profession of the Deputy Judge and the cause of his appointment, and no such appointment shall be continued for more than one calendar month without a renewal of the like notice; and it shall be lawful for the Governor to annul any such appointment of which he shall disapprove.

The Judge of any District Court may appoint a deputy in certain cases.

Such appointment to be notified to the Governor who may amend it.

VII. And be it enacted, that for every Court holden under the authority of this Act, there shall be a Clerk and one or more Bailiffs; and the Judge of the District Court shall from time to time appoint, and at his pleasure remove the Clerk and Bailiffs of the Courts holden by him.

A Clerk and Bailiffs to be appointed for each Division Court by the Judge.

VIII. And be it enacted, that it shall be lawful for the Clerk of any such Division Court (with the approval of the Judge thereof) to appoint from time to time, a Deputy to act for him in the office of Clerk of the Court, at any time when he shall be prevented by illness or other unavoidable accident from acting in such office, and to remove such Deputy at his pleasure; and such Deputy, during the time for which he shall be so appointed, shall have the like powers and privileges, and be subject to the like duties as if he were the Clerk of the Court for the time being; and the Clerk of the Court shall be civilly responsible for all the acts and omissions of his Deputy.

Clerk in case of illness to appoint a Deputy.

IX. And be it enacted, that the Treasurer of every District shall be the Receiver General of fees of the several Division Courts within his District; and every such Treasurer shall be paid a percentage of three pounds on every hundred pounds of the gross produce of the fees of the Courts of which he is Receiver General, and every Judge and Clerk shall be paid by a certain salary; the salary of a Judge being in no case more than two hundred pounds or less than one hundred pounds and the salary of a Clerk being in no case more than one hundred pounds or less than twenty pounds; and the Bailiffs of the Court shall be paid by the fees hereby allowed to them: and the Governor in Council shall fix the remuneration to be paid to the Judges and Clerks, having due regard to the population

District Treasurer to receive all fees payable in Division Courts in his District.

Judges and Clerks to be paid by certain salaries.

Bailiffs by the fees allowed them.

Salaries of Judges and Clerks how to be fixed.

population of the several Districts and Divisions; and the remuneration to be paid to the Judges and Clerks, may be increased, or as vacancies shall occur, may be diminished by the same authority by which they shall be first fixed.

Certain duties of the Clerks of Division Courts prescribed.

X. And be it enacted, that the Clerk of each Division Court shall issue all summonses, warrants, precepts, and writs of execution, and register all orders and judgments of the Court, and keep an account of all such summonses, executions, and other process of the Court, and shall take charge of and keep an account of all Court fees and fines payable or paid into Court, and of all suitors, money paid into and out of Court, and shall enter an account of all such fees, fines, and monies in a book to be kept by him for that purpose, which book shall be open to all persons desirous of searching the same, on payment of one shilling for each search, and shall from time to time, at such times as shall be directed and appointed by the Governor, submit his accounts to be audited or settled by the Treasurer of his District; and the Bailiffs of the Court shall serve all summonses and execute all such orders, warrants, precepts and writs.

Duties of Bailiffs.

Certain fees to be payable on proceedings in any Division Court.

XI. And be it enacted, that there shall be payable on every proceeding in the Division Courts holden in pursuance of this Act, and to the Bailiffs of the Court, such fees as are set down in the Schedule to this Act annexed, or which shall be set down in any Schedule of reduced fees under the power hereinafter given for that purpose, and none other; and a table of such fees shall be hung up in some conspicuous place in the Offices of the several Clerks of Division Courts, and the fees on every proceeding shall be paid in the first instance by the Plaintiff on or before such proceeding, and the Bailiff's fees upon executions shall be paid to the Clerk of the Court, at the time of the issue of the warrant of execution, and shall be paid over by such Clerk to the Bailiff upon the return of the warrant of execution and not before. Provided always, that if the Bailiff shall neglect to make a Return within the time required by Law, of any summons, process or execution, he shall for each such neglect forfeit his fees on such summons, process or execution, and all fees so forfeited shall be accounted for and paid by the Clerk of the Court to the Treasurer of the District, to form part of the general fee fund.

Tables of Fees to be posted in the Clerk's offices.

Bailiff's fees on executions, how paid.

Clerks of Division Courts to render accounts to the District Treasurer of all fees by them received under this Act.

XII. And be it enacted, that the Clerk of each Division Court shall from time to time, and as often as he shall be required so to do by the Treasurer of his District, and at least once in every three months, deliver to him a full account in writing of the fees received in such Court under the authority of this Act, and a like account of all fines levied by the Court, (accounting for and deducting the reasonable expenses of levying the same, and any allowance which the Judge may have made out of any such fine in pursuance of the power hereinafter given), and a like account of the monies paid into and received out of Court by the Defendants and Plaintiffs in the said Court, under any orders and decrees of the Court,

Court, or under process of the Court, and of the balance then remaining in Court belonging to the Plaintiffs or Defendants in the Court; and the amount of such fees from time to time received by such Clerk, shall be paid over from time to time to the Treasurer, (such payment being made at least once in every three months) and shall form part of a fund to be called the general fee fund of the Division Courts, which fund shall be applied towards the payment of the salaries of the Judge and Clerks of such Courts.

And to pay over the amount so received.

Application of monies so paid over.

XIII. And be it enacted, that the Treasurer of every District shall, on or before the thirtieth day of June and the thirty first day of December, in every year, render to the Inspector General of this Province, a true account in writing of all monies received and of all monies disbursed by him, on account of the Division Courts holden under the authority of this Act, during the period comprised in such account, in such form and with such particulars as the said Inspector General shall from time to time require, and shall within ten days after the rendering of every such account, pay over the amount of any surplus of such fees to the Receiver General of this Province; and if default shall be made in such payment, the amount due by the said Treasurer shall be deemed a specialty debt to Her Majesty.

District Treasurers to render accounts to the Inspector General of monies received by them under this Act.

And to pay over to the Receiver General any balance in their hands.

XIV. And be it enacted, that in case the amount of fees received in the Division Courts in any District, shall not be sufficient to defray the disbursements required on account of such Courts, during the period comprised in the said account, it shall be lawful for the Governor of this Province, forthwith to issue his warrant on the Receiver General of this Province, in favour of the District Treasurer, for the amount which shall be required to make up the salaries of the Judge and Clerks, and the amount of such warrant shall be charged upon the consolidated fund of this Province.

If the sums so paid over for any District be not sufficient to meet the expenses of the Division Courts therein, the Governor may issue his warrant for the difference.

XV. And be it enacted, that the accounts to be kept by the several Treasurers on account of the said Courts, shall be deemed Public Accounts, and shall be inquired into and audited, and shall be within any provision of law now or hereafter to be in force for auditing Public Accounts.

Treasurers accounts touching Division Courts to be deemed public accounts.

XVI. And be it enacted, that if any person having resigned or having been removed from the Office of Treasurer, or of Clerk of a Division Court, shall neglect after twenty one days notice to such person, to account for and pay to the Treasurer of the District for the time being, or to such person as he shall appoint to receive the same, all such sums as shall remain in his hands of monies received under the authority of this Act, it shall be lawful for such Treasurer for the time being, in his own proper name only, or by his name and description

Any persons removed from the office of Treasurer or of Clerk of a Division Court, to account and pay over any monies in hands under this Act after a certain notice.

Action given to the then Treasurer in default of such account and payment.

Court may refer the account (if disputed) to a referee.

And make certain orders on the report of such referee.

In case of death or removal of District Treasurer or Clerk of any Division Court the then District Treasurer may recover by action monies received under this Act and remaining in their hands.

The Court may refer the disputed account to any person.

The Plaintiff acting as Treasurer to be *primâ facie* evidence of his holding that Office.

cription of office, to sue for and recover the same from such person with double costs of suit, in any Court of Record in this Province having competent jurisdiction, by action of debt; in which action it shall be sufficient for such Treasurer to declare as for money had and received to the use of such Treasurer for the purposes of this Act; and the Court in which the action shall be brought, may at the instance of either of the parties, refer the account in dispute in a summary manner, to be audited by any Officer of the Court or other fit person, who shall have power to examine both plaintiff and defendant upon oath; and upon the report of the referee (unless either of the parties shall shew good cause to the contrary) the Court may make a rule either for the payment of such sum as upon the report shall appear to be due, or for staying the proceedings in the action, and upon such terms and conditions as to the Court shall appear reasonable; or the Court may order judgment to be entered up as by confession for such sum as upon the report shall appear to be due.

XVII. And be it enacted, that in case of the death of any person during the time that he shall be holding the office of District Treasurer, or of Clerk of any Division Court, or after he shall have resigned, or be removed from such office, the Treasurer for the time being, may in his own proper name only, or by his name and description of office, sue for and recover from the Executors or Administrators of such person deceased, all such sums as shall have been remaining in his hands, of money received under the authority of this Act, by an action of debt, in any Court of Record in this Province having competent jurisdiction; in which action it shall be competent for the plaintiff to declare that the deceased was indebted to the plaintiff for money had and received to his use for the purposes of this Act, or that the deceased died possessed of money had and received for the purposes of this Act, whereby an action hath accrued to the plaintiff, to demand and have the same from such Executors or Administrators; and a like action may be brought against any Executors or Administrators of Executors, or Administrators: and in all such actions, the defendant or defendants may plead in like manner, and avail themselves of the like matters in defence as in any action founded upon simple contracts of the original testator or intestate; and the Court may refer the account in dispute to be audited by any officer or person, and may proceed upon the report of such referee in like manner as in the case mentioned in the next preceding section.

XVIII. And be it enacted, that in all actions to be brought, as well as in all proceedings whatsoever to be instituted or carried on by any Treasurer, by virtue of this Act, proof of his acting in the execution of the office of Treasurer, shall be sufficient evidence of his holding such office, unless the contrary shall be shown in evidence by the defendants in such actions, or the parties against whom such proceedings shall be instituted and carried on.

XIX.

XIX. And be it enacted, that the Treasurer, and also every Clerk and Bailiff, who shall receive monies in the execution of their duty, shall give security for such sum, and with so many sureties, and in such manner and form as the Governor of this Province shall see reason to direct, for the due performance of their several offices, and for the due payment of all monies received by them under any provision of this Act.

The Treasurer and Clerks of Division Courts to give security-

XX. And be it enacted, that the Judge of every Division Court established under this Act, shall have power, jurisdiction, and authority to hold plea of all debts and contracts when the subject matter of the demand shall not exceed the sum of Ten pounds, and to hear and determine the same in a summary way; and every such Judge shall have power to make such orders, judgments, and decrees thereupon, as shall appear to him to be just and agreeable to equity and good conscience; and that upon any contract for the payment of a sum certain in labour, or in any kind of goods or commodities, or in any manner otherwise than in money, it shall be lawful for the Judge, after the day is passed on which the goods or commodities should have been delivered, or labour or other things performed, to give judgment for the amount in money, as if the contract had been so originally expressed: Provided always, that no action shall be brought or tried in any such Division Court, for any gambling debt, nor for any spirituous or malt liquors drunk in a Tavern or Ale-House, nor for any cause involving the right or title to real estate: Provided also, that nothing in this Act contained shall be construed to constitute and create the said Division Courts, Courts of Record.

Of what cases the Division Courts shall take Cognizance.

Sums certain payable in goods, &c.

Proviso.

XXI. And be it enacted, that the plaintiff, in any suit brought in any Division Court, shall enter a copy of his account or demand in writing, which shall be numbered according to the order in which it shall be entered, and thereupon a summons bearing the number of the account or demand on the margin thereof, shall be issued, which shall be in substance, in the form of the schedule to this Act annexed, according to the nature of the demand; and a copy of such summons, to which shall be attached a copy of such account or demand, shall be served on the defendant, eight days at least before the day on which the Division Court shall be holden at which the cause shall be tried; and delivery of such copies of summons and account or demand to the defendant, or delivery thereof to his wife or servant or any grown person, being an inmate of his dwelling house or usual place of abode, trading or dealing, shall be deemed a good service of such summons. Provided always, that personal service on the Debtor of such summons shall be necessary in all cases where the amount sued for exceeds the sum of forty shillings.

Mode of commencing action in any Division Court.

Service of the Summons.

XXII. And be it enacted, that no such summons shall be issued, unless the Plaintiff shall, at the time of entering his account or demand, deposite with the Clerk of the Court, for every claim not exceeding twenty shillings, the sum of one shilling,

Plaintiff taking out any summons to deposite with the

Clerk one twentieth part of the sum demanded.

The Judge may, in certain cases, award the whole or part of the sum so deposited, to the Defendant.

Money so deposited and not so awarded to be returned.

At what Division Courts, any suit may be brought.

Any plaintiff having a cause of action above the value of £10, may abandon the excess and so bring the suit within the jurisdiction of a Division Court.

Minors may sue for wages in the Division Court.

No privilege to exempt any person from the jurisdiction of a Division Court.

Debts due by partners or persons jointly answerable, may be recovered from one of

shilling, and for every claim exceeding twenty shillings, one twentieth part thereof (neglecting any sum less than six-pence, in estimating such twentieth part,) and if, upon the day of the return of any such summons, or at any continuation or adjournment of the said Court, or of the cause for which the said summons shall have issued, the Plaintiff shall not appear in person, or by some other person in his behalf, or appearing, shall not make proof of his demand to the satisfaction of the Court, it shall be lawful for the Judge, if he shall think fit, to award to the Defendant a part or the whole of such deposite money, by way of costs, and as satisfaction for his trouble and attendance, with such further sum as the Judge in his discretion shall think fit, and to order and compel the Plaintiff to pay such further sum, by such ways and means as any debt ordered to be paid by the same Court, can be recovered; but so much of the said deposite money as shall not be awarded to the Defendant, shall be returned on demand to the Plaintiff.

**XXIII.** And be it enacted, that all suits brought under this Act, shall be tried at the Court holden for the Division wherein the Defendant, or where there shall be more than one Defendant, wherein any one of the Defendants shall dwell, or carry on his business at the time of entering the account or demand, or at the Court holden for the Division within which the debt was contracted.

**XXIV.** And be it enacted, that it shall not be lawful for any Plaintiff to divide any cause of action into two or more suits for the purpose of bringing the same within the jurisdiction of any Division Court, but any Plaintiff having a cause of action above the value of Ten pounds for which a suit might be brought under this Act, if the same were not above the value of Ten pounds, may abandon the excess, and thereupon the Plaintiff shall, on proving his case, recover to an amount not exceeding Ten pounds, and the judgment of the Court upon such suit shall be in full discharge of all demands in respect of such cause of action, and the entry of judgment shall be made accordingly.

**XXV.** And be it enacted, that it shall be lawful for any person under the age of twenty one years, to prosecute any suit in a Division Court, under this Act, for any sum of money not exceeding ten pounds, which may be due to him or her for wages, in the same manner as if he or she were of full age.

**XXVI.** And be it enacted, that no privilege shall be allowed to any person to exempt him from the jurisdiction of the Courts created by this Act.

**XXVII.** And be it enacted, that where any Plaintiff shall have any debt or demand recoverable under this act, against two or more persons, partners in trade or otherwise, jointly answerable, but residing in different divisions, it shall be sufficient if one of such persons be served with the process as hereinbefore directed,



directed, and judgment may be obtained, and execution issued against such person, notwithstanding others jointly liable may not have been served or sued; reserving always to the person against whom execution may issue, any right which he may have to demand contribution from any other person jointly liable with him.

them, saving his recourse.

XXVIII. And be it enacted, that the Judge of the District Court, or his Deputy as aforesaid, shall be the sole Judge to determine all actions brought in the said Division Courts, in the summary manner authorized by this Act, and all matters and questions of fact relating thereto, except when the amount claimed shall exceed two pounds ten shillings, and either of the parties shall require a jury to be summoned, as hereafter mentioned.

The Judge of the District Court to be the sole Judge in matters decided in Division Court.

XXIX. And be it enacted, that in all actions where the sum of money sought to be recovered shall exceed two pounds ten shillings, it shall be lawful for the Plaintiff or Defendant to require a jury to be summoned to try the said action, and in every such case a jury shall be summoned according to the provisions hereinafter contained, to try such action: Provided always, that if the Plaintiff require a jury to be summoned, he shall give notice in writing to the Clerk of the said Court at the time when he shall enter his account or demand, and if the Defendant shall require a jury to be summoned, he shall give to the said Clerk, or leave at the office of the said Clerk, the like notice in writing within five days after the service of the summons on the said Defendant, and the said Clerk shall cause a copy of such notice given either by the Plaintiff or Defendant, to be communicated to the opposite party in the said action, either by post or by causing the same to be delivered at his usual place of abode or business, but it shall not be necessary for either party to prove on the trial that such notice was communicated to the other party by the Clerk.

Where the sum claimed shall exceed £2 10 0. a Jury may be required.

Proviso.

Notice in writing to be given by the party requiring the Jury.

XXX. And be it enacted, that every party requiring any jury to be summoned shall at the time of giving the notice hereby required, and before he shall be entitled to have such jury summoned pay to the Clerk of the said Court, such sum of money as is set down in the schedule of fees, for the time being, for or towards the payment of the expenses of the said jury.

The party on giving notice shall pay to the Clerk such sum as is set down in the schedule of fees.

XXXI. And be it enacted, that the causes which are to be heard by the Judge alone shall be set down for hearing in a separate list from the list of causes which are to be tried by a jury, which two lists shall be severally called, "The Judge's List," and "The Jury List," and the causes shall be set down in such lists in the order in which they were entered in the first instance with the Clerk of the Division Court, and "The Jury List," shall be first disposed of, and then "The Judge's List."

Causes to be set down in the "Judge's list".

Causes to be set down in the "Jury's list".

XXXII.

The Clerk of the Peace to deliver to the Clerk of the Court list of Jurors.

**XXXII.** And be it enacted, that the Clerk of the Peace in every District shall deliver, or cause to be delivered, to the Clerk of each Division Court within his District (at the same times, and in like manner as Clerks of the Peace are now required by law to deliver lists of Jurors to the several Sheriffs) a true and complete list of the jurors residing within every such division, respectively, and the Clerk of each Division Court shall cause not less than fifteen of the persons named in such list to be summoned in rotation to attend the Court at the time and place to be mentioned in the summons: Provided always, that either of the parties to any such cause shall be entitled to his lawful challenge against any of the said jurors in like manner as he would in any Superior Court: Provided also, that if any jury shall be required to be summoned before the Clerk of the Peace shall have delivered the list of jurors, as aforesaid, to the Clerks of the several Division Courts in his District, the Clerks of such Division Courts shall cause to be summoned not less than fifteen resident inhabitant householders who are rated and assessed upon any township assessment roll within his division.

Proviso.

Either party entitled to his lawful challenge.

Where Clerk of Division Courts may summon 15 resident Inhabitant Household-ers.

Each Juryman to receive six pence for every cause in which he shall be sworn.

Five Jurors to be empannelled and sworn.

Each cause to be decided by the majority of the Jury.

Any Juryman neglecting or refusing to attend to be fined.

**XXXIII.** And be it enacted, that each juror shall receive from the Clerk of the Division Court out of the monies to be deposited with him for that purpose the sum of six pence for every cause in which such juryman shall be sworn.

**XXXIV.** And be it enacted, that from time to time, as occasion shall require, five jurors shall be empannelled, and sworn to do justice between the parties whose cause they shall be required to try, according to the best of their skill and ability, and to give a true verdict according to the evidence, and each cause shall be decided by the verdict of the majority of the jury so empannelled and sworn; and any juryman who after being duly summoned for that purpose as aforesaid shall wilfully neglect or refuse to attend the Court, shall be liable to a fine not to exceed ten shillings to be set on him by the Judge, which fine shall be levied and collected as other fines are hereinafter directed to be levied and collected, and shall form part of the general fee fund to be paid to the Treasurer of the District.

Proceedings on the day at which the Defendant shall be summoned to appear.—

**XXXV.** And be it enacted, that on the day named in the summons, the Plaintiff shall appear in the Division Court, in person, or by some person in his or her behalf, and thereupon the Defendant shall be required by himself or herself, or by some person on his or her behalf, to answer; and on answer being made in Court, the Judge shall proceed in a summary way to try the cause and give judgment without further pleading or formal joinder of issue.

No cause of action to be proved except

**XXXVI.** And be it enacted, that no evidence shall be given by the Plaintiff, on the trial of any such cause as aforesaid, of any cause of action except such as

as shall be stated and contained in the demand or account entered as hereinbefore directed.

that mentioned  
in the demand

XXXVII. And be it enacted, that all Defendants shall be allowed to set off any debt or demand not exceeding Ten Pounds claimed to be due to them from the Plaintiff, or to set up, by way of defence, and to claim and have the benefit of any statute of limitation, or of any other relief or discharge under any statute, now or hereafter to be in force in Canada West; Provided always, that if the Defendant's demand as proved, exceed that proved by the Plaintiff, the Court may give judgment in favour of the Defendant for such balance as may appear due from the Plaintiff, with costs of suit: Provided also, that no such defence shall be admitted on the hearing or trial of any cause under this Act, unless notice thereof in writing shall have been delivered to the Plaintiff, or left for him at his usual place of abode or business, three days at least before the trial.

Defendant  
may plead set  
off &c.

And may re-  
cover any ba-  
lance due to  
him by the  
Plaintiff.

Proviso.

XXXVIII. And be it enacted, that the Judge of the District Court shall have power from time to time, to make general rules for regulating the practice and proceedings of the said Division Courts, and also to frame forms for every proceeding in the said Courts, for which he shall think it necessary that a form be provided, and from time to time to alter any such form and also to alter all or any of the forms given in the Schedule to this Act: Provided always, that such rules and forms so made, framed or altered, shall not be brought into use until the same shall have been submitted to and approved by the Chief Justice and Judges of the Court of Queen's Bench, for that part of this Province formerly called Upper Canada, or any two of them.

The District  
Judge may  
make Rules of  
practice and  
forms for the  
Division  
Courts.

Proviso.

XXXIX. And be it enacted, that if on the day named in the summons, the Defendant shall not appear as aforesaid, or sufficiently excuse his or her absence, or shall neglect to answer, the Judge, on proof of due service of the summons, may proceed to the hearing or trial of the cause on the part of the Plaintiff only, and the order, verdict or judgment thereupon which shall be given, made or rendered after hearing the evidence to be adduced on the part of the Plaintiff shall be final and absolute and as valid as if both parties had attended. Provided always, that the Judge may make any order for granting any time to the Plaintiff or Defendant to proceed in the prosecution or defence of the suit.

Proceedings  
if the Defen-  
dant shall make  
default.

The Judge  
may give time  
for the prosecu-  
tion or defence  
of any suit.

XL. And be it enacted, that it shall be lawful for the Defendant in any action brought under the provisions of this Act, at any time before the day appointed for the trial thereof, to pay into Court such sum of money as he shall think a full satisfaction for the demand of the Plaintiff, together with the costs incurred by the Plaintiff up to the time of such payment; and notice of such payment shall

Defendant  
may pay money  
into Court be-  
fore the day on  
which he is  
summoned to  
appear.

Duty of the Clerk in such case.

Consequence of such payment.

Defendant to have costs if no greater sum than that paid in, be recovered by the Plaintiff.

All credible persons, including the parties to any suit may be examined on the trial.

Proviso.

False swearing or affirmation to be perjury.

Either parties may obtain subpoenas for witnesses.

Who may serve such subpoenas; obligation of the party so served.

Tender of expenses.

shall be forthwith communicated by the Clerk of the said Court to the Plaintiff, by Post or by sending the same to his usual place of abode or business, and the said sum of money shall be paid to the Plaintiff, and all proceedings in the said action shall be stayed, unless the Plaintiff shall within three days after the receipt of notice of such payment signify to the Clerk of the said Court, his intention to proceed for the remainder of the demand claimed; and in such case the action shall proceed as if it had been brought originally for such remainder only: Provided always, that if the Plaintiff shall recover no further sum in the action than such sum as shall have been paid into Court under the provision hereinbefore contained, the Plaintiff shall pay to the Defendant all costs, charges and expenses incurred by him in the said action after such payment as aforesaid, and such costs, charges and expenses shall be settled by the Court, and shall be recovered by the Defendant by such ways and means as any debt ordered to be paid by the Court can be recovered.

**XLI.** And be it enacted, that on the trial of any such suit, the parties thereto, being credible persons, and all other credible persons whosoever, may be examined upon oath or affirmation (being of any of the classes allowed by law to affirm in any judicial proceedings) which the Judge shall openly administer to each party or witness at the time of his giving his evidence touching the matters in dispute, without regard to any objection on the ground of incompetence from interest or otherwise; Provided always, that Judgment shall in no case be given for either party in any action for any sum on the oath or affirmation of the Plaintiff or Defendant respectively without other sufficient evidence.

**XLII.** And be it enacted, that every person who in any examination shall wilfully and corruptly give false evidence, shall be liable to the penalties of perjury.

**XLIII.** And be it enacted, that either of the parties to the suit may obtain from the Clerk of the Division Court, wherein the same shall be brought, summons to witness, with or without a clause requiring the production of books, papers and writings in their possession or control; and in any such summons any number of names may be inserted, and service of any such summons by the Bailiff of any other Division Court, shall be as valid and effectual as if the same had been served by a Bailiff of the Court out of which the same issued; and every person on whom any such summons shall have been served, either personally, or at his or her usual place of abode, and to whom at the same time, a tender of payment of his or her expenses shall have been made, on such scale of allowance as shall from time to time be settled by the Judge, and approved by a Judge of the Court of Queen's Bench of that part of the Province formerly called Upper Canada, and who shall refuse or neglect without sufficient cause, to appear or to produce any

any books, papers, or writings required by such summons to be produced, and also every person in Court called upon to give evidence, who shall refuse to be sworn and give evidence, shall forfeit and pay such fine not exceeding ten shillings as the Judge shall set on him or her; and such fine shall be recoverable in any Division Court (in whatever District it may be) in the Jurisdiction of which the party so refusing shall be; and the whole or any part of such fine, in the discretion of the Judge (after deducting the costs) shall be applicable towards indemnifying the party injured by such refusal or neglect, and the remainder thereof shall form part of the general fee fund before mentioned: Provided that no person shall be compelled to attend as a witness who shall dwell more than forty miles from the place where the Court is to be holden, at which he or she is summoned to attend.

Penalty on witnesses refusing to attend or to give evidence

Proviso.

XLIV. And be it enacted, that any fine imposed under the authority of this Act, may be levied by the same process as any debt recovered in the said Court, and shall be accounted for as herein provided.

How fines imposed under this Act may be levied.

XLV. And be it enacted, that no action brought in any Division Court holden according to the provisions of this Act, nor any order, verdict, Judgment or proceeding therein, shall be removed into any Superior Court by any writ or process whatsoever, but every such order, Verdict and Judgment made by the Judge in any Division Court shall be final and conclusive between the parties.

No suit brought in any Division Court to be removed.

Exception.

XLVI. And be it enacted, that the Clerk of each Division Court shall cause a note of all summonses, and of all orders, and of all judgments and Executions, and returns thereto, to be fairly entered from time to time in a book which shall be kept at his office; and the Clerk shall sign his name on every page of such book; and such entries in the said book so signed, or a copy thereof purporting to be signed and certified as a true copy by such Clerk, shall at all times be admitted in all Courts and places whatsoever, as evidence of such entry or entries and of the proceeding referred to by such entry or entries, without any further proof.

Certain process and proceedings to be entered by the Clerk.

Entries and copies thereof to be evidence.

XLVII. And be it enacted, that the Judge may make orders concerning the time or times, and the proportions in which any sum and costs recovered by judgment of the said Court, shall be paid, and at the request of the party entitled to the same, may order such sums to be paid into Court: Provided always, that in any such order for time, reference shall be had to the day on which the summons was served on the defendant, and issuing of execution shall not be postponed without the consent of the party entitled to the same, for a longer period than fifty days from the service of the summons.

Judge may grant delay for the payment of sums recovered by judgment.

Such delay not to exceed a certain time.

XLVIII. And be it enacted, that if there be cross judgments between the parties,

What shall be done when there are cross

Judgments between the parties.

parties, execution shall be taken out by that party only, who shall have obtained judgment for the larger sum, and for so much only as shall remain after deducting the smaller sum, and satisfaction for the remainder shall be entered as well as satisfaction on the judgment for the smaller sum; and if both sums shall be equal, satisfaction shall be entered upon both judgments.

No suit to be brought in another Court for a sum awarded in a Division Court.

XLXIX. And be it enacted, that no suit shall be brought in any Court for the recovery of any sum awarded by any judgment in a Division Court held under this Act.

Execution, how to be granted and enforced.

L. And be it enacted, that whenever the Judge of any Division Court shall have made an order for the payment of money, it shall be lawful for the said Judge immediately, or in case of default or failure of payment thereof, at the times, and in the manner thereby directed, to award execution against the goods and chattels of the party against whom such order shall be made; and thereupon the Clerk of the Court, at the request of the party prosecuting such order for the payment of money, shall issue a precept in the nature of a writ of *feri facias*, to one of the Bailiffs of the Court, who, by virtue of such precept, shall levy by distress and sale of the goods and chattels of such party, being within the District in which the said Court was holden, such sum of money and costs as shall be so ordered, and shall pay the same over to the said Clerk.

In case the Bailiff shall not find goods in his District he may apply to a Justice in any other District.

LI. And be it enacted, that it shall be lawful for any Bailiff of a Division Court to whom a precept of Execution shall be directed against the goods of any Defendant according to the provisions of this Act in case he shall not find sufficient goods or chattels of the Defendant within the District in which such Division Court is holden, to apply to any Justice of the Peace acting for and within any other District in this Province in which the goods and chattels of such Defendant shall be and such Justice of the Peace, is hereby authorised and required upon such Bailiff producing the precept and making oath (which such Justice is hereby empowered to administer) that the same has been duly issued out of the said Division Court and that the goods and chattels of the Defendant are not to be found within the District in which such Division Court is held but are believed by such Officer to be within the District where such Justice acts, to sign his name on the back of such precept and thereupon such Bailiff shall have power to take the goods and chattels of such Defendant wheresoever the same shall be found within such District and deal therewith in like manner as if the same had been taken within the jurisdiction of the said Division Court, and all Constables and other peace Officers are hereby required to be aiding within their respective jurisdictions in the execution of the precept so indorsed.

How such Justice may proceed.

LII. And be it enacted, that no sale of any goods which shall be taken in execution as aforesaid, shall be had until after the end of eight days at least next following the day on which such goods shall have been so taken, unless upon the request in writing under the hand of the party whose goods shall have been taken; and public notice in writing shall be given at some convenient place within the Town or Township where such goods were taken, of the time and place of such sale, at least eight days before the same shall take place.

At least eight days public notice of any sale under execution shall be given, unless the defendant shall request that the sale take place sooner.

LIII. And be it enacted, that every such seizure and sale shall be taken to be within all the provisions of an Act of the Parliament of Upper Canada, passed in the first year of Her Majesty's Reign, intituled, "An Act to regulate the costs of levying distresses for small rents and penalties."

Seizures and sales under this Act, to be within the provisions of the Act, 1 Vict. Cap. 16

LIV. And be it enacted, that upon every precept of execution awarded against the goods and chattels of any person whomsoever, the Clerk of the Division Court, out of which such execution shall issue, shall cause to be endorsed the sum of money and costs adjudged; and if the party against whom such execution shall be awarded, shall before an actual sale of the goods and chattels, pay or cause to be paid or tendered unto the Clerk or Bailiff of such Court, such sum of money as aforesaid, or such part thereof as the plaintiff shall agree to accept in full of his debt, together with the fees herein directed to be paid, the execution shall be superseded, and the goods and chattels shall be released and restored to the said party.

Precepts of execution to be indorsed with the sum to be levied.

If such sum and certain fees be paid, the execution shall be suspended.

LV. And be it enacted, that if any person shall wilfully insult the Judge or any Officer of any Division Court, during his sitting or attendance in Court, or shall wilfully interrupt the proceedings of such Court, it shall be lawful for any bailiff or Officer of the Court, with or without the assistance of any other person, by order of the Judge, to take such offender into custody, and the Judge may impose upon any such offender, a fine not exceeding the sum of two pounds, and in default of payment thereof it shall be lawful for the said Judge by warrant under his hand and seal to cause such fine to be levied by distress and sale of the Goods of the offender together with the reasonable charges of such distress and sale, and in default of such distress to commit the offender to the Common Gaol of the District for any period not exceeding one Calendar month.

Persons insulting the Judge, or wilfully interrupting the proceedings of the Court, liable to be taken into custody and fined.

LVI. And be it enacted, that if any bailiff or Officer of any Division Court, acting under colour or pretence of the process of such Court, shall be guilty of extortion or misconduct, or shall not duly pay or account for any money levied or received by him, under the authority of this Act, it shall be lawful for the Judge, at any sitting of the Court, if the party aggrieved shall think fit to complain

If any Bailiff or Officer of any Division Court be guilty of extortion under colour of its process, the Judge may in-

quire summarily into the case and may order the money extorted to be refunded, and set such fine on the offender, as to such Judge may seem meet.

plain to him, to enquire into such matter in a summary way, and for that purpose to summon and enforce the attendance of all necessary parties, and to make such order thereupon for the repayment of any money extorted, or for the due payment of any money so levied or received as aforesaid, and for the payment of such damages and costs to the parties aggrieved, as the Judge shall think just; and in default of payment of any money so ordered to be paid by such Bailiff, within the time specified for the payment thereof in such order, it shall be lawful for the Judge, by warrant under his hand and seal, to cause such sum to be levied by distress and sale of the goods of the offender, together with the reasonable charges of such distress and sale, and in default of such distress, to commit the offender to the common Gaol of the District, for any period not exceeding three calendar months.

Clerks, Bailiffs or other officers taking any greater fees than those allowed by this Act, to be incapable of holding office, and also liable in damages.

LVII. And be it enacted, that if any Clerk, Bailiff, or other Officer employed in putting this Act, or any of the powers thereof into execution, shall exact, take, or accept any fee or reward whatsoever, other than, and except such fees as are or shall be appointed and allowed respectively, as aforesaid, for or on account of any thing done or to be done by virtue of this Act, or on any account whatsoever, relative to putting this Act into execution, every such person so offending shall, upon proof thereof before the said Court, be for ever incapable of serving or being employed under this Act, in any office of profit or emolument, and shall also be liable in damages to the party aggrieved.

If any action which might be brought in a Division Court shall be brought in any superior Court of Record, and the Plaintiff shall not have verdict for more than ten pounds, he shall have no costs.

Exception.

LVIII. And be it enacted, that in case any action shall be prosecuted after the commencement of this Act, in any superior Court of Record, for any cause which might have been entered in a Division Court under this Act, and the verdict shall be found for the plaintiff for a sum not exceeding ten pounds, such plaintiff shall have judgment to recover such sum only, and no costs, and shall have execution only against the goods and chattels of the defendant, and shall not at any time be allowed to maintain any action on such judgment, in any Court, and if a verdict, shall not be found for the plaintiff, the defendant shall be entitled to his costs as between Attorney and Client, unless in either case, the Judge who shall try the cause shall certify on the back of the record, that the plaintiff had a probable cause of action for the debt or damages sought to be recovered in such action, to an amount exceeding ten pounds.

Informalities in any part of the previous proceedings shall not make a person levying and dis-

LIX. And be it enacted, that when any levy or distress shall be made, for any sum of money to be levied by virtue of this Act, the distress itself shall not be deemed unlawful, nor the party or parties making the same, be deemed a trespasser or trespassers, on account of any defect or want of form in the information, summons, conviction, warrant, precept or other proceeding relating thereto;



thereto; nor shall the party or parties distraining, be deemed a trespasser or trespassers from the beginning on account of any irregularity which shall afterwards be committed by the party or parties so distraining, but that the person or persons aggrieved by such irregularity, shall and may recover full satisfaction for the special damage.

LX. And be it enacted, that no order, verdict, or judgment, or other proceedings made concerning any other matters aforesaid, shall be quashed or vacated for any matter of form.

LXI. And for the protection of persons acting in the execution of this Act, be it enacted, that all actions and prosecutions to be commenced against any person for any thing done in pursuance of this Act, shall be laid and tried in the District where the fact was committed, and shall be commenced within six calendar months after the fact was committed and not afterwards or otherwise; and notice in writing of such action, and of the cause thereof shall be given to the Defendant, one calendar month at least before the commencement of the action; and no Plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if after action brought, a sufficient sum of money shall have been paid into Court with costs, by or on behalf of the Defendant.

LXII. And be it enacted, that in construing this Act, the word "person" shall be taken to comprehend a body politic or corporate as well as an individual; and that every word importing the singular number, shall when necessary to give full effect to the enactments herein contained, be deemed to extend and be applied to several persons or things, as well as one person or thing; and that every word importing the masculine gender shall where necessary extend and be applied to a female as well as a male; and that the words "Canada West" shall be taken to mean that portion of the Province formerly constituting the Province of Upper Canada.

LXIII. And be it enacted, that this Act shall be and continue in force for four years from and after the passing of this Act, and from thence to the end of the then next ensuing Session of Parliament and no longer.

tress a Trespasser.

Nor shall any subsequent irregularity make any such person a trespasser from the beginning.

No proceedings to be vacated for want of form.

Action for any thing done in Execution of this Act, where to be commenced, and where notice of such action to be given.

Tender of sufficient amends or payment of a sufficient sum into Court, to be a bar.

SCHEDULE REFERRED TO IN THIS ACT.

SUMMONS.

Demand, £  
Costs.....  
The

Division Court of the District of

You are hereby summoned to appear at the next sitting of this Court to be holden at \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ on \_\_\_\_\_ of the clock of the same day, to answer to the complaint of \_\_\_\_\_ who claims from you payment of the account a statement whereof is hereto annexed; and in case you fail to appear by yourself or some person on your behalf, the Plaintiff will obtain Judgment and execution against you by your default.

Take notice that if you require a Jury to be Summoned to try this cause, you must give notice to the Clerk of this Court, or leave at his Office, at \_\_\_\_\_ notice thereof in writing within five days after service of the Summons upon you.

Take notice that if on the trial of this cause you mean to set off any debt which you claim to be due to you from the Plaintiff in this cause, or to take the benefit of any Statute of limitation or other Statute, you must give to the Clerk, or leave at his office, notice in writing thereof \_\_\_\_\_ days at least before the said day of \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ in the year of Our Lord One thousand Eight hundred \_\_\_\_\_

Entered No. \_\_\_\_\_

By the Court.

Clerk.

To Mr. \_\_\_\_\_

the Defendant. }

SUMMONS

## SUMMONS TO A WITNESS.

The Division Court of the District of

To

You are hereby Summoned to appear at the sittings of the said Court to be  
holden at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_  
at \_\_\_\_\_ o'clock of the same day to give evidence on the part of the  
in a cause between \_\_\_\_\_ Plaintiff and  
Defendant.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ One thousand Eight hundred

By the Court.

Clerk.

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*Absolute Order for payment of a sum recovered.*

The Division Court of the District of \_\_\_\_\_ holden on &c.

Between \_\_\_\_\_ Plaintiff, and \_\_\_\_\_ Defendant.

It is ordered, that the Defendant do pay to the Plaintiff the sum of £  
debt and \_\_\_\_\_ costs on the \_\_\_\_\_ day of \_\_\_\_\_ next, after  
notice of this Order.

Entered

By the Court,

Clerk.

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*Absolute Order for payment of a sum recovered by Instalments.*

The Division Court of the District of \_\_\_\_\_ holden on &c.

Between \_\_\_\_\_ Plaintiff, and \_\_\_\_\_ Defendant.

It

It is ordered, that the Defendant do pay to the Plaintiff the sum of £  
 on the next, after the date of this order, and the further sum of  
 £ on every following until payment of the full  
 sum of £ debt and costs be satisfied.

Entered

By the Court.

Clerk.

*Precept or Warrant against Goods.*

Debt, £	The	Division
Costs,	Court of the District of	
£	_____	
Paid £	To	
Levy £	A Bailiff of the said Court.	

You are hereby commanded to levy and cause to be made of the Goods and  
 Chattels of the sum of and  
 your lawful fees on the execution of this Precept, so that you have the said money  
 within twenty days after the receipt hereof, and pay the same to the Clerk of the  
 Court to satisfy for the debt and costs adjudged to  
 by the said Court.

Therein fail not at your peril.

Given under my Hand and Seal this \_\_\_\_\_ day of  
 One thousand Eight hundred \_\_\_\_\_

Judge of the said Division Court.

SCHEDULE

SCHEDULE OF FEES.

	Not exceeding 40s.		Not exceeding £5.		Exceeding £5.	
	s.	d.	s.	d.	s.	d.
Entering Account and issuing Summons, . . . . .	0	9	1	3	2	0
Summons to Witness to attend, . . . . .	0	6	1	0	1	6
Every hearing of a Cause, . . . . .	1	0	1	6	2	0
Every Order for payment, . . . . .	0	6	1	0	1	6
Every Execution, . . . . .	0	6	1	0	1	6
Every Notice for a Trial by Jury, . . . . .	0	0	0	0	1	6
Deposite to pay Jurors and Bailiff's Fees thereon, .	0	0	0	0	3	6

TO THE BAILIFF.

For the service of every Summons, Order, or other proceeding on each person, . . . . .	s.	d.
	0	6
For taking Goods in execution, . . . . .	2	0
For every Mile travelled more than two from the Clerks Office to serve Summons or execute Warrant, . . . . .	0	4
For every Mile travelled in taking any person committed for Contempt to Goal, . . . . .	0	6
For every Jury sworn, . . . . .	1	0
To be paid by the Clerk out of the Deposite made.		

CAP. IV.

An Act to enable Members of the Legislative Assembly for places within that part of the Province formerly constituting the Province of Upper Canada, to vacate their seats in certain cases and for other purposes.

[17th August, 1841.]

**WHEREAS**, it is expedient that the Members of the Legislative Assembly representing that part of the Province of Canada heretofore known as the Province of Upper Canada, should be enabled to vacate their seats in certain cases: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with

Preamble.