



ANNO OCTAVO
VICTORIÆ REGINÆ.

CAP. XIII.

An Act to amend, consolidate, and reduce into one Act, the several Laws now in force, establishing or regulating the practice of District Courts in the several Districts of that part of this Province formerly Upper Canada.

[17th March, 1845.]

WHEREAS it is necessary to make further provision for regulating the practice of the several District Courts in Canada West, and for extending the jurisdiction thereof: 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, and 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 a certain Act of the Parliament of Upper Canada, passed in the fifty-eighth year of the Reign of His late Majesty King George the Third, intituled, *An Act to regulate the Costs in certain cases in the Court of King's Bench*; and also a certain other Act of the Parliament of Upper Canada, passed in the second year of the Reign of His late Majesty King George the Fourth, intituled, *An Act to reduce into one Act the several Laws now in force establishing District Courts and regulating the practice thereof, and also to extend the powers of the said District Courts*, as well as the Acts therein recited; and also the second, third and fourth clauses of a certain other Act of the Parliament of Upper Canada, passed in the fourth year of the Reign of His late Majesty King William the Fourth, intituled, *An Act to revive and extend the provisions of an Act passed in the tenth year of His late Majesty's Reign, intituled, "An Act to authorize the detention of Debtors*

Preamble.

U. C.
58 Geo. 3. c. 4.

U. C.
2 Geo. 4 c. —.

2d 3d and 4th
clauses of Act
of U. C. 4
Will. 4. c. 6.

Debtors in certain cases ;” and also a certain other Act of the Parliament of Upper Canada, passed in the fifth year of the Reign of His late Majesty King William the Fourth, intituled, *An Act to enable Suitors in the District Courts to procure the attendance of Witnesses from any District in this Province, and to authorize certain persons therein named to take affidavits in the said District Courts ;* and also a certain Act of the Parliament of this Province, passed in the fourth and fifth years of the Reign of Her present Majesty, intituled, *An Act to alter and amend the Laws now in force in that part of this Province formerly Upper Canada, regulating the District Courts ;* and also so much of the fifth section of a certain other Act of the Parliament of this Province, passed in the fourth and fifth years of Her Majesty’s Reign, intituled, *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,* as relates to the Judge of any District Court being elected or sitting as a Member of the Legislative Assembly of this Province, be, and the same are hereby repealed, upon, from and after the day upon which this Act shall come into operation and effect.

U. C.
5 Will. 4. c. 4.

Act of Canada,
4 & 5 Vict.
c. 8.

6th clause of
Act of Canada,
4 & 5 Vict.
c. 3.

Repeal.

District Courts
established.

Judges to be
appointed, who
shall preside
therein

To hold office
during good
behaviour.

Judges may be
removed on
the joint ad-
dress of the
Legislative
Council and
Assembly.

Clerk to be ap-
pointed to hold
office during
pleasure.

No Attorney
or articled
Clerk to hold
such office.

Judges to be
Barristers.

To preside at
Quarter Ses-
sions.

Proviso.

No Judge to
practise the
law.

Penalty.

II. And be it enacted, That there be established, in and for every District in Canada West, a Court of Law and of Record, to be known by the name and style of “ *The District Court*” of each respective District, over each of which Courts one or more Judges to be appointed under the Great Seal of the Province, (and who, as well as those Judges who are now appointed and who shall remain qualified, shall hold office during good behaviour,) shall preside: Provided always, that it may be lawful for the Governor to remove any such Judge or Judges of the said Court, upon a Joint Address of the Legislative Council and Legislative Assembly, and there shall also be a Clerk to be appointed in the same manner, who shall hold office during pleasure: Provided also, that no practising Attorney or articled Clerk shall discharge the duties of such office, under penalty of forfeiture of the same.

III. And be it enacted, That each of the Judges of the said Courts shall be a Barrister at Law, and if appointed under this Act when it shall come into force, shall be of at least five years standing, and shall reside within the District over the District Court whereof he or they respectively shall be appointed to preside; and that the first or Senior Judge of the District Court of any District, being also a Justice of the Peace therein, shall preside as Chairman at the General Quarter Sessions of the Peace for such District, unless in cases of absence from sickness or other unavoidable cause, when the Justices present shall elect another Chairman *pro tempore*: Provided always, that no Judge of any such District Court shall, directly or indirectly, practise or carry on or conduct any business in the profession or practice of the Law, while acting as such Judge, on pain of forfeiting his office, and subject to the further penalty of one hundred pounds, to be recovered by any person

person who shall sue for the same, by action of debt, bill, plaint, or information, in Her Majesty's Court of Queen's Bench for Upper Canada; one-half of the said penalty to belong to the party suing, and the other to Her Majesty, Her Heirs or Successors.

Distribution.

IV. And be it enacted, That every Judge so to be appointed, before he shall be qualified to act as such, shall take the following oath before some person to be appointed by the Governor of this Province to administer the same, that is to say: "I do swear that I will truly and faithfully, according to my skill and knowledge, execute the several duties, powers and trusts of Judge of the District Court of the district of _____, and of the several Division Courts within the same, without fear, favour or malice: So help me God."

Judge to take an oath of office.

The Oath.

V. And be it enacted, That the said Courts respectively, shall hold plea of all causes or suits relating to debt, covenant or contract, to the amount of twenty-five pounds, and in cases of contract, or debt on the common Counts where the amount is ascertained by the signature of the defendant to fifty pounds, and also in all matters of tort, relating to personal chattels, where the damages shall not exceed twenty pounds, and where titles to land shall not be brought in question.

Amount of jurisdiction of the said Courts.

VI. And be it enacted, That the said Courts respectively shall hold four terms in each year, which shall severally commence on the Monday in the week next but two preceding the week in which the General Quarter Sessions are respectively holden, and shall end on Saturday of the same week; and every day in term shall be a return day, and the first and last days of all periods limited by this Act, or by any rule or order of the said Courts, shall be inclusive.

Terms appointed.

First and last days to be inclusive.

VII. And be it enacted, That the original process for compelling the appearance of the defendant, in any suit to be brought in the said Courts, respectively, after this Act shall come into effect, shall be a Writ of *Capias ad Respondendum*, and which shall bear *teste* on the day on which it issues, and which shall be considered to all intents and purposes the commencement of the action, a copy of which, in actions not bailable, shall be personally served on each Defendant by some literate person, at least four days before the return thereof, and that upon every copy of such process there shall be endorsed an english notice, addressed to such Defendant, of the intent and meaning thereof, to the effect following: "You are served with this process to the intent that you may, either in person or by your Attorney, enter your appearance in the office of the clerk of the said District Court, on the return day thereof, being the _____ day of _____ next, or within four days thereafter, in order to your defence in this action."

Process for compelling the appearance of any defendant.

Notice to be indorsed on the Process.

VIII.

Proceedings, if the defendant shall not appear.

VIII. And be it enacted, That in case the Defendant shall not appear either in person or by Attorney on the return day or within four days thereafter, it shall be lawful for the Plaintiff, upon affidavit being made and filed of the service of such process, to enter an appearance for such Defendant, and to file his declaration and to proceed thereon according to the rules and practice of Her Majesty's Court of Queen's Bench in Upper Canada, in actions not bailable.

Time for pleading, &c., limited to four days.

IX. And be it enacted, That in all causes in the said District Courts the time for pleading, replying, rejoicing and otherwise answering until the parties are at issue, shall be four days.

Defendant may plead several matters without leave of Court.

X. And be it enacted, That it shall and may be lawful for the Defendant in any action or suit in the said District Courts, to plead as many and several matters thereto as he may think necessary, without leave of the Court; and any Judge of the said Courts respectively, in term time or vacation, may make an order for the delivery of the particulars of the Plaintiff's demand or the Defendant's set-off, in like manner as may be done in the said Court of Queen's Bench.

The mode of pleading, and all other proceedings to be the same as prescribed for the Queen's Bench under Act of U. C. 7 Will. 4. c. -.

XI. And be it enacted, That the mode of pleading in the said District Courts and the mode of entering and transcribing pleadings, judgment and other proceedings and the regulations as to the payment of costs, shall be the same as is now practised in the said Court of Queen's Bench in Upper Canada, under the new rules made in pursuance of the provision contained in an Act passed in the seventh year of the reign of His late Majesty King William the Fourth, intituled, *An Act for the further amendment of the law and the better advancement of justice.*

Plaintiff to file his declaration, and in default of plea may proceed to judgment.

XII. And be it enacted, That it shall and may be lawful for the Plaintiff (the Defendant having appeared) to file his declaration, and to proceed according to the practice of the said Court of Queen's Bench in similar cases, and in default of plea, replication, rejoinder, or other answer within the time prescribed by this Act, the opposite party may sign interlocutory judgment or judgment of *non pros.* (as the case may be) subject to be set aside in the discretion of the Court: Provided always, that the Judge may in term time or vacation, grant further time for any pleading.

Proviso.

Affidavit to be annexed to any plea bringing the title to real estate into question.

XIII. And be it enacted, That no plea, replication or other pleading, whereby the title to any land or to any annual or other rent, duty or other custom or thing relating to, or issuing out of lands or tenements shall be brought in question, shall be received by any District Court, without an affidavit thereto annexed, that such plea, replication, or other pleading is not pleaded vexatiously, or for the mere purpose of excluding such Court from having jurisdiction, but that the same does contain

contain matter which the deponent believes is necessary for the party pleading, to enable him to go into the merits of his case.

XIV. And be it enacted, That it shall and may be lawful, for the said Courts, respectively, to issue Writs of *Capias ad Respondendum*ailable, in all cases within their jurisdiction, upon the same affidavit made and filed by the Plaintiff, his Attorney, agent or servant, and in cases in which by law the said Court of Queen's Bench may issue similar process; and the Judges of the said District Courts, respectively, shall and may exercise the same powers as any Judge of the said Court of Queen's Bench, with respect to making orders for the arrest of parties (within their jurisdiction) whenailable process cannot issue without such order: Provided always, that no party shall be holden to bail for a less sum than ten pounds, and that the sum sworn to, shall, by the officer issuing such Writ, be marked in the margin thereof, and that bail be taken for such sum, and no more.

In what cases
*Capias*ailable
may be issued.

Proviso.

No person to
be held to bail
for less than
£10, &c.

XV. And be it enacted, That it shall and may be lawful, and the clerks of the several District Courts in Upper Canada, are hereby required upon application by any Commissioner of Her Majesty's Court of Queen's Bench, and upon payment of the usual fees by law established for the same, to furnish such Commissioner with such number of Writs of *Capias ad Respondendum* as such Commissioner may so require.

Commissioners
of Queen's
Bench to be
furnished
Writs of *Capias
ad Responden-
dum*.

XVI. And be it enacted, That it shall and may be lawful for such Commissioner to issue a Writ of *Capias ad Respondendum* in the same manner, and with the like effect as the same may now be issued in Her Majesty's Court of Queen's Bench, by virtue of the ninth section of an Act passed by the Parliament of Upper Canada, in the second year of the reign of His late Majesty King George the Fourth, intituled, *An Act to repeal part of and amend the laws now in force respecting the practice of His Majesty's Court of King's Bench in this Province*.

Commissioners
may issue Writs
of *Capias ad
Respondendum*
as under Act
of U. C. 2
Geo. 4. c. -.

XVII. And be it enacted, That no Commissioner shall issue any Writ of *Capias ad Respondendum* in any case in which he shall be employed as Attorney for the person suing out such Writ.

No Attorney
acting as Com-
missioner to
issue Writs of
*Capias ad Res-
pondendum*,
where he is act-
ing as Attorney
for Plaintiff.

XVIII. And be it enacted, That in all cases of an arrest being made under and by virtue of a Writ of *Capias ad Respondendum* issued by a Commissioner of the Court of Queen's Bench, as hereinbefore provided, the said Writ, together with the affidavit to hold to bail upon which the same was issued, shall be filed in the office of the clerk of the District Court on the return day of such Writ, or in default thereof, the defendant shall not be required to put in and perfect special bail, until two days after the said Writ and affidavit shall be so filed with the clerk in term time,
and

Such Writs of
Capias to be
filed with the
Clerk of the
District Court.

Defendant not
bound to plead
till two days
after such fil-
ing of Writ of
Capias.

and in the event of the said Writ and affidavit not being filed two days before the last day of term inclusive, then and in such case the defendant shall be allowed the whole of the first two days of the ensuing term to put in and perfect special bail.

Within what time any *Capias* shall be returnable.

XIX. And be it enacted, That all Writs of *Capias ad Respondendum* issuing out of the said Courts, shall be made returnable in the same term in which they are issued, or in the next ensuing term.

Who may take affidavits and recognizances.

XX. And be it enacted, That the Judges or clerks of the several District Courts, respectively, and all Commissioners in the respective districts duly appointed for taking affidavits and special bail in the said Court of Queen's Bench, shall be and are hereby authorized to take all affidavits, as well as all recognizances of bail that may be required to be taken in the respective District Courts.

In what cases the Sheriff shall take bail and assign the bail-bond.

XXI. And be it enacted, That the Sheriff to whom any Writ of *Capias ad Respondendum* shall be directed, shall take bail thereon and assign the bail bond if required, in like manner as the law does or shall direct in cases where like process is issued from the said Court of Queen's Bench, and such assignment shall have the like validity and effect; and that whatever may be the penalty of the bail bond, an action thereon may be brought in the District Court from which the Writ of *Capias* issued and proceeded in to final judgment and execution, as in other cases within the jurisdiction of such District Court.

Action on the bond in the District Court, whatever be the amount.

Plaintiff may file a declaration *de bene esse*, &c.

XXII. And be it enacted, That the Plaintiff, in any suit commenced by Writ of bailable *Capias*, may file a declaration *de bene esse* in the office of the Clerk of the District Court, at any time after the issue of such Writ, and leave a copy thereof in the said Office with the Clerk, to be by him delivered up to the Defendant or his Attorney, without fee or reward.

Bail to the action how to be perfected.

XXIII. And be it enacted, That the Defendant in every bailable action shall be allowed two days after the return day of the Writ to enter and perfect bail to the action, and to give notice thereof to the Plaintiff or his Attorney, except in the cases hereinbefore otherwise provided for, upon default made in the filing of Affidavits upon which Writs of *Capias ad Respondendum* have been issued by Commissioners; and the recognizance thereof shall be to the same substance and effect as the recognizance taken in the said Court of Queen's Bench: Provided always, that no such bail to the action shall be considered as perfected until the recognizance, with the affidavit of justification and of the due taking annexed, shall be filed in the office of the Clerk of the District Court.

Recognizance. Proviso.

XXIV. And be it enacted, That in all cases where a declaration shall be filed *de bene esse* as aforesaid, the Defendant shall be bound to plead thereto within four days after perfecting bail to the action as aforesaid; and in all cases where a declaration shall be filed absolutely, after bail perfected, and in all cases where the Plaintiff may have omitted to file a declaration on the return day of the Writ, the Defendant shall be bound to plead within four days after service of a copy thereof on himself or his Attorney, without any rule or demand of plea, otherwise the Plaintiff may sign judgment; and the Plaintiff shall in every case be bound to declare on or before the last day of the term next ensuing that in which the process is returnable, in default whereof the Defendant, may enter judgment of *non pros.* and have execution thereon: Provided always, that in either case, the time for pleading or declaring may be extended by the Judge of the District Court.

Within what time the Plaintiff shall declare, and the Defendant shall plead.

Proviso.

XXV. And be it enacted, That it shall and may be lawful for the Plaintiff, his servant or agent, in any action now pending or hereafter to be brought in any of the said District Courts, at any time after action brought and before final judgment upon making such an affidavit as is required by law in Upper Canada in similar cases in the said Court of Queen's Bench, to sue out an *Alias* or *Pluries Capias a.l Respondendum* as the case may require in the said suit, and cause the Defendant to be thereupon arrested and holden to bail, which bail, if the Writ shall have been sued out after appearance being filed, shall be bail to the action, and shall be perfected as aforesaid before the Defendant shall be discharged from the custody of the Sheriff, and the suit shall, in all such cases, proceed after bail put in and perfected, as the same would have proceeded if no such *Alias* Writ had been taken out.

Defendant may be held to bail, after action brought on affidavit.

XXVI. And be it enacted, That every prisoner arrested upon process issued out of any of the said District Courts, whether detained by the Sheriff or other officer upon the original arrest or upon the surrender by his bail, shall and may be admitted to bail in term time or vacation, upon the same terms and in the same manner as if he were a prisoner under the like circumstances in the said Court of Queen's Bench.

Prisoners may be admitted to bail in the same cases and manner as in the Queen's Bench.

XXVII. And be it enacted, That the bail, or either of them, in any suit in the said District Courts, may surrender their principal in like manner and upon the same terms as may be done now or hereafter in the said Court of Queen's Bench; and that the respective Judges in the said District Courts shall have power to grant the same remedies to the Plaintiff against the Sheriff or Sheriff's bail, or the bail to the action, respectively, and to afford relief to the Defendant, Sheriff or bail, in the like way and by the like proceedings as might now or hereafter be done in the said Court of Queen's Bench, had the action been instituted in that Court.

Bail may surrender their principal, and other proceedings may be had as in like cases in the Queen's Bench.

XXVIII.

Proceedings
after plea in
cases bailable.

XXVIII. And be it enacted, That after plea filed in cases bailable, the parties shall proceed to trial and judgment in like manner as in cases not bailable.

What notice
of trial shall be
given.

XXIX. And be it enacted, That in all matters of fact to be tried by a jury, when issue be joined, six days notice of trial shall be given to the Defendant or his Attorney ; and in all cases where judgment shall have been signed by default, six days notice of assessment shall likewise be given, which said notice may be countermanded three days before the day appointed for trying such issue or taking such assessment.

Plaintiff to
make up a re-
cord in all ca-
ses to be tried,
or where da-
mages are to
be assessed.

XXX. And be it enacted, That in all cases to be tried before the said Courts, and in all cases where damages are to be assessed, it shall be the duty of the Plaintiff to prepare and enter with the clerk a record in the form of a *Nisi Prius* record, on or before the first day of the sitting of the said Courts, respectively.

Penalty for not
proceeding to
trial or assess-
ment on the
day appointed
by notice.

XXXI. And be it enacted, That in all cases where notice of trial or assessment shall be given as aforesaid, and not duly countermanded, if the Plaintiff neglect to proceed with such trial or assessment, he shall pay the Defendant all reasonable costs by him incurred in consequence of such notice, or in default of proceeding to trial in pursuance of such notice, the Court may order the like judgment as in case of nonsuit, to be entered against him, or the party may proceed by attachment as in the said Court of Queen's Bench.

Penalty on
Plaintiff for
not proceeding
to trial within
a certain time
after issue
joined.

XXXII. And be it enacted, That if after issue joined, the Plaintiff shall not proceed to trial at the next or the second ensuing sittings holden for the trial of issues, the Defendant may move for and the Court may order the like judgment as in cases of nonsuit, or dispose of such motion upon terms, according to the practice of the said Court of Queen's Bench ; and if the Plaintiff shall neglect to proceed to trial upon a peremptory undertaking, a judgment of nonsuit may be entered on the third day of the then next ensuing term, unless the Plaintiff, on application to the Court, to be supported by affidavit, obtain leave to try such issue at the next ensuing sittings, upon payment of all reasonable costs, and upon such terms as the Court may deem just between the parties.

And upon a
peremptory un-
derstanding.
Proviso.

Writs of *Sub-
pœna* may be
issued and en-
forced as in
the Queen's
Bench.

XXXIII. And be it enacted, That the said District Courts may issue Writs of *Subpœna ad Testificandum* to enforce the attendance of witnesses residing within their respective jurisdiction ; and also, Writs of *Subpœna duces tecum* to enforce the attendance of witnesses and the production of deeds and papers material to the party suing out the same, and may proceed against persons who, having been duly served with a *Subpœna*, shall disregard or disobey the same, in like manner and by the same mode of proceeding as is practised in the said Court of Queen's Bench.

XXXIV.

XXXIV. And be it enacted, That it shall and may be lawful for any Plaintiff or Defendant in any action now pending or hereafter to be brought, to sue out a Writ of *Subpœna* as often as occasion may require, from the office of the Clerk of the Crown, or any of his deputies in Canada West, to compel the attendance of any witness, resident out of the jurisdiction of the District Court in which such action shall be brought or pending, to give evidence at the trial of such action, and also Writs of *Subpœna duces tecum* to enforce the attendance of witnesses and the production of deeds and papers material to the party suing out the same, which Writs of *Subpœna* shall be as effectual, and the person disobeying the same shall be liable to the same penalties, as if the action had been commenced and prosecuted in the said Court of Queen's Bench; and the said Court of Queen's Bench shall have power and authority to proceed against the person or persons disobeying such Writ of *Subpœna*, as if the same had been issued in a cause pending before the Court: Provided always, that every witness shall be entitled to the sum of five shillings for each day's necessary attendance, and five shillings for every twenty miles of travel: the sums paid to be costs in the cause.

The Queen's Bench may issue *Subpœnas* to compel the attendance at trial, in a District Court, of witnesses residing out of its jurisdiction.

Proviso.

Costs allowed to witnesses.

XXXV. And be it enacted, That the Judge presiding at the sittings of any of the District Courts, shall have power to put off the trial of, or assessment of damages, in any cause entered for trial or assessment at such sittings, upon such terms as are usually imposed at the sittings at *Nisi Prius*.

Judge may postpone trial or assessment of damages on certain terms.

XXXVI. And be it enacted, That it shall and may be lawful for the Defendant in any action to pay money into Court, in like manner as the same may be done in the said Court of Queen's Bench.

Defendant may pay money into Court as in Queen's Bench.

XXXVII. And be it enacted, That the said District Courts may in term time, by rule or orders set aside proceedings for irregularity, or stay the same until security be given for costs, in all matters within their jurisdiction, in like manner and to the same extent, as the said Court of Queen's Bench, or any Judge thereof can or may do.

Proceedings may be set aside for irregularity, or stayed as in Queen's Bench.

XXXVIII. And be it enacted, That all and every the Statutes of Jeofails and of limitations and amendments, shall be of the same force in the said District Courts as in the said Court of Queen's Bench.

Statutes of Jeofails, &c. to apply to District Courts.

XXXIX. And be it enacted, That in case of demurrer, resort shall be had to the practice of the said Court of Queen's Bench, and that upon all demurrers the said District Courts, respectively, shall proceed to judgment or grant leave to amend, conforming to the practice of the said Court of Queen's Bench in like cases.

In case of demurrer, resort shall be had to the practice of the Queen's Bench.

District Judges to issue Precepts for summoning Jurors to try issues, and assess damages; and at what time and place.

XL. And to the end that the trial of all issues to be joined in the said District Courts, as well as the assessment of damages upon judgment obtained by default or upon demurrer, may be had at the most convenient time and place: Be it enacted, that it shall and may be lawful for the Judges of the said District Courts, respectively, to issue a Precept to the Sheriff of their respective districts, and also, if required by either Plaintiff or Defendant in a suit where the Sheriff is the opposing party, to issue a Precept to any Coroner of their respective districts, at least fourteen days before the week in which the General Quarter Sessions of the Peace are holden, requiring him to summon, and he is hereby directed thereupon to summon not less than thirty-six, nor more than forty-eight jurors, to be and appear at the time and place when and where the General Quarter Sessions are holden, on the same day on which such Sessions do generally commence to be holden, from whom a jury shall be taken for the trial of each issue or assessment of damages, in like manner as is practised in cases at *Nisi Prius*; and each juror sworn in any cause shall be entitled to receive the sum of seven pence half-penny, and no more.

Compensation to Jurors.

Computation in cases where no issue remains to be tried.

XLII. Provided always, and be it enacted, That in actions on bills, promissory notes, bonds or covenants for payment of money, when judgment shall be signed by default, or shall be given on demurrer, and no issue of fact remain to be tried, it shall and may be lawful for the said District Courts in term time, or the Judge thereof in vacation, upon proof of the service of notice of such intended proceeding at least six days before any computation or order therefor, to compute or by order to direct the clerk to compute the principal and interest due on such bill, note, bond or covenant for the payment of money, whereupon the Plaintiff may forthwith tax his costs, enter final judgment and sue out execution.

When final judgment may be entered after verdict.

XLII. And be it enacted, That it shall and may be lawful for the party in whose favor the verdict shall be rendered, or in cases where the Plaintiff was nonsuited at the trial, for the Defendant or his Attorney, to enter final judgment, on the third day of the term next after the rendering of such verdict, and thereupon to sue out execution.

District Courts may grant new trials, set aside verdicts, &c., on the same principles as in Queen's Bench.

Proviso.

XLIII. And be it enacted, That the said several District Courts may set aside verdicts or nonsuits, and grant new trials, and hear and in their discretion grant motions in arrest of judgment, in all cases within their jurisdiction, upon the like principles and grounds as prevail in the said Court of Queen's Bench upon similar applications: Provided always, that no motion for a new trial or nonsuit shall be entertained after the rising of the Court on the second day of the term next ensuing the rendering of the verdict or nonsuit in the cause, and that all rules moved in the said Court in term time under this or any other clause of this Act, shall

shall be two day rules (where the same rules in the Court of Queen's Bench would be four day rules) and answerable or returnable on the third day inclusive, after service, and may be made absolute at the rising of the Court on that day, and in all cases not otherwise provided for herein, one half of the period allowed in the Court of Queen's Bench shall be allowed in the said District Courts, and upon all or any arguments in term time under this or any other clause of this Act, the Judge of the said Courts, respectively, may pronounce judgment on the first Wednesday after term, or again postpone from that day until the ensuing term.

All rules to be two day rules.

One half of all periods allowed in Queen's Bench, to be allowed in District Courts.

When judgment to be pronounced.

XLIV. And be it enacted, That it shall and may be lawful for the party recovering judgment in any suit or action brought in any of the said District Courts, on application to the Judge of the District Court of any other district than that in which such judgment was recovered, and upon producing and filing in the office of the District Court of such other district an exemplification of the judgment, together with an affidavit that such judgment or some part thereof remains unpaid and unsatisfied, to sue out execution in such other district, in the same manner as by law he could do in the district in which such judgment was rendered, and that the costs of obtaining such exemplification and execution shall be added to the amount directed to be levied by such execution.

In what cases and on what conditions execution may be taken out in a District other than that in which the judgment was rendered.

XLV. And be it enacted, That when any Defendant in a cause to be brought in any of the said District Courts, shall be a prisoner in the custody of the Sheriff or other officer upon the process issued in such cause, the Plaintiff shall file his declaration, and serve a copy thereof on such prisoner, within the first four days of the term next following the return day of the process in the said cause, and shall afterwards proceed to final judgment and execution against such prisoner, within two terms after filing such declaration, unless further time be granted by the Court for any proceeding, or unless the Plaintiff be delayed by the act or pleading of such Defendant, otherwise such prisoner shall be supersediable, and may be discharged in like manner as is done when prisoners are supersediable in any action instituted in the said Court of Queen's Bench.

Within what time the declaration shall be filed and served when the Defendant is in custody, and final judgment proceeded to.

Proviso.

XLVI. And be it enacted, That every Defendant, being such prisoner, shall plead to the declaration filed and served as aforesaid, within four days after the said service; and in default thereof the Plaintiff shall be at liberty to sign judgment and to proceed as in other cases.

Such prisoner to plead within a certain time.

XLVII. And be it enacted, That it shall and may be lawful for the several Judges of the said District Courts, either at the sittings for trials or in term times, by consent of the parties, to order any cause to be referred to arbitration by rule of Court, which rule shall have the same effect, and shall be enforced by the same

Court may order reference to arbitration as in Queen's Bench.

means,

means, as if the same had been granted by the said Court of Queen's Bench in a cause depending in that Court, and the several Judges of the said District Courts shall have power to set aside any award made under such reference, under the same rules and regulations, upon the same terms and in like manner as is done by the Court of Queen's Bench.

District Courts to have the same power to enforce their regulations as the Queen's Bench.

May punish by fine or imprisonment. Proviso.

Certain Writs of execution may be issued as in Queen's Bench.

Recognizance of bail may be entered of record, with like effect as in the Queen's Bench.

Court of Queen's Bench may send certain issues to be tried at the District Court of the District where the *venue* is laid.

Proceedings in such case.

Return.

XLVIII. And be it enacted, That the said District Courts shall have and exercise the same powers to enforce their regulations, rules and directions as the said Court of Queen's Bench in Upper Canada now possesses, and may punish by fine or imprisonment, or either for any wilful contempt or resistance to their regular process, rules or orders, provided that such fine shall in no case exceed twenty-five pounds, currency, nor such imprisonment six calendar months

XLIX. And be it enacted, That it shall and may be lawful for the said District Courts to issue Writs of *Fieri Facias* against goods and chattels, and against lands and tenements, and Writs of *Capias ad Satisfaciendum* upon all judgments entered in the said Courts, in the like cases, upon the same terms, and in the same order, as similar Writs are or may hereafter be issued by the said Court of Queen's Bench.

L. And be it enacted, That all recognizances of bail taken in any of the said District Courts may be entered of record in the Court in which the suit or action shall have been instituted; and that action of debt or *Scire Facias*, shall lie thereupon, as in similar cases in the said Court of Queen's Bench.

LI. And be it enacted, That in any action depending in Her Majesty's Court of Queen's Bench in Upper Canada, for any debt or demand in which the sum sought to be recovered, and indorsed on the copy of the original process served in such action, shall not exceed the sum of twenty-five pounds, and in any action in the said Court for any debt or demand in which the amount shall be ascertained by the signature of the Defendant or Defendants, it shall be lawful upon application by the Plaintiff or Plaintiffs for the said Court, or any Judge thereof, if such Court or Judge shall be satisfied that the trial will not involve any difficult question of fact or law, and the Court or any Judge thereof shall think fit so to do, to order and direct that the issue or issues joined shall be tried before the Judge of the District Court of the district wherein the *venue* in such action shall be laid; and for such purpose a Writ shall issue directed to such Judge, commanding him to try such issue at the first or second sittings of such District Court next after the issuing thereof, by a jury returned for the trial of issues joined in the said Court, and to return such Writ with the finding of the jury thereon endorsed, within ten days after the execution thereof; and such Judge shall proceed to try the issue or issues,

issues, and return upon payment of the fees lawfully due thereon; and if either party require the same, such Judge shall, on payment of the fees hereinafter set forth, report in writing, under his hand, his charge to the jury, together with a copy of the evidence adduced, and of any other matter necessary for a full understanding of the case.

A fuller report may be demanded.

LII. And be it enacted, That notice of trial and of countermand shall be given according to the practice of the said Court of Queen's Bench, and if the Plaintiff shall not proceed to try the issue pursuant to such notice, or shall not countermand the same, judgment as in case of nonsuit may be entered, or other proceedings may be had thereon, pursuant to the practice of the said Court of Queen's Bench.

Notice of trial and countermand to be given, and consequences to be as in Queen's Bench.

LIII. And be it enacted, That at the expiration of six days next after the receipt and filing of the said Writ of Trial and of the return thereof in the Crown Office, costs shall be taxed, judgment signed, and execution issued, unless either party shall apply to stay proceedings as hereinafter mentioned; and the verdict of the jury on the trial of such issue or issues shall be as valid and of the like force as a verdict of a jury at *Nisi Prius*; and the Judge presiding at the trial of such issue or issues shall have the like power, with respect to amendment on such a trial and other proceedings and relief thereat, as are possessed in that behalf by the Judges at *Nisi Prius*.

Proceedings after the return of the verdict.

Power of Judge as to amendment.

LIV. And whereas it would greatly tend to diminish the expense and to the more expeditious termination of suits, if the Judges of the said several District Courts in Canada West were authorized to execute Writs of Enquiry, to be issued from the said Court of Queen's Bench: Be it therefore enacted, that for and notwithstanding any thing contained in the twenty-ninth section of a certain Act of the Parliament of Upper Canada, passed in the second year of the Reign of His late Majesty King George the Fourth, intituled, *An Act to repeal part of and amend the laws now in force respecting the practice of His Majesty's Courts of King's Bench in this Province*, as provides that in all cases where judgment shall have gone by default, the damages shall be ascertained at the same time, and in like manner as if the parties had pleaded to issue, it shall and may be lawful in every action or suit to be brought after this Act shall come into effect in Her Majesty's said Court of Queen's Bench, in which judgment shall go by default or in which judgment shall be given for the Plaintiff on demurrer, and there shall be no issue of fact to be tried, and in which damages are required to be assessed, a Writ of Enquiry for the Plaintiff to issue, directed to the Judge of the District Court of the district in which the *venue* in such suit or action is laid; which Writ shall be executed at the first or second sittings of such District Court next after the issuing thereof, and six days notice of the execution thereof shall be given to the Defendant or his Attorney; and the Judge of the District Court shall make due return of the said Writ within

Part of the Act of U. C. 2 Geo. 4, 2nd Session, cap. 1, sec. 20, repealed, as to assessment of damages in cases by default.

Writs of Enquiry may issue to the District Courts in such cases.

What return shall be made to such Writs.
ten

ten days after the execution thereof, upon payment of the fees lawfully due thereon, and if either party require the same, such Judge shall, on payment of the fee hereinafter set forth, report in writing under his hand, his charge to the jury, together with a copy of the evidence adduced and of any other matter necessary for a full understanding of the case; and the Plaintiff may within six days after the receipt and filing of the Writ of Enquiry and of the return thereof in the Crown Office, enter final judgment and issue execution thereon.

When judgment may be entered after return.

How either party shall proceed if he wishes to set aside any proceeding under a Writ of Enquiry or of Trial.

LV. Provided always, and be it enacted, That if either party shall object to any of the proceedings on the execution of any such Writ of Trial or Writ of Enquiry, and shall give the opposite party notice of his intention to apply to set the same aside within six days next after the day on which the verdict thereon was rendered, such party may, before the entry of final judgment, apply to the said Court of Queen's Bench in term time, or to a Judge thereof in vacation, for a rule to shew cause why such proceedings should not be set aside, which rule, if granted upon the order of a Judge in vacation, shall be returnable in the term next ensuing the application, and shall operate as a stay of proceedings in the mean time; and the said Court of Queen's Bench where any such rule is granted shall make such order thereon and grant such relief as the justice of the case may require: Provided always, that nothing herein contained shall be construed to affect the right of any party to apply to the said Court of Queen's Bench against any other proceeding in the said cause, or to restrain the Plaintiff from obtaining a rule to compute principal and interest, in cases in which the same can now be lawfully done, unless the same shall be otherwise ordered by any rule of the said Court of Queen's Bench.

Proviso.

Other rights of either party not to be affected.

Queen's Bench to make rules of practice concerning proceedings on such Writs.

LVI. And be it enacted, That the Judges of the said Court of Queen's Bench, shall have power to make all necessary rules and regulations for the practice to be observed as to such Writs of Trial or Writs of Enquiry, and the costs therein, not inconsistent with the provisions of the Act or otherwise provided for therein.

Parties dissatisfied with the decision of the District Judge on any point of law, may appeal to Queen's Bench on certain conditions.

LVII. And be it enacted, That if either party in a cause which shall be instituted in any of the said District Courts, shall be dissatisfied with the decision of the Judge upon any point of law arising upon the pleadings, or with the charge to the Jury, or the decision upon any motion for a nonsuit, or for a new trial, or in arrest of judgment, it shall and may be lawful for such party,—(upon giving bond to the opposite party, himself and two sureties in such sum as the said Judge of the District Court shall direct, which sureties shall also justify to such amount by affidavit, to be annexed to the bond in like manner as bail are required to justify) conditioned to abide by the decision to be made in the cause, and to pay all sums of money and costs, as well of the suit as of the appeal, as shall be

Security to be given.

taxed

taxed and awarded to the opposite party, which bond and affidavit of justification, and also an affidavit of the due execution thereof shall be produced to the Judge of the District Court at the time of making the application hereinafter mentioned, and shall remain in the custody of the Clerk of the said District Court until the opinion of the Court above shall be given, and shall then be delivered to the successful party,—to require the Judge of the said District Court, to certify under his hand to the said Court of Queen's Bench, the pleadings in such cause and all motions, rules or orders that have been made, granted or refused therein, together with his own charge, judgment or decision thereon, and the evidence, and all objections and exceptions thereto when any trial has been had; whereupon the same matter shall be set down for argument at the next term of the said Court of Queen's Bench, which Court shall give such order or direction to the Court below, touching the judgment to be given in such matter as the law of the land shall require, and shall also award costs to either party in their discretion, which costs shall be certified to and form part of the judgment of the Court below; and upon receipt of such order, direction and certificate, the Judge of the District Court shall forthwith proceed in accordance therewith.

District Judge to certify the pleadings, &c., to Queen's Bench.

Matter to be argued in the Queen's Bench.

Queen's Bench to direct the Court below.

Costs.

LVIII. And be it enacted, That this Act shall come into and shall be in force and operation with regard to each of the said District Courts, respectively, upon, from and after the first day of the first term of each of the said Courts, which shall commence upon or after the first day of May next after the passing of this Act: Provided always, that all process, suits, causes and proceedings then pending in the several District Courts of Canada West, shall be executed and continued, and all further proceedings in such suits be carried on according to the provisions of this Act: Provided also, that Writs of Execution according to the established course of law may issue upon any judgment in any of the present District Courts which shall remain in the whole or in part unsatisfied at the time this Act shall come into operation.

When this Act shall come into force.

Proviso.

Continuance of pending suits.

Proviso.

Execution on judgments of present District Courts.

LIX. And be it enacted, That in any suit to be brought in the said Court of Queen's Bench after this Act shall come into effect, which suit may be of the proper competence of the said District Courts, no more costs shall be taxed against the Defendant than would have been incurred in the District Court in carrying on the same action, unless the Judge who presides at the trial of such suit or action, shall certify in open Court, immediately after the verdict is recorded, that it was a fit cause to be withdrawn from the District Court, and to be commenced in the said Court of Queen's Bench: Provided also, that so much of the costs of the Defendant, to be taxed as between Client and Attorney, in any such suit wherein the Judge shall not certify as aforesaid, as shall exceed the costs of defence taxable, and which would have been incurred in the District Court

Costs in suits brought in Queen's Bench which might be brought in a District Court.

Proviso.

Extra costs, paid by the Defendant may be allowed him and set off against costs of Plaintiff.

Court in defending the same action, shall be set off and allowed by the Master in entering judgment against the costs to be taxed for the Plaintiff and recoverable from the Defendant.

Receiver of Fees appointed.

LX. And be it enacted, That the Treasurer of each of the Districts in Canada West, shall be the Receiver of Fees of the District Court within his District.

Allowance to such Receiver.

Judges how paid.

Salary to be fixed from time to time by the Governor in Council.

LXI. And be it enacted, That every such Treasurer shall be paid by a percentage of four pounds on every hundred pounds, and no more, of the gross produce of the Fees of the District Court; and that every Judge shall be paid by a certain salary in no case more than five hundred pounds, or less than two hundred and fifty pounds; and the Governor in Council shall fix the remuneration to be paid to the Judges respectively, having due regard as well to the population of the several Districts as the amount of fees received by the Treasurer of each District under this and the said last mentioned Act; and the remuneration of the Judges may be increased, or, as vacancies shall occur, may be diminished by the same authority by which they were at first fixed.

Clerks to keep accounts of all process and proceedings mentioned in the Schedule.

And shall receive the Fees for the Fee Fund.

Audit.

LXII. And be it enacted, That the Clerk of each District Court shall keep an account of all Writs of *Capias ad Respondendum*, Executions, *Subpanas*, Rules, Orders, and all other Writs and Process of the said Courts, and of all other papers and proceedings whatsoever, mentioned and included in the Schedule hereto annexed of Fees to be collected by such Clerk and paid over to the Fee Fund, and shall receive and take all Fees payable on every such Writ or other proceeding, and shall duly and regularly enter an account of all such Fees 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 and three pence 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 Judge of the District: Provided always, that no such fee shall be demanded or received for searching the Appearance and Plea Book only, or either of them.

Fees to be as in Schedule.

LXIII. And be it enacted, That there shall be payable on every proceeding in the said District Courts the Fees which are set down for such proceedings respectively in the Schedule to this Act annexed; and a Table of such Fees shall be hung up in some conspicuous place in the office of the several Clerks of such District Courts.

Clerk to account to the Treasurer and pay over monies to him.

LXIV. And be it enacted, That the Clerk of each and every such District Court shall, from time to time, as often as he shall be required so to do by the Treasurer of his District, deliver to him a full account in writing of the Fees received

received in such Court, applicable to the Fee Fund, under the authority of this Act; and the amount of the Fees received by the said Clerk for such purpose, shall be paid over from time to time by him to the Treasurer, and at least once in every three months; and such amount or so much thereof as may be necessary, shall be applied by such Treasurer in payment of the salaries of the Judges of the said District Courts.

LXV. 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 Public Accounts of this Province, a true account in writing of all monies received and of monies disbursed by him on account of the Court, 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 such Treasurer shall be deemed a specialty debt to Her Majesty.

Treasurer to account to Inspector General and pay over any balance to Receiver General, twice a year.

LXVI. And be it enacted, That in case the amount of Fees received in any of the said District Courts shall not be sufficient to defray the disbursements required on account of the said Courts, during the periods comprised in the said account, it shall be lawful for the Governor of this Province, forthwith to issue his Warrant in favour of the Treasurer for the amount which shall be required to make up the salaries of the said Judges, and the amount of such Warrant shall be charged upon the Consolidated Revenue Fund of this Province.

Governor may issue his Warrant for any deficiency in the Fee Fund to pay the Judge's salary.

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

Treasurer's Accounts to be deemed Public Accounts.

LXVIII. And be it enacted, That if any person having resigned, or having been removed from the office of Treasurer of any District, or Clerk of any District 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 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

Mode of enforcing the payment of monies not paid over by Treasurers and Clerks.

Form of Declaration in action.

Account may be referred.

Order of the Court.

Judgment.

declare as for money had and received to the use of such Treasurer for the purposes of this Act ; and the Court in which such 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 an 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 show 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 by confession, for such sum as upon the report shall appear to be due.

Mode of proceeding for the recovery of money due by a Treasurer or Clerk from his executors or administrators.

LXIX. And be it enacted, That in case of the death of any person, during the time that he shall be holding the office of Treasurer or Clerk, or after he shall have resigned or been 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 monies received under the authority of this Act, and by 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, 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 is hereinbefore mentioned.

Plaintiffs acting as Treasurers to be *primâ facie* evidence of his being such.

LXX. And be it enacted, That in all actions to be brought, as well as in all proceedings whatever 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.

Treasurers and Clerks to give security.

LXXI. And be it enacted, That the Treasurers and Clerks who shall receive any monies in the execution of their duty, shall give security for such sum, and with as many sureties, and in such manner and form, as the Governor of this Province

Province shall see reason to direct, for the performance of their several offices and for the due payment of all monies received by them, under the provisions of this Act: Provided always, that nothing in this Act contained shall extend or be construed to extend to make it necessary for any Treasurer, or the Clerk of any District Court, who has already given security according to the provisions of any existing law, to give new security, or to vacate or make void any such security, but that every such security shall enure to and continue in, and be of the same force and effect while such Treasurers or Clerks, respectively, shall remain in office, or until they shall give new security for the due performance of their several offices and for the due payment of all monies received by them, as if such existing securities had been respectively taken under the provisions of this Act.

Proviso.

Existing securities to remain valid.

LXII. And be it enacted, That nothing in this Act contained shall extend or be construed to extend to annul or make void any existing commission or appointment of Judges, duly qualified according to the requirements of this Act, or Clerks of any of the District Courts in any District in Canada West, but that the same shall continue and shall be a sufficient authority to the parties, respectively, holding the same, to discharge their respective functions under this Act; and that nothing in this Act shall extend or be construed to extend to make the District Courts held under the provisions of this Act, new Courts, but that they shall be taken to be to all intents and purposes the same Courts, as if they had continued to be held under the provisions of the Acts hereby repealed.

Former Commissions of Judges duly qualified, and of Clerks to remain valid.

Courts to be deemed the same Courts as if held under former Acts.

LXIII. And be it enacted, That each and every Clerk of any such District Court, shall hold his office in the Court House, or in the event of there being no room, then in such place as the Judge shall direct within the District Town of his respective District, and shall keep such office open for the transaction of business pertaining to such office, on every day (Sundays and the legal Holidays excepted) from the hour of ten in the forenoon to the hour of three in the afternoon, and in Term time from the hour of nine of the clock in the forenoon to the hour of four of the clock in the afternoon.

Place and hours at and during which Clerks shall keep their Offices open.

LXIV. And be it enacted, That in construing this Act, the word "Governor" shall mean the Governor, Lieutenant-Governor, or person administering the Government of this Province; and 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 to one person or thing; and every word importing the Masculine Gender shall, when necessary, extend and be applied to a female as well as a male;

Interpretation clause.

male; and that the words "Canada West," shall be taken to mean that portion of the Province which formerly constituted the Province of Upper Canada.

Fees to be those and those only set down in the Schedule.

LXXV. And be it enacted, That Fees may be demanded and received for the writs, process, business and service in the conduct of suits, matters and things in the said District Courts according to the Schedule subjoined by the several parties therein named; and that no other or greater Fee than is set down in the said Schedule shall be had, taken or received by any officer or person whatsoever for any business done by him in the said Courts; and that no Fee shall be taxed and allowed for any business other than such as is mentioned in the said Schedule; and that it shall be the duty of the Clerks of the said District Courts to tax costs, subject to an appeal therefrom, forthwith on any dispute arising at taxation, to the Judge of the said District Courts, respectively.

Allowance to District Judges not being Barristers, and therefore superseded under this Act.

LXXVI. And whereas, certain of the Judges of the District Courts are not Barristers at Law, and will be superseded and obliged to retire from their offices by the provisions of this Act, and it is just to make some provision for them: Be it therefore enacted, that where any person, now a Judge of a District Court, who is not a Barrister at Law, and is therefore superseded from his office in conformity with the provisions of this Act, shall have served in the office of such Judge for a period not less than ten years, he shall be entitled to and shall receive a pension of one hundred pounds per annum during his life; and where any such person as aforesaid shall have served in the office of Judge for a period of less than ten years, he shall be entitled and receive a gratuity of two hundred pounds, and that such several pensions and gratuities shall be paid by the Receiver General of this Province, in discharge of any Warrants to be issued by the Governor, and the amount of such Warrants shall be charged upon the Consolidated Revenue Fund of the Province: Provided always, that if any person receiving such pension, shall hereafter be appointed to any office under the Government of this Province, the salary and emoluments whereof shall be equal to such pension, then and in such case, the said pension shall be diminished and reduced one half, and if the salary and emoluments of such office shall amount to double the sum of such pension, the same shall thenceforward cease and wholly determine.

Proviso.

If such person be afterwards appointed to another office.

SCHEDULE.

 FEES TO BE RECEIVED BY THE CLERK AND TO BELONG TO AND BE PAID OVER TO
 THE FEE FUND.

- Every Writ of *Capias ad Respondendum*, one shilling and three pence.
- Every Verdict, five shillings.
- Executing each Writ of Trial or Enquiry and making return thereto, five shillings.
- Every report made by the Judge of the proceedings on executing a Writ of Trial or Enquiry, five shillings.
- Every Certificate of Proceedings made by the Judge to be transmitted to the Court of Queen's Bench, two shillings and six pence.
- Every Rule requiring a motion in open Court, one shilling and three pence.
- Every Rule or Order of Reference, one shilling and three pence.
- Every other Rule or Judge's Order, one shilling.
- Every Recognizance of Bail taken by Judge, one shilling and six pence.
- Every Affidavit administered by Judge, one shilling.
- Every computation of Principal and Interest on a Bill, Note, Bond or Covenant for payment of money, two shillings and six pence.

FEES TO THE SHERIFF.

- Every Jury sworn, four shillings.
- Every Process served, including Return, two shillings and six pence.
- Every Declaration, Rule or other paper served, one shilling and three pence.
- Every Execution received, one shilling and three pence.
- Every Return of Execution, money made or party arrested, two shillings and six pence.
- Every other Return of Execution, one shilling and three pence.
- Milage, four pence per mile on all Writs executed.
- Every Bail Bond taken, two shillings and six pence.
- Every Assignment of Bail Bond, one shilling.
- Poundage upon all monies actually made under *fi. fa.* six pence in the pound.

FEES TO A COMMISSIONER.

- Taking Recognizance of Bail taken, one shilling and six pence.
- Every Affidavit administered, one shilling.

FEES TO THE ATTORNEY.

- Instructions to sue or defend, five shillings.
 Copy of *Capius ad Respondendum*, one shilling.
 Fee on every Writ of *Capius*, two shillings and six pence.
 Drawing Declaration on Common Counts, five shillings.
 Copy of every paper, half the amount allowed for the Original.
 General Issue, Appearance, Interlocutory Judgment, Notice of set off, Cognovit,
 or entering final Judgment, each, two shillings and six pence.
 Special Pleadings after Declaration, each, five shillings.
 Every Notice, including copy and service, two shillings and six pence.
 Drawing Bill of Costs after Verdict, two shillings and six pence.
 Drawing Bill of Costs, when no Verdict, one shilling.
 Necessary Entries of Proceedings on the Judgment Roll, Record for Trial,
 Demurred Book and other necessary Entries, per folio of one hundred words,
 six pence.
 For every necessary Attendance, one shilling.
 Brief and Fee on Assessment, or Writ of Enquiry, ten shillings.
 Brief and Fee on a Trial, one pound ten shillings.
 Fee on Argument for new Trial or on Demurrer, one pound.
 Every Special Motion in Term Time, five shillings.
 Every Common Motion in Term, or Motion before the Judge in Chambers, two
 shillings and six pence.
 Drawing Bail Piece, four shillings.
 Drawing Recognizance of Bail, two shillings.
 Drawing every Affidavit including Attendance, two shillings and six pence.
 Fee on every execution, two shillings and six pence.
 Special Declaration, ten shillings.
 Drawing Bond on Appeal, ten shillings.

FEES TO THE CRIER.

- Swearing the Jury, one shilling.
 Calling the Cause, six pence.
 Each Witness sworn, three pence.

FEES TO THE CLERK.

- Every Writ of *Capius ad Respondendum* and filing *Præcipe*, one shilling and
 three pence.
 Filing every separate Paper, four pence.
 Taking Verdict, two shillings and six pence.

Taking

Taking any Affidavit, one shilling.

Taking any Recognizance of Bail, one shilling and six pence.

Every Rule drawn up and signed by the Clerk, one shilling and six pence.

Every Rule of Reference, two shillings and six pence.

Every *Subpœna*, one shilling and three pence.

Every Search, six pence.

Entering every Judgment, one shilling and six pence.

Every Writ of Execution including filing *Præcipe*, two shillings.

For each Quarterly Account rendered by him to the Treasurer, to be paid by the Treasurer out of the Fee Fund, one pound.

For every other Account of Fees received, made and rendered on a legal requisition, to be also paid out of the Fee Fund, ten shillings.

Examining and filing Record, two shillings and six pence.

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