warehousing of Spirits, on Spirits lawfully manufactured within this Province, there shall be payable on all such Spirits manufactured upon or after the fifth day of July next, or which having been so manufactured before that day, and warehoused under the said Act, shall, upon or after the same be taken out of warehouse for consumption, a further duty of one half penny currency per gallon, wine measure, so that the total duty payable on such Spirits shall be one penny and one half penny currency per gallon.

July, 1856, in addition to that under 12 V. c. 14.

II. This Act shall be construed as one Act with the Act last above cited, and with the Act thereby amended, passed in the ninth year of Her Majesty's Reign, and intituled, *An Act to repeal certain Acts therein mentioned, and to impose a duty on Distillers and the Spirituous Liquors made by them, and to provide for the collection of such duties;* and all the provisions of the said Acts not inconsistent with this Act, shall apply to the duty hereby imposed, and all words and expressions herein used shall have the same meaning as in the said Acts; and the word "manufactured," in this Act, shall be equivalent to the words "distilled, manufactured or made," in the said Acts.

Interpretation clause.

9 V. c. 2.

CAP. XLIII.

An Act to amend, repeal and consolidate the provisions of certain Acts therein mentioned, and to simplify and expedite the proceedings in the Courts of Queen's Bench and Common Pleas in Upper Canada.*

[*Assented to* 19*th June*, 1856.]

WHEREAS it is expedient to simplify and expedite the proceedings in the Courts of Queen's Bench and of Common Pleas for Upper Canada: Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts, as follows:

Preamble.

I. The provisions of this Act shall come into operation on the twenty-first day of August one thousand eight hundred and fifty-six.

Commencement of this Act.

And with respect to the sealing and issuing of Writs and to the offices of the Courts of Queen's Bench and Common Pleas in the different Counties or Unions of Counties; Be it enacted as follows:

Sealing and issuing Writs.

II. There shall be an officer appointed by the Governor of this Province, who shall be called the Clerk of the Process.

Clerk of the Process to be appointed.

III.

* **NOTE.**—The Notes in Brackets indicate the sources from which the provisions of the clauses opposite to which they stand, are derived. "1852," stands for the English Common Law Procedure Act of 1852, (15, 16 V. c. 76,) and "1854," for that of 1854, (17, 18 V. c. 125.) The Provincial Acts are referred to by Reign and chapter in the usual manner. Where there is no Bracketed Note, the provisions of the clause are original. The clauses from the English Acts are taken with as little change as was consistent with their adaptation to U. C. Law and Institutions.

To be an Officer of both Courts.

III. The Clerk of the Process shall be deemed an officer of both of the said Superior Courts of Common Law, and shall keep his Office in Osgoode Hall, and shall have a reasonable allowance for printing, procuring and transmitting blank forms of all Writs and Process, and for necessary books and stationery, and shall be subject to such rules for his guidance, as shall be, from time to time, made according to and under the powers for making rules hereinafter set forth.

To be subject to rules, to be made.

To seal the writs, &c., of both Courts.

IV. The Clerk of the Process shall have a seal for sealing Writs in each of the said Courts, to be approved by the Chief Justice of each Court respectively, and he shall seal therewith and sign all Writs and Process whatsoever which are to be issued from such Courts respectively; he shall keep each Deputy Clerk of the Crown and Pleas supplied with all Writs and Process so signed and sealed in blank to be by them filled up and issued; and he shall in like manner keep the Clerks of the Crown and Pleas supplied with all Writs and Process other than those which he is required to issue; and the Clerk of the Process shall issue to the parties or their Attorneys all Writs of Summons and capias and alias and pluries Writs of Summons and Capias, and Writs of capias in actions already commenced and concurrent Writs, and shall renew such Writs as hereinafter authorized, which shall be required to be issued from the principal office at Toronto; And it shall be his duty and the duty of each Deputy Clerk of the Crown, to issue Writs for the commencement of actions alternately one from each Court and not otherwise, provided that this shall not be understood in any way to affect the issue of concurrent Writs.

And supply Clerks and Deputy Clerks.

To issue writs, &c., to parties and their Attorneys.

Writs to issue alternately, from each Court.

To make quarterly returns to Inspector General.

V. The Clerk of the Process shall make quarterly returns, verified by his affidavits, to the Inspector General, of all Writs and Process issued by him in suits brought at Toronto or supplied by him in order to be issued, to the Clerks or Deputy Clerks of the Crown; and such Clerks or Deputy Clerks shall account for and pay over all fees receivable by them on such Writs and Process, as they are now bound by law to do in respect to other fees received by them; And the Clerk of the Process shall receive the fees on Writs and Process issued by him as aforesaid at Toronto, and shall in like manner, account for and pay over such fees to form part of the Consolidated Revenue Fund of the Province.

Clerks and Deputy Clerks to account as at present.

Clerk of Process to pay over fees received by him.

Proper Office for taking out writs in transitory actions.

VI. In cases in which the cause of action shall be transitory, the Plaintiff may sue out the Writ for the commencement of the action from the office of the Clerk of the Crown and Pleas of either of the said Courts, or from the office of any of the Deputy Clerks of the Crown and Pleas.

When the venue is local.

VII. When the venue is local, the Writ for the commencement of the action must be sued out from the office within the proper County.

VIII.

VIII. The venue in any action may be changed according to the practice now in force, but notwithstanding a change of the venue, the proceedings shall continue to be carried on in the office from which the first process in the action was sued out.

Provision if the venue be changed.

IX. All proceedings to final judgment shall be carried on in the office from which the first process in the action was sued out, and the service of all papers and proceedings subsequent to the Writ, shall be made upon the Defendant or his Attorney, according to the practice now in force, unless special provision is otherwise made in this Act, and if the Attorney of either party do not reside or have not a duly authorized agent residing in the County wherein such action was commenced, then service may be made upon the Attorney wherever he resides, or upon his duly authorized agent in Toronto, or if such Attorney have no duly authorized agent there, then service may be made by leaving a copy of the papers for him in the office where the action was commenced, marked on the outside as copies left for such Attorney.

Proceedings to be carried on in office whence writ issues, &c., service of papers, &c.

X. Final judgment may be entered upon a *cognovit actionem* or Warrant of Attorney to confess judgment, which shall have been given or executed, in the first instance and before the suing out of any process, in any of the said offices or at the option of the Plaintiff, unless some particular office in which the judgment is to be entered be expressly stated in such *cognovit* or warrant.

As to Judgments on *cognovits.*

XI. All Writs of Execution may issue from the office wherein the judgment is entered, or after the transmission of the roll to the principal office, such Writs may, at the option of the party entitled thereto, be issued out of such principal office.

Writs of execution.

XII. Either party may as of right, upon giving two days' notice to the opposite party, have the taxation of costs made by any Deputy Clerk of the Crown and Pleas, revised by the principal Clerk of the Court wherein the proceedings were had; and it shall be lawful for such Court or a Judge, by rule or summons, to call upon the Deputy Clerk who taxed any Bill, to shew cause why he should not pay the costs of revising his taxation and of the application, if in the opinion of the Court or Judge, on the affidavits and hearing the parties, such Deputy Clerk has been guilty of gross negligence, or of wilfully taxing fees or charges for services or disbursements larger or other than those sanctioned by the Rules and Practice of the Court.

Revision of taxation of costs.

Costs of Revision may be charged to Deputy in certain cases.

XIII. Each Deputy Clerk of the Crown and Pleas shall, if proper accommodation be afforded him, keep his office in the Court House of his County, and until he can obtain such accommodation he shall keep his office in some convenient place

Deputy Clerks to keep their offices in the Court House

if possible: and if not, at some convenient place in the same town.

place in the County Town; and every Deputy Clerk's office shall (except between the first day of July and the twenty-first day of August) be kept open from ten o'clock in the morning until three o'clock in the afternoon, Sundays, Christmas Day, Good Friday, Easter Monday, the birthday of the Sovereign, and any day appointed by Royal proclamation for a general fast or thanksgiving, excepted; and between the first day of July and the twenty-first day of August, such offices shall be kept open from nine in the morning until noon.

Hours of attendance, &c.

Rules to return process, may be issued by Deputy Clerks.

XIV. Every Deputy Clerk of the Crown and Pleas may sign and issue rules on any Sheriff or Coroner to return Writs and Process issued out of the office of such Deputy and directed to such Sheriff or Coroner; and it shall be the duty of each Sheriff or Coroner to return such Writs to the office from which such rule issued, in case he shall be served with any such rule.

Preserving evidence of Sheriff's sales.

And whereas many titles to land depend upon Sheriff's sales upon executions, and it is therefore important to provide for the preservation of evidence of the judgments upon which such executions issued, and also for the more speedy registration of judgments; Be it enacted as follows:

Deputy Clerks to keep books for minuting all Judgments, &c.

XV. Every Deputy Clerk of the Crown and Pleas shall keep a regular book, in which shall be minuted and docketed all Judgments entered by such Deputy Clerk; and such minute shall contain the name of every Plaintiff and Defendant, the date of the commencement of the action, the date of the entry of such judgment, the form of action, the amount of debt or damages recovered, the amount of costs taxed, and whether such judgment was entered upon or by verdict, default, confession, *non pros*, non-suit, discontinuance, or how otherwise; and within three months after the entry of each judgment, the Deputy Clerk shall transmit to the principal Clerk of the proper Court in Toronto, every such judgment-roll and all papers of or belonging thereto, and such judgment shall be also docketed in the principal office, and in case the original judgment-roll be lost or destroyed, so that no exemplification or examined copy thereof can be procured, a copy of the entry in either of such docket books, certified by the Clerk or Deputy Clerk having such book in his custody, shall be evidence of all matters therein set forth and expressed: and when any such Deputy shall enter up any Judgment in either of the said Courts, he may give to the party on whose behalf it is entered, or to his legal representative, a certificate signed by him, of such Judgment, containing the like particulars as are required in certificates of Judgments given by the Clerks of the Crown and Pleas, and such certificate may be registered in the Registry Office of any County in Upper Canada, and the same certificate and the registration thereof, shall have the like force and effect in binding or operating as a charge upon lands, tenements and hereditaments situated within such County, as if

Judgments to be also docketed at Toronto.

If the original roll be lost, copies may be used, &c.

Deputy Clerks may give certificates of Judgments entered by them, which certificates may be registered in the proper County and bind lands.

if the certificate had been granted at the principal office at Toronto.

Writs for commencement of personal actions.

And with respect to the Writs for the commencement of personal actions in the said Courts, against Defendants, whether in or out of the jurisdiction of the Courts; Be it enacted as follows:

Mode of commencing personal actions where Defendant resides within the jurisdiction. (1852, s. 2.)

XVI. All personal actions brought in the said Courts where the Defendant is residing or supposed to reside within the jurisdiction thereof, except in cases where it is intended to hold the Defendant to special bail, shall be commenced by Writ of Summons according to the form contained in the Schedule (A) to this Act annexed, marked No. 1, and in every such Writ and copy thereof, the place and county of the residence or supposed residence of the party Defendant, or wherein the Defendant shall be or shall be supposed to be, shall be mentioned.

Form or cause of action need not be mentioned in writ. (1852, s. 3.)

XVII. It shall not be necessary to mention any form or cause of action in any Writ of Summons or in any notice of Writ of Summons issued under the authority of this Act.

Names of Defendants, must be. (1852, s. 4.)

XVIII. Every Writ of Summons shall contain the names of all the Defendants, and shall not contain the name or names of any Defendant or Defendants in more actions than one.

Date of Writ.

Teste. (1852, s. 5.)

XIX. Every Writ of Summons or Capias issued under the authority of this Act, shall bear date on the day on which the same shall be issued, and shall be tested in the name of the Chief Justice of the Court from which the same shall issue, or in case of a vacancy of such office, then in the name of the Senior Puisne Judge of the said Court.

Office whence issued to be marked on writ.

XX. The Clerk or Deputy Clerk of the Crown and Pleas who shall issue any Writ, shall mark in the margin a memorandum stating from what office and in what County such Writ was issued, and shall subscribe his name to such memorandum.

Name of Attorney or person suing out writ to appear on it.

Further particulars if Plaintiff sue in person. (1852, s. 6.)

XXI. Every Writ of Summons or of Capias shall be indorsed with the name and place of abode of the Attorney actually suing out the same, and when the Attorney actually suing any Writ, shall sue out the same as agent for any other Attorney, the name and place of abode of such other Attorney shall also be indorsed upon the said Writ; and in case no Attorney shall be employed to issue the Writ, then it shall be indorsed with a memorandum expressing that the same has been sued out by the Plaintiff in person, mentioning the City, Town, incorporated or other Village or Township within which such Plaintiff resides.

XXII.

Commencement of actions where it is intended to hold Defendant to special bail.

(*This and the two following sections amend and consolidate the repealed provisions of*

2 G. 4, c. 1.
5 W. 4, c. 3.
8 V. c. 48, s. 44.)

Execution of process.

Indorsement thereof on writ.

Declaration when to be made, when Defendant is imprisoned for want of bail.

Proviso: Some Defendants may be arrested, and others not.

Effect of service as to those not arrested.

XXII. In all such actions wherein it shall be intended to arrest and hold any person to special bail, the process shall be by a Writ of Capias according to the form contained in schedule (A) to this Act annexed, and marked No. 2, and may be directed to the Sheriff of any County or Union of Counties in Upper Canada; and so many copies of such process, together with every memorandum or notice subscribed thereto and all indorsements thereon, as there may be persons intended to be arrested thereon or served therewith, shall be delivered with the original Writ, to the Sheriff or other officer who may have the execution or return thereof, and who shall upon or immediately after the execution of such process, cause one such copy to be delivered to every person upon whom such process shall be executed by him, whether by service or arrest, and shall indorse on such Writ the true day of the execution thereof, whether by service or arrest, within three days at furthest after such service or arrest; and if any Defendant be taken or charged in custody upon any such process, and imprisoned for want of sureties for his appearance thereto, the Plaintiff in such process may, before the end of the next term after the arrest of such Defendant, declare against such Defendant and proceed thereon, in the manner and according to the directions contained in the third and fourth rules of the Court of Queen's Bench, made in Easter Term, in the fifth year of Her Majesty's Reign: Provided always, that it shall be lawful for the Plaintiff or his Attorney, to order the Sheriff or other officer to whom such Writ shall be directed, to arrest one or more of the Defendants therein named, and to serve a copy thereof on one or more of the others, which order shall be duly obeyed by such Sheriff or other officer, and such service shall be of the same force and effect as the service of the Writ of Summons hereinbefore mentioned, and no other.

Affidavit for suing out *Capias*. (*See sect.* xxii.)

Proviso: Where the cause of action is other than a debt certain.

Proviso: Act not to subject to arrest per-

XXIII. It shall not be lawful to issue or sue out any such writ of capias, unless an affidavit be first made by such Plaintiff, his servant or agent, of the Plaintiff's cause of action, and that the amount thereof (being in no case less than ten pounds) is justly and truly due to the Plaintiff, and also that such Plaintiff, his servant or agent hath good reason to believe and verily doth believe that the Defendant is immediately about to leave Upper Canada with intent and design to defraud the Plaintiff of the said debt: Provided always, that where the cause of action is other than a debt certain, a writ of capias may be issued and sued out to arrest and hold the Defendant to special bail, a Judge's order having been first obtained for that purpose, in such cases and in such manner as has heretofore been the practice; Provided also, that nothing in this Act contained, shall subject any person to arrest who by reason of any privilege, usage or otherwise may now by law be exempt therefrom; Provided also, that it shall not be necessary that any such affidavit shall be at the time of the making thereof, entitled of or in any Court, but that the style and title of the Court may be added

added at the time of suing out the process, and shall be that
of the Court out of which the process is issued, and that such
style and title when so added, shall be for all purposes and in all
proceedings whether civil or criminal, taken and adjudged to
have been part of the affidavit *ab initio*.

sons now exempted.

Proviso: as to entitling the affidavit.

XXIV. Special bail may be put in and perfected according
to the practice now in force; and after special bail is so put in,
the plaintiff may proceed by filing a declaration or otherwise
to judgment, in like manner as if the action had been commenced by writ of summons and the Defendant had appeared
thereto.

Special bail. (*See sect.* xxii.)

Declaration, and further proceedings.

XXV. Every Attorney whose name shall be endorsed on any
writ issued for the commencement of any action shall, on demand in writing made by or on behalf of any Defendant, declare
forthwith whether such writ has been issued by him or with his
authority or privity, and if he shall answer in the affirmative,
then he shall also, in case the Court or a Judge shall so order
and direct, declare in writing, within a time to be limited by such
Court or Judge, the profession or occupation and place of abode
of the Plaintiff, on pain of being guilty of a contempt of the
Court from which such writ shall appear to have been issued;
and if such Attorney shall declare that such writ was not issued
by him or with his authority or privity, all proceedings upon
the same shall be stayed, and no further proceedings shall be
taken thereon without leave of the Court or a Judge.

Attorney whose name is indorsed on the writ to declare whether he sued it out, and if so, Plaintiff's name, &c. if so ordered.

Proceedings stayed if he declares he did not sue it out. (1852, s. 7.)

XXVI. Upon the writ and copy of any writ served or executed for the payment of any debt, the amount of the debt shall be
stated, and the amount of what the Plaintiff's Attorney claims
for the costs of such writ, copy and service, and attendance to
receive debt and costs; and it shall be further stated, that upon
payment thereof within eight days, to the Plaintiff or his Attorney, further proceedings will be stayed, which indorsement
shall be written or printed in the following form or to the like
effect, "The Plaintiff claims £ for debt and £ for
"costs; and if the amount thereof be paid to the Plaintiff or his
"Attorney within eight days from the service hereof, further
"proceedings will be stayed"; But the Defendant shall be at
liberty, notwithstanding such payment, to have the costs taxed,
and if more than one sixth be disallowed, the Plaintiff's Attorney shall pay the costs of taxation.

Amount of debt and costs of writ to be stated on it, &c.

And a certain notice.

Defendant may have costs taxed. (1852, s. 8.)

XXVII. The Plaintiff in any action may, at any time during
six months from the issuing of the original Writ of Summons
or of capias, issue from the office whence the original Writ issued, one or more concurrent Writ or Writs of the same kind,
to be tested of the same day as the original Writ, and to be
marked by the Clerk or Deputy Clerk issuing the same, with
the word "*concurrent*" in the margin, with the memorandum
required by the twentieth Section of this Act; Provided that
such

Plaintiff may obtain *concurrent* writs.

Their date, &c.

Proviso. 1852, s. 9.)

such concurrent Writ or Writs shall only be in force for the period during which the original Writ in such action shall be in force.

Within what time Writs must be served, &c.

XXVIII. No original Writ of Summons or capias shall be in force for more than six months from the day of the date thereof, including the day of such date; but if any Defendant therein named, may not have been served therewith, the original or concurrent Writ of Summons or Capias may be renewed at any time before the expiration, for six months from the date of such renewal, and so from time to time, during the currency of the renewed Writ, by being marked in the margin, with a memorandum to the effect following: "Renewed for "six months from the day of ," signed by the Clerk or Deputy Clerk who issued such Writ, or his successor in office, upon delivery to him by the Plaintiff or his Attorney, of a præcipe, in such form as has heretofore been required to be delivered upon the obtaining of an *alias* Writ; and a Writ of Summons or Capias so renewed, shall remain in force and be available to prevent the operation of any Statute whereby the time for the commencement of the action may be limited, and for all other purposes from the date of the issuing the original Writ.

Renewing writs.

Effect of renewal as to Statute of limitations. (1852, s. 11.)

Renewing and returning writs issued before the commencement of this Act, &c.

XXIX. When any Writ of Summons or Capias in any such action shall have been issued before, and shall be in force at the commencement of this Act, such Writ may, at any time before the expiration thereof, be renewed under the provisions of, and in the manner directed by this Act; and where any Writ, issued in continuation of a preceding Writ, according to the provisions of the Act passed in the twelfth year of Her Majesty's Reign, intituled, *An Act to make further provision for the administration of Justice, by the establishment of an additional Superior Court of Common Law, and also a Court of Error and Appeal in Upper Canada, and for other purposes*, shall be in force and unexpired, or where one month next after the expiration thereof, shall not have elapsed at the commencement of this Act, such continuing Writ may, without being returned *non est inventus*, or entered of record according to the provisions of the said Act, be filed in the proper office of the Court, within one month next after the expiration of such Writ, or within twenty days after the commencement of this Act, and the original Writ of Summons or capias in such action may thereupon, but within the same period of one month next after the expiration of the continuing Writ, or within twenty days after the commencement of this Act, be renewed under the provisions of, and in the manner directed by this Act; and every such Writ shall, after such renewal, have the same duration and effect for all purposes, and shall be, if necessary, subsequently renewed in the same manner as if it had originally issued under the authority of this Act.

As to writs issued in continuance of preceding writs under the Act.

12 V. c. 63. (1852, s. 12.)

XXX.

XXX. The production of a Writ of Summons or Capias with the memorandum signed as required in the foregoing Section, shewing such Writ to have been renewed according to this Act, shall be sufficient evidence of its having been so renewed, and of the commencement of the action as of the first date of such renewed Writ, for all purposes.

Proof of such renewal of writs. (1852, s. 13.)

XXXI. The Writ of Summons in any action may be served in any County in Upper Canada.

Service in any County. (1852, s. 14.)

XXXII. The person serving the Writ of Summons shall, and he is hereby required within three days at furthest after such service, to indorse on such Writ, the day of the month and week of the service thereof, otherwise the Plaintiff shall not be at liberty in case of non-appearance to proceed under this Act; and every affidavit of service of such Writ shall mention the day on which such indorsement was made.

Indorsement of the day of service on the writ.

Penalty for default. (1852, s. 15.)

XXXIII. Every such Writ of Summons issued against a Corporation aggregate, may be served on the Mayor, Warden, Reeve, President, or other head Officer, or on the Township, Town, City or County Clerk, Clerk, Cashier, Manager, Treasurer or Secretary, or Agent of such Corporation, or of any branch or agency thereof in Upper Canada; and every person who shall, within Upper Canada, transact or carry on any of the business of, or any business for any Corporation whose chief place of business shall be without the limits of Upper Canada, shall, for the purpose of being served with a Writ of Summons issued against such Corporation, be deemed the agent thereof.

Writs against Corporations how served.

Who shall be deemed agents of Corporations in certain cases. (1852, s. 16.)

XXXIV. The service of the Writ of Summons wherever it may be practicable, shall, as heretofore, be personal; but it shall be lawful for the Plaintiff to apply from time to time, on affidavit, to the Court out of which, the Writ of Summons issued or to a Judge, and in case it shall appear to such Court or Judge that reasonable efforts have been made to effect personal service, and either that the Writ has come to the knowledge of the Defendant or that he wilfully evades service of the same, and has not appeared thereto, it shall be lawful for such Court or Judge to order that the Plaintiff be at liberty to proceed as if personal service had been effected, subject to such conditions as to the Court or Judge may seem fit.

Service to be personal.

Exception:

Service may be dispensed with by the Court or a Judge, on affidavit of certain facts. (1852, s. 17.)

XXXV. In case any Defendant being a British subject, is residing out of the Jurisdiction of the said Superior Courts, it shall be lawful for the Plaintiff to issue a Writ of Summons in the form contained in the Schedule (A) to this Act annexed, marked No. 3, which Writ shall bear the indorsement contained in the said form, purporting that such Writ is for service out of the Jurisdiction of the said Superior Courts, and the time for appearance by the Defendant shall be regulated by the

Summons to a party being British Subject residing out of the jurisdiction of the said Courts.

the distance from Upper Canada of the place where the Defendant is residing, having due regard to the means of, and necessary time for postal or other communication; and it shall be lawful for the Court or Judge, upon being satisfied that there is a cause of action which arose within the Jurisdiction, or in respect of the breach of a contract made within the Jurisdiction, and that the Writ was personally served upon the Defendant, or that reasonable efforts were made to effect personal service thereof upon the Defendant, and that it came to his knowledge, and either that the Defendant wilfully neglects to appear to such Writ, or that he is living out of the Jurisdiction of the said Courts, in order to defeat or delay his creditors, to direct from time to time, that the Plaintiff shall be at liberty to proceed in the action in such manner and subject to such conditions as to such Court or Judge may seem fit, having regard to the time allowed to the Defendant to appear being reasonable, and to the other circumstances of the case; Provided always, that the Plaintiff shall be and he is hereby required to prove the amount of the debt or damages claimed by him in such action, either before a Jury on an assessment in the usual mode, or by reference to compute in the manner hereinafter provided, according to the nature of the case, as such Court or Judge may direct, and the making such proof shall be a condition precedent to his obtaining Judgment.

Service thereof, &c.

If Service cannot be made.

Order in such case by the Court or a Judge, on Affidavit.

Proviso: Plaintiff must prove his case. (1852, s. 18.)

XXXVI. In any action against a person residing out of the Jurisdiction of the said Courts and not being a British subject, the like proceedings may be taken as against a British subject resident out of the Jurisdiction, except that the Plaintiff shall, instead of the Summons mentioned in the next preceding Section, issue a Writ of Summons according to the form contained in the said Schedule (A) marked No. 4, and shall in manner aforesaid serve a notice of such last mentioned Writ upon the Defendant, which notice shall be in the form contained in the said Schedule also marked No. 4; and such service or reasonable efforts to effect the same, shall be of the same force and effect as the service or reasonable efforts to effect the service of a Writ of Summons in any action against a British subject resident abroad, and by leave of the Court or a Judge, upon their or his being satisfied by affidavit as aforesaid, the like proceedings may be had and taken thereupon.

If the Defendant be not a British Subject. (1852, s. 19.)

XXXVII. If the Plaintiff or his Attorney shall omit to insert in or indorse on any Writ or copy thereof, any of the matters required by this Act to be inserted therein or indorsed thereon, such Writ or copy thereof shall not on that account be held void, but it may be set aside as irregular, or amended, upon application to be made to the Court out of which the same shall issue, or to a Judge, and such amendment may be made upon any application to set aside the Writ, upon such terms as to the Court or Judge may seem fit.

Amendment if the Plaintiff omits any thing in the indorsement on, or in the writ. (1852, s. 20.)

XXXVIII.

XXXVIII. If either of the forms of Writ of Summons contained in the Schedule (A) to this Act annexed, and marked respectively Nos. 1, 3, and 4, shall by mistake or inadvertence be substituted for any other of them, such mistake or inadvertence shall not be an objection to the Writ or any other proceeding in such action, but the Writ may, upon an *ex parte* application to a Judge, whether before or after any application to set aside such Writ or any proceeding thereon, and whether the same or notice thereof shall have been served or not, be amended by such Judge, without costs.

Amendment if one form of writ be substituted by error for another. (1852, s. 21.)

XXXIX. A Writ for service within the Jurisdiction may be issued and marked as a concurrent Writ with one for service out of the Jurisdiction, and a Writ for service out of the Jurisdiction may be issued and marked as a concurrent Writ with one for service within the Jurisdiction.

Certain writs may be made concurrent. (1852, s. 22.)

XL. Any affidavit for the purpose of enabling the Court or a Judge to direct proceedings to be taken against a Defendant residing out of the Jurisdiction of the said Courts, may be sworn before the Chief Justice or Judge of any Court of Superior Jurisdiction in the Country wherein such Defendant shall reside or be served, or before the Mayor or Chief Magistrate of any City, Town or place wherein the Defendant shall reside or be served, or before any Consul General, Consul, Vice-Consul, or Consular Agent for the time being, appointed by Her Majesty at any foreign port or place at or near which the Defendant shall reside or be served, and every affidavit so sworn by virtue of this Act, may be used and shall be admitted in evidence saving all just exceptions, providing it purport to be sworn before such Chief Justice, Judge, Mayor, or Chief Magistrate, Consul General, Consul, Vice Consul, or Consular Agent; Provided always, that if any person shall forge any signature to any such affidavit, or shall use or tender in evidence any such affidavit with any false, forged or counterfeit signature thereto, knowing the same to be false, forged or counterfeit, he shall be guilty of felony, and shall upon conviction, be liable, at the discretion of the Court, to be kept confined at hard labour in the public Penitentiary of this Province, for any term not less than four years nor more than ten years, and every person who shall be charged with committing any felony under this Act, may be dealt with, indicted, tried, and if convicted, sentenced, and his offence may be laid and charged to have been committed, in the county or place in which he shall be apprehended or be in custody; and every accessory before or after the fact to any such offence, may be dealt with, indicted, tried, and if convicted, sentenced, and his offence may be laid and charged to have been committed, in any county or place in which the principal offender may be tried; Provided also, that if any person shall wilfully and corruptly make a false affidavit before such Chief Justice, Judge, Mayor, Chief Magistrate, Consul General, Consul, Vice Consul or Consular Agent, every person so

Affidavits for enabling proceedings to be taken against a party out of the jurisdiction, before whom to be made.

Proviso. Punishment for forging signatures, &c.

Accessories.

Proviso: trial, punishment, &c., for taking false affidavits.

vits. out of U. C. (1853, s. 23.)

so offending shall be deemed and taken to be guilty of perjury, in like manner as if such false affidavit had been made in Upper Canada before competent authority, and may be dealt with, indicted, tried, and if convicted, sentenced, and his offence may be laid and charged to have been committed, in that county or place where he shall have been apprehended or be in custody.

In demands for liquidated sums, certain particulars may be indorsed on the writ.

XLI. In all cases where the Defendant resides within the Jurisdiction of the Court, and the claim is for a debt or liquidated demand in money, with or without interest, arising upon a contract express or implied, as for instance, on a Bill of Exchange, Promissory Note or Cheque, or other simple contract debt, or on a bond or contract under seal for payment of a liquidated amount of money, or on a statute where the sum sought to be recovered is a fixed sum of money, or in the nature of a debt or on a guarantee, whether under seal or not, where the claim against the principal is in respect of such debt or liquidated demand, bill, note or cheque, the Plaintiff shall be at liberty to make upon the Writ of Summons and copy thereof, a special indorsement of the particulars of his claim, in the form contained in Schedule (A) to this Act annexed, marked No. 5, or to the like effect; and when a Writ of Summons has been indorsed in the special form hereinbefore mentioned, the indorsement shall be considered as particulars of demand, and no further or other particulars need be delivered unless ordered by the Court or a Judge.

No further particulars need be given unless on order. (1852, s. 25.)

Plaintiff may obtain *capias* in certain cases, after commencing the suit by writ of summons, affidavit required.

XLII. It shall be lawful for the Plaintiff, after the commencement of any action by Writ of Summons but before Judgment in such action, upon making and filing an affidavit conformably to the provisions of the twenty-third section of this Act or on obtaining a Judge's order for that purpose to sue out of the office whence such Summons was issued a Writ of *Capias*, and one or more concurrent Writs, and to renew such Writs in manner directed by this Act—which Writ of *Capias* in every such case shall be in the form contained in Schedule (A) to this Act annexed, and marked No. 6, and may be directed to the Sheriff of any county or union of counties in Upper Canada, and so many copies of such Writ with every memorandum or notice subscribed thereto, and all endorsements thereon as there may be persons intended to be arrested thereon shall be delivered with such writ to the Sheriff or other officer who may have the execution or return thereof, and who shall immediately, upon or after the execution thereof, cause one such copy to be delivered to every person upon whom such process shall be executed by him, and shall indorse upon such Writ the true day of the execution thereof within three days at farthest after such execution; and the proceedings in any such action may be carried on to Judgment without regard to the issuing of such *Capias* or to any proceedings in any way arising from or dependent thereon—and on entering Judgment the

Form of writ.

To whom directed.

Copies.

16 V. c. 175, s. 3.

One copy to be delivered to each person on whom the writ shall be executed.

the Plaintiff shall be entitled to tax the costs of such Writ or Writs of *Capias* and the proceedings thereon in like manner as if the suit had been originally commenced by *Capias*, together with the other costs incurred and taxable in the cause: Provided always, that notwithstanding any thing contained in the fourth section of this Act, such Writ shall be issued in the Court out of which the original Writ in the cause was sued out.

Costs.

Proviso: Writ to issue from the same Court as the original writ.

And as regards proceedings against absconding debtors who shall have real or personal property, credits or effects in Upper Canada; Be it enacted as follows:

Absconding Debtors.

XLIII. If any resident in Upper Canada indebted to any person, shall depart from Upper Canada with intent to defraud his creditors, and shall, at the time of his so departing, be possessed to his own use and benefit, of any real or personal property, credits or effects in Upper Canada, he shall be deemed an absconding debtor, and his property, credits and effects aforesaid, may be seized and taken for the satisfying of his debts by a Writ of Attachment, which shall also contain a Summons to the absconding debtor, and shall be in the form in the Schedule (A) to this Act annexed, marked No. 7, and such Writ shall be dated on the day on which it is sued out, and shall be in force for six months from its date, and may be renewed for the purpose of effecting service on the Defendant, in like manner as a Writ of Summons issued under the authority of this Act.

Form of Writ against absconding Debtors, &c. (*The provisions under this and the next 15 sections amend and consolidate the provisions of the repealed Acts*— 2 W. 4, c. 5. 5 W. 4, c. 5.)

Duration of writ. Renewal.

XLIV. Upon affidavit made by any Plaintiff, his servant or agent, that any such person so departing is indebted to such Plaintiff in a sum exceeding twenty-five pounds, and stating the causes of action, and that the Deponent hath good reason to believe and doth verily believe such person hath departed from Upper Canada and hath gone to (stating some place to which the absconding Debtor is believed to have fled or that the Deponent is unable to obtain any information to what place he hath fled,) with intent to defraud the Plaintiff of his just dues, or to avoid being arrested or served with process, which affidavit shall be accompanied by the affidavit of two other credible persons, that they are well acquainted with the Debtor mentioned in the first named affidavit, and have good reason to believe and do believe that such Debtor hath departed from Upper Canada with intent to defraud the said Plaintiff, or to avoid being arrested or served with process, it shall be lawful for either of the said Courts or a Judge, or for the Judge of any County Court, by rule or order, to direct that a Writ of Attachment shall issue (to be in the "Inferior Jurisdiction" if the case be within the Jurisdiction of the County Court, and to be marked and the costs to be allowed accordingly,) and to appoint in such rule or order the time for the Defendants putting in Special Bail, which time shall be regulated by the distance from Upper Canada of the place to which the absconding

Proceedings upon affidavit that the Defendant hath departed, &c. from Upper-Canada, for the purpose of avoiding payment or service of process.

Further Affidavit in confirmation of the former.

Writ of Attachment to issue.

 Debtor

Debtor is supposed to have fled, having due regard to the means of and necessary time for postal or other communication; and such Writ of Attachment shall issue in duplicate, and shall be so marked by the officer issuing the same (the costs of suing out the same being allowed only as if a single Writ issued), and one Writ shall be delivered to the Sheriff to whom the same shall be directed, and the other shall be used for the purpose of effecting service on the Defendant.

Writ of Attachment to be in duplicate.

Further proceedings after service or attempted service.

XLV. Upon its appearing on affidavit to the Court or a Judge, that a copy of the Writ was personally served on the Defendant, or that reasonable efforts were made to effect personal service thereof on him, and that such Writ came to his knowledge, or that the Defendant hath absconded in such a manner that after diligent inquiry no information can be obtained as to the place he hath fled to, it shall be lawful for such Court or Judge, if the Defendant has not put in Special Bail, either to require some further attempt to effect service or to appoint some act to be done which shall be deemed good service, and thereupon, or on the first application, if it shall so seem fit to the Court or a Judge, to direct that the Plaintiff may proceed in the action in such manner and subject to such conditions as the Court or Judge may direct or impose: Provided always, that the Plaintiff shall prove the amount of the debt or damages claimed by him in such action either before a Jury on an assessment or by reference to compute in the manner provided by this Act according to the nature of the case, and the making such proof shall be a condition precedent to his obtaining Judgment, and no execution shall issue until the Plaintiff, his Attorney or Agent shall make oath of the sum justly due by the absconding Debtor to the Plaintiff, after giving him credit for all payments and claims which might be set off or lawfully claimed by the Debtor at the time of making such last mentioned affidavit, and the execution shall be indorsed to levy the sum so sworn to with the taxed costs of suit or the amount of the Judgment, including the costs which ever shall be the smaller sum of the two.

Proviso: Plaintiff must prove his claim.

Further affidavit required before execution shall issue.

Plaintiff may obtain concurrent writs, to other Sheriffs.

XLVI. The Plaintiff may at any time within six months from the date of the original Writ of Attachment, without further order from the Court or a Judge, issue from the office whence the original Writ issued, one or more Concurrent Writ or Writs of Attachment, to bear teste on the same day as the original Writ, and to be marked by the Officer issuing the same with, the word "Concurrent" in the margin, which Concurrent Writ or Writs of Attachment may be directed to any Sheriff other than the Sheriff to whom the original Writ was issued, and need not be sued out in duplicate or be served on the Defendant, but shall operate merely for the attachment of his real or personal property, credits or effects in aid of the original Writ.

They shall be used merely for attaching property.

XLVII.

XLVII The Court or a Judge may at any time before or after final Judgment, but before execution executed, in their discretion, and having regard to the time of the application and other circumstances, let in the Defendant to put in Special Bail, and to defend the action, upon an application supported upon satisfactory affidavits, accounting for Defendant's delay and default and disclosing a good defence on the merits.

Court may let in Defendant to put in Special Bail. Affidavit required.

XLVIII Upon the Defendant's putting in and perfecting Special Bail to the action in like manner as if he had been arrested on a Writ of Capias, for the amount sworn to on obtaining the attachment, either within the time limited by the Writ or within such time as shall be specified by the Court or a Judge on letting in the Defendant to defend as aforesaid, all his property, credits and effects which have been attached in that suit, excepting any which may have been disposed of as perishable, and then the net proceeds of the goods so disposed of, shall be restored and paid to him unless there be some other lawful ground for the Sheriff to withold or detain them, and after Special Bail shall be so put in and perfected the Defendant shall be let in to plead, and the action shall proceed as in ordinary cases begun by Writ of Capias; Provided always, that after obtaining Judgment it shall not be necessary for the Plaintiff to make or file any other or further affidavit than that on which the Writ of Attachment was ordered, in order to sue out a Writ of *capias ad satisfaciendum*; And provided also, that if it shall appear at any time before execution issued, upon motion to be made in Court for that purpose and upon hearing the parties by affidavit, that the Defendant was not an absconding Debtor within the true meaning of this Act, at the time of the suing out of the Writ of Attachment against him, such Defendant shall recover his costs of defence, and the Plaintiff shall, by rule of Court, be disabled from taking out any Writ of Execution for the amount of the verdict rendered or ascertained upon reference to compute or otherwise recovered in such action, unless the same shall exceed, and then for such sum only as the same shall exceed the amount of the taxed costs of the Defendant, and in case the sum so recovered shall be less than the amount of the taxed costs of the Defendant, then the Defendant shall be entitled, after deducting the amount of the sum recovered as aforesaid from the amount of such Defendant's taxed costs, to take out execution for the balance in like manner as a Defendant may now by law have execution for costs in ordinary cases.

Property of Defendant to be restored on his putting in Special Bail;

Or proceeds if sold.

Proviso: as to *ca. sa.*

Proviso: if the Defendant prove that he was not an absconding Debtor when the original writ issued.

Costs, and remedy of Defendant for them.

XLIX. The Sheriff to whom any Writ of Attachment shall be directed shall forthwith take into his charge or keeping all the property, credits and effects, including all rights and shares in any Association or Corporation (which shall be attached in the same manner as they might be seized in execution under the provisions of an Act of the Parliament of this Province, passed in the twelfth year of Her

Sheriff to attach all the property and credits of Defendant.

 Majesty's

12 Vic. c. 23. Majesty's Reign, intituled, *An Act to provide for the seizure and sale of shares in the Capital Stock of Incorporated Companies*,) of the absconding Debtor as set forth in such Writ, and shall be allowed all necessary disbursements for keeping the same; and he shall immediately call to his assistance two substantial freeholders of his County, and with their aid he shall make a just and true inventory of all the personal property, credits and effects, evidences of title or debt, books of account, vouchers and papers that he shall attach, and shall return such inventory, after it shall have been signed by himself and the said freeholders, together with the Writ of Attachment.

Inventory to be made of property seized.

How perishable goods shall be dealt with.

L. In case any horses, cattle, sheep, pigs or any perishable goods or chattels, or such as from their nature (as timber or staves) cannot be safely kept or conveniently taken care of, shall be taken under any Writ of Attachment, it shall be the duty of the Sheriff who has attached the same to have them appraised and valued, on oath, by two competent persons; and in case the Plaintiff suing out the Attachment shall desire it and shall deposit with the Sheriff a Bond to the Defendant executed by two freeholders, whose sufficiency shall be approved by the Sheriff in double the amount of the appraised value of such articles, conditioned for the payment of such appraised value to the Defendant, his executors or administrators, together with all costs and damages that may have been incurred by the seizure and sale thereof, in case Judgment shall not be obtained by the Plaintiff against the Defendant, then the Sheriff shall proceed to sell all or any such enumerated articles at public auction, to the highest bidder, giving not less than six days' notice of such sale, unless any of the articles are of such a nature as not to allow of that delay, in which case the Sheriff may sell such articles last mentioned forthwith; and the Sheriff shall hold the proceeds of such sale for the same purposes as he would hold any property seized under the attachment.

Sale of all such goods if Plaintiff give security to restore appraised value, if he fail.

Sheriff to hold proceeds.

Such goods to be restored if Plaintiff fail to give sufficient security.

LI. If the Plaintiff in any Writ of Attachment, after notice to himself or his Attorney, of the seizure of any such articles as enumerated, shall neglect or refuse to deposit any such Bond, or shall only offer a Bond of sureties insufficient in the judgment of the Sheriff, then, after the lapse of four days next after such notice, the Sheriff shall be relieved from all liability to such Plaintiff in respect to the articles so seized, which the said Sheriff is thenceforth authorized and directed to restore to the person from whose possession he took the same.

Liability of debtors, &c., of the defendant paying him after notice of the seizure, &c,

LII. If any person who is indebted to or has the custody or possession of any property or effects of an absconding Debtor, shall, after notice in writing of the Writ of Attachment duly served upon him by the Sheriff or by or on behalf of the Plaintiff in such Writ, pay any debt or demand or deliver any such property or effects to such absconding Debtor, or to any person

person for the individual use and benefit of such absconding Debtor, the person paying such debt or demand or delivering such property or effects, shall be deemed to have done so fraudulently, and is hereby made liable for the amount of such debt or demand or for such property and effects or the value thereof, to the Plaintiff in such Writ of Attachment, provided such Plaintiff recover Judgment against the absconding Debtor, and if the property and effects actually seized by the Sheriff are insufficient to satisfy such Judgment; and if any person indebted to any absconding Debtor or having custody of his property as aforesaid, shall be sued for such debt, demand or property after notice as aforesaid of the Writ of Attachment, by the absconding Debtor or by any person to whom the absconding Debtor may have assigned such debt or property after the date of the Writ of Attachment, he may, on affidavit, apply to the Court or a Judge, to stay proceedings in the action against himself, until it shall be known whether the property and effects so seized by the Sheriff, shall be sufficient to discharge the sum or sums recovered against the absconding Debtor, and it shall be lawful for the Court or a Judge to make such rule or order in the matter as they may think fit, and if necessary to direct an issue to try any disputed question of fact.

Proviso: Defendant's debtor sued by him after the seizure, may obtain stay of proceedings.

Court or Judge may make a rule, &c.

LIII. If the real and personal property, credits and effects of any absconding Debtor attached by any Writ of Attachment as aforesaid, shall prove insufficient to satisfy the executions obtained in the suit thereon against such absconding Debtor, the Sheriff having the execution thereof may by rule or order of the Court or a Judge to be granted on the application of the Plaintiff, in any such case, sue for and recover from any person indebted to such absconding Debtor, the debt, claim, property or right of action attachable under this Act and owing to or recoverable by such absconding Debtor, with costs of suit, in which suit the Defendant shall be allowed to set up any defence which would have availed him against the absconding Debtor at the date of the Writ of Attachment, and a recovery in such suit by the Sheriff shall operate as a discharge as against such absconding Debtor; and such Sheriff shall hold the moneys recovered by him as part of the assets of such absconding Debtor, and shall apply them accordingly; provided that the declaration in such action shall contain an introductory averment to the effect following:—"A. B., Sheriff of, (&c.) who "sues under the provisions of the law respecting absconding "Debtors, in order to recover from C. D., Debtor to E. F., an "absconding Debtor, the debt due (or other claim according to "the facts) by the said C. D., to the said E. F. complains, &c." Provided also, that no Sheriff shall be bound to sue any party as aforesaid until the attaching creditor shall give his bond with two sufficient sureties payable to such Sheriff by his name of office in double the amount or value of the debt or property sued for conditioned to indemnify him from all costs, losses and expenses to be incurred in the prosecution of such action or to which

Debtor of Defendant may be sued if defendant's property seized be not sufficient to satisfy Plaintiff.

Money recovered to be held as part of assets of absconding debtor.

Proviso: averment to be inserted in Sheriff's declaration.

Proviso: Sheriff not bound to sue until creditor give bond to indemnify him.

Proviso: Sheriff's successor may continue the action.

which he may become liable in consequence thereof; Provided lastly, that in the event of the death, resignation or removal from office of any Sheriff after such action brought, the action shall not abate, but may be continued in the name of his successor to whom the benefit of the bond so given shall enure as if he had been named therein, and a suggestion of the necessary facts as to the change of the Sheriff as Plaintiff shall be entered of record.

Costs in such cases, and how paid.

LIV. The costs of the Sheriff for seizing and taking charge of property, credits and effects under a Writ of Attachment, including the sums paid to any persons for assisting in taking an inventory, and for appraising (which shall be paid for at the rate of *five shillings* for each day actually required for and occupied in making such inventory or appraisement) shall be paid in the first instance by the Plaintiff in the Writ of Attachment, and may after having been taxed be recovered by the Sheriff by action in any Court in Upper Canada, having jurisdiction for the amount, and such costs shall be taxed to the party who pays the same as part of the disbursements in the suit against the absconding Debtor and be so recovered from him;

Proviso: New writ not to make new Inventory requisite.

Provided always, that the Sheriff having made an inventory and appraisement on the first Writ of Attachment against any absconding Debtor, shall not be required to make any new inventory and appraisement on a subsequent Writ of Attachment coming into his hands, nor shall he be allowed any charge for any inventory or appraisement except upon the first Writ.

Persons having previously commenced suits against the same Defendant may proceed to judgment, &c.

LV. Any person who shall have commenced a suit in any Court of Record of Upper Canada, the process wherein shall have been served or executed before the suing out a Writ of Attachment against the same defendant as an absconding Debtor, shall, notwithstanding the suing out of the Writ of attachment, be entitled to proceed to Judgment and execution in his suit in the usual manner; and if he shall obtain execution before the Plaintiff in any such Writ of Attachment, he shall have the full advantage of his priority of execution in the same manner as if the property and effects of such absconding Debtor still remained in his own hands and possession, subject to the prior satisfaction of all costs of suing out and executing the Attachment if the Court or a Judge shall so order;

Proviso: If such suit be fraudulent or collusive.

Provided always, that nothing herein contained shall prevent the Court in which such action is brought or a Judge from setting aside any such judgment and execution, or staying proceedings therein on the application of the Plaintiff on any Writ of Attachment, if such judgment shall appear to be fraudulent, or such action has been brought in collusion with the absconding Debtor, or for the fraudulent purpose of defeating the just claims of other Creditors of such absconding Debtor.

LVI. If any Sheriff to whom a Writ of Attachment is delivered for execution, shall find any property or effects, or the proceeds of any property or effects which have been sold as perishable, belonging to the absconding Debtor named in such Writ of Attachment, in the hands, custody and keeping of any Constable or of any Bailiff or Clerk of a Division Court by virtue of any warrant of attachment issued under the provisions of the Act of the Parliament of this Province, passed in the Session held in the thirteenth and fourteenth years of Her Majesty's Reign, intituled, *An Act to consolidate and amend the several Acts now in force regulating the practice of Division Courts in Upper Canada, and to extend the Jurisdiction of the same*, it shall be the duty of such Sheriff to demand and to take from such Constable, Bailiff or Clerk, all such property or effects, or the proceeds of any part thereof as aforesaid, and it shall be the duty of such Constable, Bailiff or Clerk, on demand by such Sheriff and notice of the Writ of Attachment, forthwith to deliver all such property, effects and proceeds as aforesaid to the Sheriff, upon penalty of forfeiting double the value or the amount thereof, to be recovered by such Sheriff, with costs of suit (which sheriff shall, after deducting his own costs, hold and account for such penalty as part of the property and effects of the absconding Debtor); Provided always, that the Creditor who has sued out such Warrant of Attachment may proceed to judgment against the absconding Debtor in the Division Court, and on obtaining Judgment, and serving a memorandum of the amount thereof, and of his costs to be certified under the hand of the Clerk of the Division Court, he shall be entitled to satisfaction in like manner as and in rateable proportion with the other Creditors of the absconding Debtor who shall obtain Judgment as hereinafter mentioned.

If the Sheriff find property in the hands of a Bailiff, or Clerk of a Division Court under 13 & 14 V. c. 53.

Proviso: Creditor in Division Court may proceed to judgment, &c.

LVII. When several persons shall sue out Writs of Attachment against any absconding debtor, the proceeds of the property and effects attached and in the Sheriff's hands, shall be rateably distributed among such of the Plaintiffs in such Writs as shall obtain Judgments and issue execution, in proportion to the sums actually due upon such Judgments, and the Court or a Judge may, in their discretion, delay the distribution, in order to give reasonable time for the obtaining of Judgment against such absconding Debtor; and every Creditor who shall produce a certified memorandum from the Clerk of any Division Court, of his Judgment as aforesaid, shall be considered a Plaintiff in a Writ of Attachment who has obtained Judgment and issued execution, and shall be entitled to share accordingly; Provided always, that when the property and effects of the absconding Debtor shall be insufficient to satisfy the sums due to such Plaintiffs, none shall be allowed to share, unless their Writs of Attachment were issued and placed in the hands of the Sheriff for execution within six months from the date of the first Writ of Attachment, or in case of a Warrant of Attachment, unless the same was placed in the hands of the Constable

Proceedings if several persons take out writs against the same absconding Debtor.

Proviso: Who shall share if the property will not pay all.

Constable or Bailiff before or within six months after the date of the first Writ of Attachment.

When all the seizing Creditors are satisfied, the remaining property to be delivered up.

LVIII. If after the period of one month next following the return of any execution against the property and effects of any absconding Debtor, or after a period of one month from a distribution under the order of the Court or a Judge, whichever shall last happen, and after satisfying the several Plaintiffs entitled, there shall be no other Writ of Attachment or execution against the same property and effects in the hands of the Sheriff, then all the property and effects of the absconding Debtor, or unappropriated moneys the proceeds of any part of such property and effects, remaining in the hands of the Sheriff, together with all books of account, evidences of title or of debt, vouchers and papers whatsoever belonging thereto, shall be delivered to the absconding Debtor or to the person or persons in whose custody the same were found, or to any lawfully appointed Agent of the absconding Debtor, and thereupon the responsibility of the Sheriff in respect thereto shall determine.

And with respect to the appearance of the Defendant and the proceedings of the Plaintiff in default of appearance ; Be it enacted as follows:

Plaintiff need not enter appearance for Defendant. (1852, s. 26.)

LIX. From the time when this Act shall commence and take effect, no appearance need be entered by the Plaintiff for the Defendant.

Proceedings on non-appearance of Defendant on writ specially indorsed.

Signing judgment.

Execution.

Proviso ; Defendant may be let in to defend. (1852, s. 27.)

LX. In case of non-appearance by the Defendant where the Writ of Summons is indorsed in the special form hereinbefore provided, it shall be lawful for the Plaintiff on filing an affidavit of personal service of the Writ of Summons, or a rule of Court, or a Judge's order for leave to proceed under the provisions of this Act, and the Writ of Summons, at once to sign final Judgment in the form contained in the Schedule (A) to this Act annexed, marked No. 7, *bis*, (on which Judgment no proceeding in error or appeal shall lie) for any sum not exceeding the sum indorsed on the Writ, together with interest to the date of the Judgment and costs to be taxed in the ordinary way : and the Plaintiff may upon such Judgment, issue execution at the expiration of eight days from the last day for appearance, and not before ; Provided always, that it shall be lawful for the Court or a Judge, either before or after final Judgment, to let in the Defendant to defend, upon an application supported by satisfactory affidavits accounting for the non-appearance and disclosing a defence upon the merits.

And if the writ be not so specially indorsed.

LXI. In case of such non-appearance where the Writ of Summons is not indorsed in the special form hereinbefore provided, it shall be lawful for the Plaintiff, on filing an affidavit of personal service of the Writ of Summons or a Judge's Order for leave to proceed under the provisions of this Act,

Act, and the Writ of Summons, to file a declaration indorsed with a notice to plead in eight days, and to sign Judgment by default at the expiration of the time to plead so indorsed as aforesaid, and in the event of no plea being filed and served where the cause of action mentioned in the declaration is for any of the claims which might have been inserted in the special indorsement on the Writ of Summons, the Judgment shall be final, and execution may issue for an amount not exceeding the amount indorsed on the Writ of Summons with interest and costs; Provided always, that in such case the plaintiff shall not be entitled to more costs than if he had made such special indorsement and signed Judgment upon non-appearance.

Declaration. Signing judgment. Execution. Proviso: as to Costs. (1852, s. 28.)

LXII. The Defendant may appear at any time before Judgment, and if he appear after the time specified either in the Writ of Summons or in the warning indorsed in any Writ of Capias served on him, or in any rule or order to proceed as if personal service had been effected, he shall, after notice of such appearance to the Plaintiff or his Attorney, as the case may be, be in the same position as to pleadings or other proceedings in the action as if he had appeared in time; Provided always, that a Defendant appearing after the time appointed by the Writ, shall not be entitled to any further time for pleading or any other proceeding, than if he had appeared within such appointed time: Provided also, that if the Defendant shall appear after the time appointed by the Writ, and shall omit to give such notice of his appearance, the Plaintiff may proceed as in case of non-appearance.

Plaintiff may appear at any time before judgment. His position. Proviso. Proviso. (1852, s. 29.)

LXIII. Every appearance by the Defendant in person shall give an address at which it shall be sufficient to leave all pleadings and other proceedings not requiring personal service, and if such address be not given, the appearance shall not be received, and if an address as given shall be illusory or fictitious, the appearance shall be irregular and may be set aside by the Court or a Judge, and the Plaintiff may be permitted to proceed by sticking up the proceedings in the office from whence the Writ was sued out.

Defendant appearing in person to give an address, &c. Where pleadings, &c., may be served. (1852, s. 30.)

LXIV. The mode of appearance to every such Writ of Summons or under the authority of this Act, shall be by filing with the proper officer in that behalf, a memorandum in writing according to the following form, or to the like effect:

Mode and form of appearance. (1852, s. 31.)

A. B., Plaintiff, against C. D. Defendant, *or* against C. D. and another *or* against C. D. and others.	The Defendant, C. D. appears in person *or* E. F. Attorney for C. D. appears for him.

(*If the Defendant appears in person, here give his address.*)

Entered the day of A. D., 18

LXV

At what time certain proceedings may be taken if Defendant do not appear.

LXV. All such proceedings as are mentioned in any Writ of Summons or Capias, or notice or warning thereto or thereon, issued, made or given by authority of this Act, may be had and taken (in default of a Defendant's appearance or putting in special bail) at the expiration of ten days from the service or execution thereof, on whatever day the last of such ten days may happen to fall, whether in term or vacation; Provided always, that if the last of such ten days shall in any case happen to fall on a Sunday, Christmas Day or Good Friday, in either of such cases the following day, or the following Monday when Christmas Day falls on a Saturday, shall be considered as the last of such ten days; Provided also, that if such Writ shall be served or be executed on any day between the first day of July and the twenty-first day of August in any year, special bail may be put in by the Defendant on bailable process, or appearance entered by the Defendant on process not bailable, at the expiration of such ten days; Provided also, that no declaration or pleading after declaration shall be filed or served between the said first day of July and the said twenty-first day of August.

Proviso: for Holidays.

Proviso: for Dog-days.

Proviso. Dog-days. (1852, s. 32.)

Proceedings if some of the Defendants appear and others do not the writ being specially indorsed. (1852, s. 33.)

LXVI. In any action brought against two or more Defendants when the Writ of Summons is indorsed in the special form hereinbefore provided, if one or more of such Defendants only shall appear and another or others of them shall not appear, it shall be lawful for the Plaintiff to sign Judgment against such Defendant or Defendants only as shall not have appeared, and before declaration against the other Defendant or Defendants, to issue execution thereupon, in which case he shall be taken to have abandoned his action against the Defendant or Defendants who shall have appeared; or the Plaintiff may before such execution declare against such Defendant or Defendants as shall have appeared, stating by way of suggestion the Judgment obtained against the other Defendant or Defendants who shall not have appeared, in which case the Judgment so obtained against the Defendant or Defendants who shall not have appeared, shall operate and take effect in like manner as a Judgment by default obtained before the commencement of this Act against one or more of several Defendants in an action of debt.

And with respect to the joinder of parties to actions; Be it enacted as follows:

Court may in certain cases order any party not joined as

LXVII. It shall be lawful for the Court or a Judge at any time before the trial of any cause, to order that any person or persons not joined as Plaintiff or Plaintiffs in such cause shall be so joined, or that any person or persons originally joined as Plaintiff or Plaintiffs shall be struck out from such cause, if it shall appear to such Court or Judge that injustice will not be done

done by such amendment, and that the person or persons to be added as aforesaid, consent either in person or by writing under his, her or their hands to be so joined, or that the person or persons to be struck out as aforesaid, were originally introduced without his, her or their consent, or that such person or persons consent in manner aforesaid to be struck out; and such amendment shall be made upon such terms as to the amendment of the pleadings, if any, postponement of the trial, and otherwise, as the Court or Judge by whom such amendment is made shall think proper; and when any such amendment shall have been made, the liability of any person or persons who shall have been added as co-Plaintiff or co-Plaintiffs shall, subject to any terms imposed as aforesaid, be the same as if such person or persons had been originally joined in such cause.

Plaintiff, to be so joined, or a party joined to be struck out before trial. (1852, s. 34.)

LXVIII. In case it shall appear at the trial of any action that there has been a mis-joinder of Plaintiffs, or that some person or persons not joined as Plaintiff or Plaintiffs ought to have been so joined, and the Defendant shall not at or before the time of pleading have given notice in writing that he objects to such non-joinder, specifying therein the name or names of such person or persons, such mis-joinder or non-joinder may be amended as a variance at the trial by any Court of Record holding plea in civil actions, and by any Judge sitting at *nisi prius*, or other presiding officer, in like manner as to the mode of amendment and proceedings consequent thereon, or as near thereto as the circumstances of the case will admit, as in the case of amendment of variances under the Act of the Parliament of Upper Canada, passed in the seventh year of the Reign of King William the Fourth, intituled, *An Act for the further amendment of the law and the better advancement of Justice*, if it shall appear to such Court or Judge or other presiding officer, that such mis-joinder or non-joinder was not for the purpose of obtaining an undue advantage, and that injustice will not be done by such amendment, and that the person or persons to be added as aforesaid, consent either in person or by writing under his, her or their hands to be so joined, or that the person or persons to be struck out as aforesaid were originally introduced without his, her or their consent, or that such person or persons consent in manner aforesaid to be so struck out, and such amendment shall be made upon such terms as the Court or Judge or other presiding officer by whom such amendment is made, shall think proper; and when any such amendment shall have been made, the liability of any person or persons, who shall have been added as co-Plaintiff or co-Plaintiffs shall, subject to any terms imposed as aforesaid, be the same as if such person or persons had been originally joined in such action.

Proceedings for amendment if the misjoinder of Plaintiffs; or an omission to join those who ought to be joined, appear at the trial, the Defendant not having given notice of objection.

Act of U. C. 7 W. 4, c. 3.

Liabilty of persons ordered to be joined as Plaintiffs. (1852, s. 35.)

LXIX. In case such notice be given, or any plea in abatement of non-joinder of a person or persons as co-Plaintiff or co-Plaintiffs

If such notice have been given by the Defendant, or

non-joinder be pleaded in abatement. (1852, s. 36.)

co-Plaintiffs (in cases where such plea in abatement may be pleaded) be pleaded by the Defendant, the Plaintiff shall be at liberty, without any order, to amend the writ and other proceedings before plea, by adding the name or names of the person or persons named in such notice or plea in abatement, and to proceed in the action without any further appearance, on payment of the costs of and occasioned by such amendment only, and in such case the Defendant shall be at liberty to plead *de novo*.

Mis-joinder of Defendants discovered before trial in action on contract.

And at trial. (1852, s. 37.)

LXX. It shall be lawful for the Court or a Judge in the case of the joinder of too many Defendants in any action on contract, at any time before the trial of such cause to order that the name or names of one or more of such Defendants be struck out, if it shall appear to such Court or Judge that injustice will not be done by such amendment, and the amendment shall be made upon such terms as the Court or Judge by whom such amendment is made shall think proper; and in case it shall appear at the trial of any action on contract, that there has been a mis-joinder of defendants, such mis-joinder may be amended as a variance at the trial in like manner as the mis-joinder of Plaintiffs has been hereinbefore directed to be amended, and upon such terms as the Court or Judge or other presiding officer by whom such amendment is made shall think proper.

If the non-joinder of Defendants be pleaded in abatement in such action.

Proviso. (1852, s. 38.)

LXXI. In any action on contract where the non-joinder of any person or persons as co-Defendant or co-Defendants has been pleaded in abatement, the Plaintiff shall be at liberty, without any order, to amend the Writ of Summons and the declaration by adding the name or names of the person or persons named in such plea in abatement as joint contractors, and to serve the amended Writ upon the person or persons so named in such plea in abatement, and to proceed against the original Defendant or Defendants and the person or persons so named in such plea in abatement; Provided that the date of such amendment shall, as between the person or persons so named in such plea of abatement and the Plaintiff, be considered for all purposes as the commencement of the action.

Costs of such plea in abatement, &c.

Judgment as regards Defendants liable or not liable, respectively.

LXXII. In all cases after such plea in abatement and amendment, if it shall appear upon the trial of the action that the person or persons so named in such plea in abatement was or were jointly liable with the original Defendant or Defendants, the original Defendant or Defendants shall be entitled as against the Plaintiff to the costs of such plea in abatement and amendment; but if at such trial it shall appear that the original Defendant or any of the original Defendants is or are liable, but that one or more of the persons named in such plea in abatement is or are not liable as a contracting party or parties, the Plaintiff shall nevertheless be entitled to Judgment against the other Defendant or Defendants who shall appear to be liable,

liable, and every Defendant who is not so liable shall have Judgment and shall be entitled to his costs as against the Plaintiff, who shall be allowed the same together with the costs on the plea in abatement and amendment, as costs in the cause against the original Defendant or Defendants who shall have so pleaded in abatement the non-joinder of such person; Provided that any such Defendant who shall have so pleaded in abatement, shall be at liberty on the trial to adduce evidence of the liability of the Defendants named by him in such plea in abatement.

Proviso. (1852, s. 39.)

LXXIII. Provided always that in any action to be brought in Upper Canada against any joint obligor or contractor, the action shall not abate on account of any other joint obligor or contractor not being made a Defendant, unless the party pleading such non-joinder shall aver in his plea that such joint obligor or contractor is living within the limits of Upper Canada, and shall state the place of his residence, nor unless an affidavit of the truth of such plea be filed therewith.

Action not to abate by non-joinder of joint contractor, &c., unless it be averred and sworn that he lives in Upper Canada. 59 G. 3, c. 25.

LXXIV. The joint obligation, contract or promise may be given in evidence against any one or more of the joint obligors or contractors, and shall have the same force and effect for the recovery of Judgment thereon as if it were only the obligation, contract or promise of the Defendant or Defendants actually sued.

Joint contract &c, may be given in evidence against any one contractor, &c. 59 G. 3, c. 25.

LXXV. Causes of action of whatever kind, provided they be by and against the same parties and in the same rights, may be joined in the same suit, but this shall not extend to replevin or ejectment; and where two or more of the causes of action so joined are local and arise in different Counties, the venue may be laid in either of such Counties, but the Court or a Judge shall have power to prevent the trial of different causes of action together, if such trial would be inexpedient, and in such case the Court or a Judge may order separate records to be made up and separate trials to be had; Provided always, that nothing herein contained shall be construed to restrict or diminish the obligation or right of a Plaintiff to include in one action all or any of the drawers, makers, endorsers and acceptors of any Bill of Exchange or Promissory Note.

Several causes of action may be joined, subject to certain conditions.

Court may order separate trials.

Proviso: as to promissory notes, bills, &c. (1852, s. 41.)

LXXVI. In any action brought by a man and his wife on any cause of action accruing personally to the wife, in respect of which they are necessarily co-Plaintifs, it shall be lawful for the husband to add thereto claims in his own right, and separate actions brought in respect of such claims may be consolidated, if the Court or a Judge shall think fit; Provided, that in case of the death of either Plaintiff, such suit, so far only as relates to the causes of action, if any, which do not survive, shall abate.

Cases where a husband and wife are co-Plaintiffs.

Proviso. (1852, s. 40.)

And

And for the determination of questions raised by the consent of the parties without pleading; Be it enacted as follows:

Parties may agree upon an issue of fact, and try it.

LXXVII. Where the parties to an action are agreed as to the question or questions of fact to be decided between them, they may, after writ issued and before Judgment, by consent and order of a Judge, (which order any Judge shall have power to make upon being satisfied that the parties have a *bonâ fide* interest in the decision of such question or questions, and that the same is or are fit to be tried,) proceed to the trial of any question or questions of fact without formal pleadings, and such question or questions may be stated for trial in an issue in the form contained in the Schedule (A) to this Act annexed, marked No. 8, and such issue may be entered for trial and tried accordingly in the same manner as any issue joined in an ordinary action, and the proceedings in such action and issue shall be under and subject to the ordinary control and jurisdiction of the Court, as in other actions.

Form of stating questions, and trial of issue thereon. (1852, s. 42.)

And may enter into agreement to pay money or not, according to the result. (1852, s. 43.)

LXXVIII. The parties may, if they think fit, enter into an agreement in writing, which shall be embodied in the said or any subsequent order, that upon the finding of the Jury in the affirmative or negative of such issue or issues, a sum of money to be fixed by the parties, or to be ascertained by the Jury upon the issue or issues and evidence submitted to them, shall be paid by one of such parties to the other of them, either with or without the costs of the action.

Judgment may be entered and execution issued, &c., upon the finding. (1852, s. 44.)

LXXIX. Upon the finding of the Jury upon any such issue, Judgment may be entered for any such sum as shall be so agreed or ascertained as aforesaid, with or without costs, as the case may be, and execution may issue upon such Judgment forthwith, unless otherwise agreed, or unless the Court or a Judge shall otherwise order for the purpose of giving either party an opportunity for moving to set aside the verdict or for a new trial.

Proceedings may be recorded, &c. Effect of judgment. (1852, s. 45.)

LXXX. The proceedings upon any such issue may be recorded at the instance of either party; and the Judgment, whether actually recorded or not, shall have the same effect as any other Judgment in a contested action.

Parties may agree upon a special case without pleadings. (1852, s. 46.)

LXXXI. The parties may, after writ issued and before Judgment, by consent and by order of a Judge, state any question or questions of law in a special case for the opinion of the Court, without any pleadings.

And may agree to pay or not to pay money, according to the decision upon

LXXXII. The parties may, if they think fit, enter into an agreement in writing, which shall be embodied in the said or any subsequent order, that upon the Judgment of the Court being given in the affirmative or negative of the question or questions of law raised by such special case, a sum of money fixed

fixed by the parties, or to be ascertained by the Court or in such manner as the Court may direct, shall be paid by one of such parties to the other of them, either with or without costs of the action, and the Judgment of the Court may be entered for such sum as shall be so fixed or ascertained, with or without costs as the case may be, and execution may issue upon such Judgment forthwith, unless otherwise agreed or unless stayed by proceedings in error or appeal.

such case, &c. (1852, s. 47.)

LXXXIII. In case no agreement shall be entered into as to the costs of such action, the costs shall follow the event, and be recovered by the successful party.

Costs, when there is no agreement about them. (1852, s. 48.)

And for the more expeditious determination of mere matters of account; Be it enacted as follows:

LXXXIV. If it be made to appear, at any time after the issuing of the writ to the satisfaction of the Court or a Judge, upon the application of either party, that the matters in dispute consist wholly or in part of matters of mere account, which cannot conveniently be tried in the ordinary way, it shall be lawful for such Court or Judge, upon such application, if they or he think fit, to decide such matter in a summary manner, or to order that such matter, either wholly or in part, be referred to an arbitrator appointed by the parties, or to an officer of the Court, or in country causes to the Judge of any County Court, upon such terms as to costs and otherwise as such Court or Judge shall think reasonable; and the decision or order of such Court or Judge, or the award or certificate of such referee, shall be enforceable by the same process as the finding of a Jury upon the matter referred.

The Court or a Judge on the application of either party may refer the whole or any part to an arbitrator, officer or County Judge.

Enforcing such order or decision under it. (1854, s. 3.)

LXXXV. If it shall appear to the Court or a Judge that the allowance or disallowance of any particular item or items in such account depends upon a question of law fit to be decided by the Court, or upon a question of fact fit to be decided by a Jury, it shall be lawful for such Court or Judge to direct a case to be stated or an issue or issues to be tried; and the decision of the Court upon such case, and the finding of the Jury upon such issue or issues, shall be taken and acted upon by the arbitrator as conclusive.

Any incidental question of law may be decided by the Court, or one of fact by a Jury upon a special case or issue. (1854, s. 4.)

LXXXVI. It shall be lawful for the arbitrator upon any compulsory reference under this Act, or upon any reference by consent of parties where the submission is or may be made a rule or order of any of the Superior Courts of Law or Equity in Upper Canada, if he shall think fit and if it is not provided to the contrary, to state his award as to the whole or any part thereof, in the form of a special case for the opinion of the Court, and when an action is referred, judgment if so ordered may be entered according to the opinion of the Court.

Arbitrator may make award in the form of a special case.

Effect thereof. (1854, s. 5.)

LXXXVII.

Proceedings before arbitrator and his power to be as upon reference by consent. (1854, s. 7.)

LXXXVII. The proceedings upon any such arbitration as aforesaid shall, except otherwise directed hereby or by the submission or document authorizing the reference, be conducted in like manner and subject to the same rules and enactments as to the power of the arbitrator and of the Court, the attendance of witnesses, the production of documents, enforcing or setting aside the award, or otherwise, as upon a reference made by consent under a rule of Court or Judge's order.

Case may be remitted to the arbitrator for reconsideration, &c., whenever the reference is made a rule of Court. (1854, s. 8.)

LXXXVIII. In every case of reference to arbitration, whether under this Act or otherwise, where the submission shall be made a rule of any Court of Upper Canada, such Court or a Judge thereof shall have power at any time and from time to time to remit the matters referred or any or either of them to the reconsideration and redetermination of the arbitrator or arbitrators or umpire as the case may require, upon such terms as to costs and otherwise as to the said Court or Judge may seem proper.

Period within which application to set aside award must be made. (1854, s. 9.)

LXXXIX. All applications to set aside any award made on a compulsory reference under this Act, shall and may be made within the first six days of the term next following the publication of the award to the parties, whether made in vacation or term; and if no such application be made, or if no rule be granted thereon, or if any rule granted thereon be afterwards discharged, such award shall be final between the parties.

Award may, by order of a judge, be enforced tho' the said period has not elapsed. (1854, s. 10.)

XC. Any award made on a compulsory reference under this Act, may, by authority of a Judge on such terms as to him may seem reasonable, be enforced at any time after six days from the time of publication, notwithstanding that the time for moving to set it aside has not elapsed.

When parties to any instrument hereafter made have agreed that any difference between them shall be referred to arbitration, the Court or a Judge may stay proceedings in any action or suit, respecting such difference, on application of defendant and proof of certain matters.

XCI. Whenever the parties to any deed or instrument in writing to be hereafter made or executed, or any of them, shall agree that any then existing or future differences between them or any of them shall be referred to arbitration, and any one or more of the parties so agreeing or any person or persons claiming through or under him or them, shall nevertheless commence any action at Law or suit in Equity against the other party or parties or any of them, or against any person or persons claiming through or under him or them in respect of the matters so agreed to be referred or any of them, it shall be lawful for the Court in which such action or suit is brought or a Judge thereof, on application by the Defendant or Defendants or any of them after appearance and before plea or answer, upon being satisfied that no sufficient reason exists why such matters cannot be or ought not to be referred to arbitration according to such agreement as aforesaid, and that the Defendant was at the time of the bringing of such action or suit and still is ready and willing to join and concur in all acts necessary and proper for causing such matters so to be decided by arbitration,

to make a rule or order staying all proceedings in such action or suit, on such terms as to costs and otherwise, as to such Court or Judge may seem fit; Provided always, that any such rule or order may at any time afterwards be discharged or varied as justice may require.

Proviso. (1854, s. 11.)

XCII. If in any case of arbitration, the document authorizing the reference provides that the reference shall be to a single arbitrator, and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator, or if any appointed arbitrator refuse to act, or become incapable of acting, or die, and the terms of such document do not shew that it was intended that such vacancy should not be supplied, and the parties do not concur in appointing a new one, or if, where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator, such parties or arbitrators do not appoint an umpire or third arbitrator, or if any appointed umpire or third arbitrator refuse to act, or become incapable of acting, or die, and the terms of the document authorizing the reference do not shew that it was intended that such vacancy should not be supplied, and the parties or arbitrators respectively do not appoint a new one, then and in every such instance, any party may serve the remaining parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire or third arbitrator respectively; and if within seven clear days after such notice shall have been served, no arbitrator, umpire or third arbitrator be appointed, it shall be lawful for any Judge of any of the Superior Courts of Law or Equity in Upper Canada, upon summons to be taken out by the party having served such notice as aforesaid, to appoint an arbitrator, umpire or third arbitrator as the case may be, and such arbitrator, umpire or third arbitrator respectively, shall have the like power to act in the reference and make an award as if he had been appointed by consent of all parties.

Provision for supplying the place of a single arbitrator or umpire, dying, refusing to act, &c., when the reference does not show an intention that his place should not be supplied.

Notice.

A Judge to appoint another in default of the proper party. (1854, s. 12.)

XCIII. When the reference is or is intended to be to two arbitrators, one appointed by each party, it shall be lawful for either party in case of the death, refusal to act or incapacity of any arbitrator appointed by them, to substitute a new arbitrator, unless the document authorizing the reference shew that it was intended that the vacancy should not be supplied, and if on such a reference one party fail to appoint an arbitrator either originally or by way of substitution as aforesaid, for seven clear days after the other party shall have appointed an arbitrator and shall have served the party so failing with notice in writing to make the appointment, the party who has appointed an arbitrator may appoint such arbitrator to act as sole referee in the reference, and an award made by him shall be binding on both parties as if the appointment had been by consent; provided however that the Court or a Judge may revoke such appointment on such terms as shall seem just.

When the reference is to two arbitrators and one party neglects to appoint, the other may, after certain notice, &c., appoint his arbitrator to act alone, unless the reference provides that the vacancy should not be supplied.

Proviso (1854, s. 13.)

Two arbitrators may always appoint an umpire, unless the reference forbid it. (1854, s. 14.)

XCIV. When the reference is to two arbitrators and the terms of the document authorizing it do not shew that it was intended that there should not be an umpire, or provide otherwise for the appointment of an umpire, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award, unless they be called upon by notice as aforesaid to make the appointment sooner.

Award to be made within a certain period.

XCV. The arbitrator acting under any such document or compulsory order of reference as aforesaid, or under any order referring the award back, shall make his award under his hand and (unless such document or order respectively shall contain a different limit of time) within three months after he shall have been appointed and shall have entered on the reference, or shall have been called upon to act by a notice in writing from any party, but the parties may by consent in writing enlarge the term for making the award; and it shall be lawful for the Superior Court of which such submission, document or order is or may be made a rule or order, or for any judge thereof, for good cause to be stated in the rule or order for enlargement from time to time, to enlarge the term for making the award, and if no period be stated for the enlargement in such consent or order for enlargement, it shall be deemed an enlargement for one month; and in any case where an umpire shall have been appointed, it shall be lawful for him to enter on the reference in lieu of the arbitrators if the latter shall have allowed their time to expire without making an award, or shall have delivered to any party or to the umpire a notice in writing stating that they cannot agree.

Period may be enlarged.

When the Umpire shall act. (1854, s. 15.)

When the award directs possession of real property to be delivered, the Court may order such delivery, and enforce it as a judgment in ejectment. (1854, s. 16.)

XCVI. When any award made on any such submission, document or order of reference as aforesaid, directs that possession of any lands or tenements capable of being the subject of an action of ejectment shall be delivered to any party either forthwith or at any future time, or that any such party is entitled to the possession of any such lands or tenements, it shall be lawful for the Court of which the document authorizing the reference is or is to be made a rule or order, to order any party to the reference who is in possession of any such lands or tenements, or any person in possession of the same claiming under or put in possession by him since the making of the document authorizing the reference, to deliver possession of the same to the party entitled thereto pursuant to the award, and such rule or order to deliver possession shall have the effect of a Judgment in ejectment against every such party or person named in it, and execution may issue and possession shall be delivered by the sheriff as on a judgment in ejectment.

Every submission to arbitration may be made a rule of Court,

XCVII. Every agreement or submission to arbitration by consent, whether by deed or instrument in writing not under seal, may be made a rule of any one of the Superior Courts of law or equity in Upper Canada on the application of any party thereto,

thereto, unless such agreement or submission contain words purporting that the parties intend that it should not be made a rule of Court; and if in any such agreement or submission it is provided that the same shall or may be made a rule of one in particular of such Superior Courts, it may be made a rule of that Court only; and if when there is no such provision a case be stated for the opinion of one of the Superior Courts and such Court be specified in the award, and the document authorizing the reference have not before the publication of the award to the parties been made a rule of Court, such document may be made a rule only of the Court specified in the award; and when in any case the document authorizing the reference is or has been made a rule or order of any one of such Superior Courts, no other of such Courts shall have any jurisdiction to entertain any motion respecting the arbitration or award.

unless the instrument forbid it.

Of what Court it may be made a rule.

And if a case be stated in the award for the opinion of a Court.

Other Courts not to interfere.
(1854, s. 17.)

And with respect to the language and form of pleadings in general; Be it enacted as follows:

XCVIII. All statements which need not be proved, such as the statement of time, quantity, quality and value where these are immaterial, the statement of losing and finding, and bailment in actions for goods and their value—the statements of acts of trespass having been committed with force and arms and against the peace of our Lady the Queen—the statement of promises which need not be proved, as promises in *indebitatus* counts and mutual promises to perform agreements, and all statements of a like kind, shall be omitted.

Statemnents which need not be proved need not be made.
(1852, s. 49.)

XCIX. Either party may object by demurrer to the pleading of the opposite party on the ground that such pleading does not set forth sufficient ground of action, defence or reply, as the case may be; and where issue is joined on such demurrer, the Court shall proceed and give Judgment according as the very right of the cause and matter in law shall appear unto them, without regarding any imperfection, omission, defect in or lack of form, and no Judgment shall be arrested, stayed or reversed for any such imperfection, omission, defect in or lack of form.

Demurrers to be for substance only.

Court may give judgment on the substance without regarding form.
(1852, s. 50.)

C. After this Act comes into operation, no pleading or amended pleading shall be deemed insufficient for any defect which could heretofore only be objected to by special demurrer.

No pleading invalid for cause now pleadable only by special demurrer.
(1852, s. 51.)

CI. If any pleading be so framed as to prejudice, embarrass, or delay the fair trial of the action, the opposite party may apply to the Court or a Judge to strike out or amend such pleading, and the Court or any Judge shall make such order respecting the same, and also respecting the costs of the application, as such Court or Judge shall see fit.

Unfair pleadings may be struck out, or amended.
(1852, s. 52.)

CII.

Notice instead of Rule, to declare, etc. (1852, s. 53.)

CII. No rule to declare, to declare peremptorily, to reply or plead any pleading whatever, shall be allowed, but a notice requiring the opposite party to declare, reply, rejoin, or otherwise, as the case may be, within eight days, otherwise Judgment, shall be sufficient; and such notice may be delivered separately or be indorsed on any pleading which the other party is required to answer.

Entering, dating, and recording pleadings. (1852, s. 54.)

CIII. Every declaration or other pleading shall be entitled of the proper Court, and of the day of the month and year when the same was filed, and shall bear no other time or date, and every declaration or other pleading shall also be entered on the record made up for trial, and on the Judgment Roll, under the date of the day of the month and year when the same respectively took place, and without reference to any other time or date, unless otherwise specially ordered by the Court or a Judge.

Profert, oyer, &c., unnecessary. (1852, s. 55.)

CIV. It shall not be necessary to make profert of any deed or other document mentioned or relied on in any pleading; and, if profert shall be made, it shall not entitle the opposite party to crave oyer of or set out upon oyer, such deed or other document.

Setting out in answer documents referred to in pleading. (1852, s. 56.)

CV. A party pleading in answer to any pleading in which any document is mentioned or referred to, shall be at liberty to set out the whole or any part thereof which may be material, and the matter so set out shall be deemed and taken to be part of the pleading in which it is set out.

As to averment of performance or non performance of a condition precedent. (1852, s. 57.)

CVI. It shall be lawful for the Plaintiff or Defendant in any action to aver performance of conditions precedent generally, and the opposite party shall not deny such performance generally, but shall specify in his pleading the condition or conditions precedent the performance of which he intends to contest.

And with regard to the time and manner of declaring; Be it enacted as follows:

Plaintiff must declare within a year. (1852, s. 58.)

CVII. A plaintiff shall be deemed out of Court unless he declare within one year after the Writ of Summons is returnable.

Commencement of declaration. Conclusion. (1852, s. 59.)

CVIII. Every declaration shall commence as follows, or to the like effect: " (*Venue.*) A. B. by E. F. his Attorney (*or in* " *person,* (*as the case may be*) sues C. D., who has been sum- " moned (*or* arrested) by virtue of a Writ issued on the " day of A. D., 18 , for (*here state cause of action*)": and shall conclude as follows or to the like effect, " and the " Plaintiff claims £ , (*or if the action is brought to recover* " *specific goods,*) the Plaintiff claims a return of the said goods " or their value, and £ for their detention."

CIX.

CIX. In all cases in which after a plea in abatement of the non-joinder of another person as Defendant, the Plaintiff shall, without having proceeded to trial on an issue thereon, commence another action against the Defendant or Defendants in the action in which such plea in abatement shall have been pleaded, and the person or persons named in such plea in abatement as joint contractors, or shall amend by adding the omitted Defendant or Defendants, the commencement of the declaration shall be in the following form, or to the like effect:

Commencement after abatement for non-joinder. (1852, s. 60.)

" (*Venue.*) A. B. by E. F., his Attorney, (*or* in his own " proper person, sues C. D. (*the defendant originally named " in the Summons*) who has been summoned (*or* arrested) by " virtue of a Writ issued on the day of A. D " 18 , and G. H., which said C. D. has heretofore pleaded " in abatement the non-joinder of the said G. H. for," &c.

Form.

CX. In actions of libel and slander, the Plaintiff shall be at liberty to aver that the words or matter complained of were used in a defamatory sense—specifying such defamatory sense without any prefatory averment to show how such words or matter were used in that sense, and such averment shall be put in issue by the denial of the alleged libel or slander; and where the words or matter set forth, with or without the alleged meaning, show a cause of action, the declaration shall be sufficient.

Averments in actions for slander or libel. (1852, s. 61.)

And as to pleas and subsequent pleadings; Be it enacted as follows:

CXI. No rule to plead or demand of plea shall be necessary, and a notice to plead served shall be sufficient.

Notice to plead sufficient. (1852, s. 62.)

CXII. In cases where the Defendant is within the jurisdiction, the time for pleading in bar, unless extended by the Court or a Judge, shall be eight days, and a notice requiring the Defendant to plead thereto in eight days, otherwise judgment, may be indorsed on the copy of the declaration served or delivered separately.

Time for pleading in bar, when Defendant is within the jurisdiction. (1852, s. 63.)

CXIII. Express colour shall no longer be necessary in any pleading.

Express colour unnecessary. (1852, s. 64.)

CXIV. Special traverses shall not be necessary in any pleading.

And special traverses. (1852, s. 65.)

CXV. In a plea or subsequent pleading it shall not be necessary to use any allegation of *actionem non* or *actionem ulterius non*, or to the like effect, or any prayer of Judgment; nor shall it be necessary in any replication or subsequent pleading to use any allegation of *precludi non*, or to the like effect, or any prayer of Judgment.

Certain allegations and prayers not required. (1852, s. 66.)

CXVI.

Commencement of plea, &c.

CXVI. No formal defence shall be required in a plea or avowry or cognizance, and it shall commence as follows, or to the like effect :—" The Defendant, by E. F., his Attorney, (*or* " in person, *as the case may be*) says that (*here state first defence*)" ; and it shall not be necessary to state in a second or other plea or avowry or cognizance, that it is pleaded by leave of the Court or a Judge or according to the form of the statute, or to that effect, but every such plea, avowry or cognizance, shall be written in a separate paragraph and numbered, and shall commence as follows, or to the like effect ; " And for a second (&c.,) plea to (*stating to what it is pleaded*) the Defendant says that &c.," and no formal conclusion shall be necessary to any plea, avowry, cognizance, or subsequent pleading.

Second plea, &c.

Formal conclusion unnecessary. (1852, s. 67.)

Defence arising after action, how pleaded. (1852, s. 68.)

CXVII. Any defence arising after the commencement of any action shall be pleaded according to the fact without any formal commencement or conclusion, and any plea which does not state whether the defence therein set up arose before or after action shall be deemed to be a plea of matter arising before action.

Or after the last pleading.

CXVIII. In cases in which a plea *puis darrein continuance* has heretofore been pleadable in Banc or at *Nisi Prius*, the same defence may be pleaded with an allegation that the matter arose after the last pleading ; but no such plea shall be allowed unless accompanied by an affidavit that the matter thereof arose within eight days next before the pleading of such plea, or unless the Court or a Judge shall otherwise order.

Affidavit required. (1852, s. 69.)

Defendant may pay money into Court, except in certain cases.

CXIX. It shall be lawful for the Defendant in all actions (except actions for assault and battery, false imprisonment, libel, slander, malicious arrest or prosecution, criminal conversation or debauching of the Plaintiff's daughter or servant), and (by leave of the Court or a Judge upon such terms as they or he may think fit,) for one or more of several Defendants, to pay into Court a sum of money by way of compensation or amends ; provided that nothing herein contained shall be taken to affect the provisions of a certain Act of the Parliament of this Province, passed in the Session of Parliament holden in the thirteenth and fourteenth years of Her Majesty's Reign, intituled, *An Act to amend the law relating to slander and libel.*

13 & 14 V. c. 60. (1852, s. 70.)

Such payment how pleaded. (1852, s. 71.)

CXX. When money is paid into Court, such payment shall be pleaded in all cases as near as may be in the following form, *mutatis mutandis :* " The Defendant, by E. F., his Attorney (*or* in person, &c.,) (*if pleaded to part, say*, as to £ , " parcel of the money claimed), brings into Court the sum of " £ , and says the said sum is enough to satisfy the claim " of the Plaintiff in respect of the matter herein pleaded to."

CXXI.

CXXI. No rule or Judge's Order to pay money into Court shall be necessary except in the case of one or more of several Defendants, but the money shall be paid to the proper Officer of either Court who shall sign a receipt for the amount in the margin of the plea, and the said sum shall be paid out to the Plaintiff, or to his Attorney upon a written authority from the Plaintiff, on demand.

No rule or order required. Exception. (1852, s. 72.)

CXXII. The Plaintiff, after the filing and service of a plea of payment of money into Court, shall be at liberty to reply to the same, by accepting the sum so paid into Court in full satisfaction and discharge of the cause of action in respect of which it has been paid in, and he shall be at liberty in that case to tax his costs of suit, and in case of non-payment thereof within forty-eight hours, to sign Judgment for his costs of suit so taxed; or the Plaintiff may reply that the sum paid into Court is not enough to satisfy the claim of the Plaintiff in respect of the matter to which the plea is pleaded, and in the event of an issue thereon being found for the Defendant, the Defendant shall be entitled to Judgment and his costs of suit.

Reply of Plaintiff in such case. Plaintiff satisfied. Plaintiff not satisfied. (1852, s. 73.)

CXXIII. And because certain causes of action may be considered to partake of the character both of breaches of contract and of wrongs, and doubts may arise as to the form of pleas in such actions, and it is expedient to preclude such doubts; any plea which shall be good in substance shall not be objectionable on the ground of its treating the declaration either as framed for a breach of contract or for a wrong.

Plea good, though it treat an alleged breach of contract as a wrong, or *vice versâ*. (1852, s. 74.)

CXXIV. Pleas of payment and set off, and all other pleadings capable of being construed distributively, shall be taken distributively, and if issue is taken thereon and so much thereof as shall be a sufficient answer to part of the causes of action proved, shall be found true by the Jury, a verdict shall pass for the Defendant in respect of so much of the causes of action as shall be answered, and for the Plaintiff in respect of so much of the causes of action as shall not be so answered; and if upon a plea of set off the Jury shall find a larger sum proved to be due from the Plaintiff to the Defendant than is proved to be due from the Defendant to the Plaintiff, a verdict shall pass for the Defendant for the balance remaining due to him, and the Defendant shall have Judgment to recover such balance and his costs of suit.

Distributive plea to be construed distributively, &c. If on set off Defendant prove more due from Plaintiff than to him. (1852, s. 75.)

CXXV. A Defendant may either traverse generally such of the facts contained in the declaration as might have been denied by one plea, or may select and traverse separately any material allegation in the declaration although it might have been included in a general traverse.

Traversing facts alleged in declaration. (1852, s. 76.)

CXXVI. A Plaintiff shall be at liberty to traverse the whole of any plea or subsequent pleading of the Defendant by a general denial,

Traversing pleas. (1852, s. 77.)

denial, or admitting some part or parts thereof to deny all the rest or deny any one or more allegations.

And replications, &c. (1852, s. 78.)

CXXVII. A Defendant shall be at liberty in the like manner to deny the whole or part of a replication or subsequent pleading of the Plaintiff.

Joining issue.

CXXVIII. Either party may plead in answer to the plea or subsequent pleading of his adversary, that he joins issue thereon, which joinder of issue may be as follows, or to the like effect: "The Plaintiff joins issue on the Defendant's, first, (&c. *specifying which or what part*) plea." "The Defendant joins "issue upon the Plaintiff's replication to the first (&c. *specifying which*) plea," and such form of joinder of issue shall be deemed to be a denial of the substance of the plea or other subsequent pleading, and an issue thereon; and in all cases where the Plaintiff's pleading is in denial of the pleading of the Defendant or some part of it, the Plaintiff may add a joinder of issue for the Defendant.

Joinder how construed, &c. (1852, s. 79.)

Pleading and demurring at the same time.

CXXIX. Either party may, by leave of the Court or a Judge, plead and demur to the same pleading at the same time, upon an affidavit by such party or his Attorney, if required by the Court or Judge, to the effect that he is advised and believes that he has just ground to traverse the several matters proposed to be traversed by him, and that the several matters sought to be pleaded as aforesaid by way of confession and avoidance are respectively true in substance and in fact, and that he is further advised and believes that the objections raised by such demurrer are good and valid objections in law, and it shall be in the discretion of the Court or a Judge to direct which issue shall be first disposed of.

Affidavit may be required. (1852, s. 80.)

Several matters may be pleaded by leave of the Court or of a Judge.

CXXX. The Plaintiff in any action may, by leave of the Court or a Judge, plead in answer to the plea or subsequent pleading of the Defendant as many several matters as he shall think necessary to sustain his action, and the Defendant in any action may by leave of the Court or a Judge plead in answer to the declaration or other subsequent pleading of the Plaintiff, as many several matters as he shall think necessary for his defence, upon an affidavit of the party making such application or his Attorney, if required by the Court or a Judge, to the effect that he is advised and believes that he has just ground to traverse the several matters proposed to be traversed by him, and that the several matters sought to be pleaded as aforesaid by way of confession and avoidance, are respectively true in substance and in fact; Provided that the costs of any issue either of fact or of law, shall follow the finding or Judgment on such issue, and be adjudged to the successful party, whatever may be the result of the other issue or issues.

On affidavit if required.

Proviso.

Costs. (1852, s. 81.)

CXXXI.

CXXXI. No rule of Court for leave to plead several matters shall be necessary where a Judge's Order has been made for the same purpose.

Rule not required. (1852, s. 82.)

CXXXII. All objections to the pleading of several pleas, replications or subsequent pleadings, or several avowries or cognizances, on the ground that they are founded on the same ground of answer or defence, shall be heard upon the summons to plead several matters.

Objections when to be heard. (1852, s. 83.)

CXXXIII. The following pleas or any two or more of them may be pleaded together as of course, without leave of the Court or a Judge, that is to say: a plea denying any contract or debt alleged on the declaration, a plea of tender as to part, a plea of the statute of limitations, set off, discharge of the Defendant under the Bankruptcy or Insolvent law, *plene administravit*, *plene administravit præter*, infancy, coverture, payment, accord and satisfaction, release, not guilty, a denial that the property an injury to which is complained of is the Plaintiff's, leave and license's *son assault demesne*, and any other pleas which the Judges of the said Superior Courts, or any four of them of whom Chief Justices of the said Court shall be two, shall, by any rule or order to be from time to time by them made in term or vacation, order and direct.

Certain pleas may be pleaded together without leave. (1852, s. 84.)

CXXXIV. The Signature of Counsel shall not be required to any pleading.

Signature of Counsel not required. (1852, s. 85.)

CXXXV. Except in the cases herein specially provided for, if either party plead several pleas, replications, avowries, cognizances or other pleadings without leave of the Court or a Judge, the opposite party shall be at liberty to sign Judgment, provided that such Judgment may be set aside by the Court or a Judge upon an affidavit of merits, and such terms as to costs and otherwise as they or he may think fit.

In other cases, several pleas, &c., shall not be filed without leave. Penalty. (1852, s. 86.)

CXXXVI. One new assignment only shall be pleaded to any number of pleas to the same cause of action, and such new assignment shall be consistent with and confined by the particulars delivered in the action, if any, and shall state that the Plaintiff proceeds for causes of action different from all those which the plea professes to justify, or for an excess over and above what all the defences set up in such pleas justify, or both.

One new assignment only to several pleas to the same cause of action. (1852, s. 87.)

CXXXVII. No plea which has already been pleaded to the declaration shall be pleaded to such new assignment, except a plea in denial, unless by leave of a Court or Judge, and such leave shall only be grounded upon satisfactory proof that the repetition of such plea is essential to a trial on the merits.

Pleas to new assignment. (1852, s. 88.)

CXXXVIII. The form of a demurrer shall be as follows, or to the like effect:

"The

Form of demurrer. (1852, s. 89.)

"The Defendant, by his Attorney, (*or* Plaintiff, *as the case may be,*) (*or* in person, &c.,) says that the declaration (*or* plea, &c.) is bad in substance,"

and on the margin thereof some substantial matter of law intended to be argued shall be stated; and if any demurrer shall be delivered without such statement, or with a frivolous statement, it may be set aside by the Court or a Judge, and leave may be given to sign Judgment as for want of a plea; and the form of a joinder on demurrer shall be as follows, or to the like effect:

Form of joinder on demurrer.

"The Plaintiff (*or* Defendant) says that the declaration (*or* plea, &c.) is good in substance."

Time for pleading to an amended pleading, &c. (1852, s. 90.)

CXXXIX. Where an amendment of any pleading is allowed, no new notice to plead thereto shall be necessary, but the opposite party shall be bound to plead to the amended pleading within the time specified in the original notice to plead, or within two days after amendment, whichever shall last expire, unless otherwise ordered by the Court or a Judge; and in case the pleading amended had been pleaded to before such amendment, and is not pleaded to *de novo* within two days after amendment, or within such other time as the Court or a Judge shall allow, the pleading originally pleaded thereto shall stand and be considered as pleaded in answer to the amended pleading.

And whereas it is desirable that examples should be given of the statements of the causes of action and of forms of pleading; Be it enacted as follows:

Forms of pleading in Schedule B, if observed in substance to be sufficient. (1852, s. 91.)

CXL. The forms contained in the Schedule (B) to this Act annexed shall be sufficient, and those and the like forms may be used with such modifications as may be necessary to meet the facts of the case, but nothing herein contained shall render it erroneous or irregular to depart from the letter of such forms, so long as the substance is expressed without prolixity.

Judgment by default, &c.

And with respect to Judgment by default, and the mode of ascertaining the amount to be recovered thereon; Be it enacted as follows:

No rule or order to compute required. Saving of pending cases. (1852, s. 92.)

CXLI. No rule or order to compute shall be used; but this shall not invalidate any proceedings already taken or to be taken by reason of any rule or order to compute, made or applied for before the commencement of this Act.

Judgment by default final in certain cases. (1852, s. 93.)

CXLII. In actions where the Plaintiff seeks to recover a debt or liquidated demand in money, the true cause and amount of which is stated in the special indorsement on the Writ of Summons or in the declaration, Judgment by default shall be final.

CXLIII. In actions in which it shall appear to the Court or a Judge that the amount of damages which ought to be recovered by the Plaintiff is substantially a matter of calculation, it shall not be necessary to assess the damages by a Jury, but the Court or a Judge may direct that the amount for which final Judgment is to be signed, shall be ascertained—if the proceedings be carried on in the principal Office at Toronto, by the Clerk of the Crown and Pleas of the proper Court—or, if the proceedings be carried on in the Deputy Clerk's Office in any County, then by the Judge of the County Court of such County; and the attendance of witnesses and the production of documents before such Clerk of the Crown or Judge of the County Court may be compelled by subpœna, in the same manner as before a Jury upon a writ of inquiry; and it shall be lawful for such Clerk or Judge of the County Court, to appoint the day for hearing the case, and to adjourn the inquiry from time to time, as occasion may require; and such Clerk of the Crown, or Judge of the County Court, shall indorse upon the rule or order for referring the amount of damages to him, the amount found by him, and shall deliver the rule or order with such indorsement to the Plaintiff, and such and the like proceedings may hereupon be had, as to taxation of costs, signing Judgment, and otherwise, as upon the finding of a Jury upon an assessment of damages.

How the amount of damages shall be ascertained when the Court shall be of opinion that it is substantially a matter of calculation. (1852, s. 94.)

CXLIV. In all actions where the Plaintiff recovers a sum of money, the amount to which he is entitled may be awarded to him by the Judgment generally, without any distinction being therein made as to whether such sum is recovered by way of a debt, or damages.

Sum of money recovered to be awarded generally.

CXLV. Notwithstanding any thing in this Act contained, the provisions of a certain Act of the Parliament of Great Britain, passed in the Session held in the eighth and ninth years of the Reign of King William the Third, intituled, *An Act for the better preventing frivolous and vexatious suits*, as to the assignment or suggestion of breaches, or as to Judgment, shall continue in force in Upper Canada.

Provisions of a certain British Act of 8, 9 W. 3, c. 11, to remain in force. (1852, s. 96.)

And with respect to notice of trial or of assessment of damages, and countermand thereof; Be it enacted as follows:

Notice of trial or assessment, &c.

CXLVI. Eight days' notice of trial or of assessment shall be given, and shall be sufficient in all cases, whether at Bar or at Nisi Prius.

Notice of trial or assessment. (1852, s. 97.)

CXLVII. A countermand of notice of trial or assessment shall be given four days before the time mentioned in the notice of trial or assessment, unless short notice has been given, and then two days before the time mentioned in the notice, unless otherwise ordered by the Court or a Judge, or by consent.

Countermand of notice. (1852, s. 98.)

Rule for costs of the day, on affidavit. (1852, s. 99.)

CXLVIII. A rule for costs of the day for not proceeding to trial or assessment pursuant to notice, or not countermanding in sufficient time, may be drawn up on affidavit without motion made in Court.

Judgment for not proceeding to trial.

And with respect to Judgment for default in not proceeding to trial; Be it enacted as follows:

A certain British Act of 14 Geo. 2, c. 17, not to be in force in U. C.

Exception. (1852, s. 100.)

CXLIX. The Act of the Parliament of Great Britain, passed in the fourteenth year of the Reign of King George the Second, intituled, *An Act to prevent inconveniences from delays of causes after issue joined*, so far as the same relates to Judgment as in case of a nonsuit, shall no longer be in force in Upper Canada, except as to proceedings taken or commenced thereupon before the commencement of this Act.

Town causes and Country causes distinguished.

CL. Causes in which the venue is or shall be laid in the United Counties of York and Peel, or in the County of York alone, when no longer united with the said County of Peel, shall be called Town Causes, and all other causes shall be called Country Causes.

If Plaintiff neglects to go to trial within a certain time after issue joined, Defendant may give notice to Plaintiff to bring issue to trial, &c. (1852, s. 101.)

CLI. Where any issue is or shall be joined in any cause, and the Plaintiff has neglected or shall neglect to bring such issue on to be tried, that is to say, in Town Causes where issue has been or shall be joined in, or in the vacation before Hilary, Trinity or Michaelmas Term, and the Plaintiff has neglected or shall neglect to bring the issue on to be tried at or before the second Assizes following such term, or if issue has been or shall be joined in or in the vacation before Easter Term, then if the Plaintiff has neglected or shall neglect to bring the issue on to be tried at or before the first Assizes after Easter Term,—and in Country Causes where issue has been or shall be joined in, or in the vacation before Hilary or Trinity Term, and the Plaintiff has neglected or shall neglect to bring the issue on to be tried at or before the second Assizes following such Term, or if issue has or shall be joined in or in the vacation before Easter or Michaelmas Term,—then if the Plaintiff has neglected or shall neglect to bring the issue on to be tried at or before the first Assizes after such Term, whether the Plaintiff shall in the meantime have given notice of trial or not, the Defendant may give twenty days' notice to the Plaintiff to bring the issue on to be tried at the Assizes next after the expiration of the notice; and if the Plaintiff afterwards neglects to give notice of trial for such Assizes, or to proceed to trial as required by the said notice given by the Defendant, the Defendant may suggest on the record that the Plaintiff has failed to proceed to trial, although duly required so to do, (which suggestion shall not be traversable, but only be subject to be set aside if untrue,) and may sign Judgment for his costs; provided that the Court or a Judge, shall have power to extend the time for proceeding to trial with or without terms; and provided

provided also, that no rule for trial by proviso shall thereafter be necessary.

Courts of Nisi Prius, &c.

And with respect to the holding of Courts of Nisi Prius and to the Nisi Prius record and to the trial; Be it enacted as follows:

Courts of Assize and Nisi Prius &c. to be held in each County or Union (except that including Toronto), and at what periods.

Who shall preside.

If commissions are issued.

And if not. 18 V. c. 92.

CLII. Courts of Assize and Nisi Prius, of Oyer and Terminer and of General Gaol delivery, shall be held in every County or Union of Counties in Upper Canada (except in that within which the City of Toronto is situate) in each and every year, in the vacations between Hilary and Easter Terms and between Trinity and Michaelmas Terms, with or without Commissions as to the Governor of this Province shall seem best, and on such days as the Chief Justices and Judges of the Superior Courts of Common Law in Upper Canada shall respectively name; and if Commissions are issued then such Courts shall be presided over by the person or persons named in such Commissions; but if no such Commissions are issued, then the Courts of Assize and Nisi Prius shall be presided over by one of the Chief Justices or of the Judges of the said Superior Courts of Common Law, or in their absence, then by some one of Her Majesty's Counsel learned in the Law and of the Upper Canada Bar who may be requested by any one of the said Chief Justices or Judges to attend for that purpose, or by some one Judge of a County Court who may be so requested; and the Courts of Oyer and Terminer and General Gaol delivery shall be presided over by either of the said Chief Justices or Judges, or by any such of Her Majesty's Counsel or any such Judge of a County Court, each and every of whom shall be deemed to be of the *quorum*, together with any one or more of the persons who shall be named as Associate Justices of the said Courts of Oyer and Terminer and General Gaol delivery; and the said Chief Justices and Judges and such of Her Majesty's Counsel as aforesaid, and such Judge of a County Court, presiding at any Court of Assize and Nisi Prius, shall and may possess and exercise the like powers and authorities as have been usually expressed and granted in Commissions issued for the holding of such Courts; and the said Chief Justices and Judges and such of Her Majesty's Counsel as aforesaid, and such Judge of a County Court presiding at any Court of Oyer and Terminer and General Gaol delivery, and the person or persons named as Associate Justices, shall and may possess and exercise the like power and authorities as have been usually expressed and granted in and by Commissions issued for holding such last mentioned Courts, and wherein such Chief Justices and Judges and Queen's Counsel and Judges of County Courts would have been named of the *quorum*; and such Courts shall in like manner be held in the County or Union of Counties within which the City of Toronto is situate, three times in each year, to commence on the

And in Courts of Oyer and Terminer and Gaol Delivery.

Powers of Judge, &c., presiding at Nisi Prius.

And in Courts of Gaol Delivery, &c.

Powers of associates.

Periods of holding such Courts in the County or

Union including Toronto. the Thursday next after the holding the Municipal Elections in January, on the second Monday in April, and on the second Monday in October in each year; Provided that nothing herein contained shall restrict the Governor of this Province from issuing special Commissions for the trial of any offenders, when he shall deem it expedient to issue any such Commission.

Proviso for special commissions.

Governor to name Associate Justices; Provincial-Secretary to notify them, if no commission issues. 18 V. c. 92.

CLIII. The Governor of this Province shall name the Associate Justices, and it shall be the duty of the Provincial Secretary, when no Commissions are issued, on or before the first day of the several terms next after which such Courts are to be holden, to transmit to the Chief Justices aforesaid, and to the Sheriff of each County or Union of Counties, lists of the names of the persons who are so named Associate Justices for each several Court of Oyer and Terminer and General Gaol delivery, and also to give due notice to every such person of his nomination and appointment; Provided always, that no greater number of persons than *five* shall be named as Associate Justices for any one Court of Oyer and Terminer and General Gaol delivery; and provided also that the Clerk of Assize shall be *ex officio* one of the Associate Justices.

Proviso: Number limited.

Clerk of Assize to be one *ex officio*.

How and when Records of Nisi Prius shall be entered in country causes.

CLIV. The record of Nisi Prius shall not be sealed or passed, but shall in Country Causes be entered with the Deputy Clerk of the Crown of the proper County or Union of Counties, before noon of the Commission or opening day of the Assizes for such County or Union; and the party entering any record shall indorse thereon whether it be an assessment, an undefended issue or a defended issue; and the Deputy Clerk of the Crown shall make three lists and enter each Record in one of the said lists, in the order in which the Records are received by him, and on the first list he shall enter all the assessments and undefended issues, and in the second list all defended issues not marked "Inferior Jurisdiction," and on the third list all defended issues marked "Inferior Jurisdiction," and it shall be in the discretion of the Judge at Nisi Prius to postpone the trial of causes in the third list until all the others are disposed of, and to call on the causes in the first list at such time and times as he shall find most convenient for disposing of the business; Provided always, that the Judge at Nisi Prius may permit a record in any suit to be entered after the time above limited, if upon facts disclosed on affidavit, or on the consent of both parties, he shall see fit to do so.

Certain particulars to be indorsed on each.

Three lists to be made by Deputy Clerk of the Crown.

Order of calling causes.

Proviso: Judge may allow entry of a Record after time limited. (1852, s. 102.)

Entry of such Records in Town Causes.

CLV. In Town Causes the Records shall be entered with the Clerk of Assize, who shall attend at the Court House on the Commission or opening day for the purpose of receiving and entering the same, from nine in the morning until noon, after which he shall not receive any without the order of the Presiding Judge, who shall have the same power in this respect as set forth in the preceding Section, and the Clerk of Assize shall make three lists as aforesaid, which shall be regulated and the business disposed of as in Country Causes.

Lists, &c.

CLVI.

CLVI. In all actions involving the investigation of long accounts on either side, the Judge at Nisi Prius may at and during the trial direct a reference of all issues in fact in the cause, or of such of the said issues and of the accounts and matters involved in all or any such issues as he shall think fit, taking the verdict of the Jury upon any issue or issues not so referred, and directing a verdict to be entered generally, on all or any of the issues, for either party, subject to such reference, or he may leave all or any issues in fact to be found by the Jury, referring only to the amount of damages to be ascertained; and if the parties agree upon the Arbitrators, (not more than three) the names of those agreed on shall be inserted in the Order of Nisi Prius, but if the parties cannot agree, the Judge shall name the Arbitrator or Arbitrators, and appoint all other terms and conditions of the reference to be inserted in such Order of Nisi Prius, and the award may be moved against, as in ordinary cases, within the first four days of the Term next after the making of the award.

In actions involving long accounts Judge may direct a reference as to part and a verdict as to other parts, &c., or leave the whole to the Jury.

Appointment of arbitrators in referred cases.

As to motion to set aside award.

(1854, s. 6.)

CLVII. Upon the trial of any cause the addresses to the Jury shall be regulated as follows: the party who begins, or his Counsel, shall be allowed, in the event of his opponent not announcing at the close of the case of the party who begins, his intention to adduce evidence, to address the Jury a second time at the close of such case, for the purpose of summing up the evidence; and the party on the other side, or his Counsel, shall be allowed to open the case and also to sum up the evidence (if any), and the right to reply shall be the same as at present.

Right of addressing the Jury regulated.

(1854, s. 18.)

CLVIII. It shall be lawful for the Court or Judge at the trial of any cause where they or he may deem it right for the purposes of justice, to order an adjournment for such time and subject to such terms and conditions, as to costs and otherwise, as they or he may think fit.

Power to adjourn the Trial.

(1854, s. 19.)

CLIX. A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may in case the witness shall, in the opinion of the Judge, prove adverse, contradict him by other evidence, or by leave of the Judge, prove that he has made at other times a statement inconsistent with his present testimony; but before such last mentioned proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

How far a party may discredit his own witness.

(1854, s. 22.)

CLX. If a witness upon cross examination as to a former statement made by him relative to the subject matter of the cause, and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it; but before such proof can

Proof of contradictory statements by adverse witness.

(1854, s. 23.)

be

be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

Cross-examination as to previous statements in writing.

CLXI. A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject matter of the cause, without such writing being shewn to him; but if it is intended to contradict such witness by the writing, his attention must before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him; Provided always, that it shall be competent for the Judge at any time during the trial, to require the production of the writing for his inspection, and he may thereupon make such use of it for the purposes of the trial as he shall think fit.

Proviso; Judge may require production of the writing, &c. (1854, s. 24.)

Proof of previous conviction of a witness may be given if he denies it on being asked, as he may be.

CLXII. A witness may be questioned as to whether he has been convicted of any felony or misdemeanor, and upon being so questioned, if he either denies the fact or refuses to answer, it shall be lawful for the opposite party to prove such conviction, and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for such offence, purporting to be signed by the Clerk of the Court or other officer having the custody of the records of the Court where the offender was convicted, or by the Deputy of such Clerk or Officer, (for which certificate a fee of *five shillings* and no more shall be demanded or taken,) shall upon proof of the identity of the persons be sufficient evidence of the said conviction, without proof of the signature or official character of the person appearing to have signed the same.

What shall be sufficient proof. (1854, s. 25.)

Attesting witness need not be called where none was required by law. (1854, s. 26.)

CLXIII. It shall not be necessary to prove by the attesting witness, any instrument to the validity of which attestation is not requisite, and such instrument may be proved by admission or otherwise, as if there had been no attesting witness thereto.

Comparison of disputed writing with genuine. (1854, s. 27.)

CLXIV. Comparison of a disputed writing with any writing proved to the satisfaction of the Judge to be genuine, shall be permitted to be made by witnesses; and such writings and the evidence of witnesses respecting the same, may be submitted to the Court and Jury, as evidence of the genuineness or otherwise of the writing in dispute.

Admission of Documents.

And with respect to the admission of Documents; Be it enacted as follows:

Calling on parties to admit Documents.

CLXV. Either party may call upon the other party, by notice, to admit any Document, saving all just exceptions, and in case of refusal or neglect to admit, the costs of proving the Document shall be paid by the party so neglecting or refusing, whatever

whatever the result of the cause may be, unless at the trial the Judge shall certify that the refusal to admit was reasonable; and no costs of proving any Document shall be allowed unless such notice be given, except in cases where the omission to give the notice is, in the opinion of the Taxing Officer, a saving of expense.

Costs. (1852, s. 117.)

CLXVI. An affidavit of the Attorney in the cause, or his Clerk, of the due signature of any admissions made in pursuance of such notice, and annexed to such affidavit, shall be in all cases sufficient evidence of such admissions.

Evidence of admissions. (1852, s. 118.)

CLXVII. An affidavit of the Attorney in the cause, or his Clerk, of the service of any notice to produce in respect to which notice to admit shall have been given, and of the time when it was served, with a copy of such notice to produce, annexed to such affidavit, shall be sufficient evidence of the service of the original of such notice, and of the time when it was served.

Evidence of service of notice to produce. (1852, s. 119.)

And with respect to rules for new trials or to enter a verdict or non-suit; Be it enacted as follows:

Rules for new trials, &c.

CLXVIII. In every rule nisi for a new trial or to enter a verdict or non-suit, the grounds upon which such rule shall have been granted shall be shortly stated therein; provided that in case of any omission, the Court may permit the rule to be amended and served again on such terms as shall be deemed reasonable; and when a new trial is granted on the ground that the verdict is against evidence, the costs of the first trial shall abide the event, unless the Court shall otherwise order.

Ground to be stated in rule *nisi* for new trial. (1854, s. 33.)

Proviso: Court may allow amendment.

Costs. (1854, s. 44.)

And with respect to procuring affidavits from unwilling persons and the production of documents generally, and also for the discovery of documents and other matters from the parties to a cause; Be it enacted as follows:

CLXIX. Upon motions founded upon affidavits, it shall be lawful for either party with leave of the Court or a Judge, to make affidavits in answer to the affidavits of the opposite party, upon any new matter arising out of such affidavits, subject to all such rules as shall hereafter be made respecting such affidavits.

Affidavits on new matter, in answer to affidavits. (1854, s. 45.)

CLXX. Upon the hearing of any motion or Summons, it shall be lawful for the Court or a Judge at their or his discretion, and upon such terms as they or he shall think reasonable, from time to time to order such documents as they or he may think fit to be produced, and such witnesses, as they or he may think necessary, to appear and be examined *vivâ voce* either before such Court or Judge, or before a Judge of any County Court,

Court or Judge may, on hearing any motion or Summons, order the production of documents or oral evidence. (1854, s. 46.)

Court, or before any Clerk or Deputy Clerk of the Crown, and upon hearing such evidence or reading the report of the Judge of the County Court, or Clerk or Deputy Clerk of the Crown, to make such rule or order as may be just.

Power to compel attendance of witnesses or production of documents in such cases.

CLXXI. The Court or Judge may by such rule or order, or by any subsequent rule or order, command the attendance of the witnesses named therein for the purpose of being examined, or the production of any writings or other documents to be mentioned in such rule or order, and may direct the attendance of any such witness to be at his own place of abode or elsewhere if necessary or convenient so to do; and the wilful disobedience of any such rule or order shall be a contempt of Court, and proceedings may be thereupon had by attachment (the Judge's order being made a rule of Court before or at the time of the application for an attachment) if in addition to the service of the rule or order, an appointment of the time and place of attendance in obedience thereto, signed by the person or persons appointed to take the examination, or by one or more of such persons, shall be also served together with or after the service of such rule or order; Provided always, that every person whose attendance shall be so required, shall be entitled to the like payment for attendance and expences as if he had been subpœnaed to attend upon a trial; Provided also, that no person shall be compelled to produce under any such rule or order any writing or other document that he would not be compellable to produce at a trial of the cause; Provided lastly, that it shall be lawful for the Court or Judge, or person appointed to take the examination, to adjourn the same from time to time as occasion may require.

Proviso.

Proviso.

Proviso.
(1854, s. 47.)

Inspection of real or personal property by jury, parties or witnesses.

CLXXII. Either party shall be at liberty to apply to the Court or a Judge for a rule or order for the inspection by the Jury or by himself or by his witnesses of any real or personal property, the inspection of which may be material to the proper determination of the question in dispute, and it shall be lawful for the Court or a Judge, if they or he think fit, to make such rule or order upon such terms as to costs and otherwise, as such Court or Judge may direct; Provided always, that nothing herein contained shall affect the provisions of any previous Acts as to obtaining a view by a Jury.

Proviso.
(1854, s. 58.)

How prisoners may be brought up to give evidence.

CLXXIII. It shall be lawful for any Sheriff, Gaoler or other Officer having the custody of any prisoner, to take such prisoner for examination under the authority of this Act by virtue of a Writ of *habeas corpus* to be issued for that purpose, which Writ may be issued by the Court or Judge, under such circumstances and in such manner as such Court or Judge may now by law issue the Writ commonly called a *habeas corpus ad testificandum*.

Persons refusing to make

CLXXIV. Any party to any civil action or other civil proceeding in any of the Superior Courts requiring the affidavit of

of a person who refuses to make an affidavit, may apply by Summons for an order to such person to appear and be examined upon oath before a Judge, or any other person to be named in such order to whom it may be most convenient to refer such examination as to the matters concerning which he has refused to make an affidavit, and a Judge may, if he think fit, make such order for the attendance of such person before the person therein appointed to take such examination for the purpose of being examined as aforesaid, and for the production of any writings or documents to be mentioned in such order, and may therein impose such terms as to such examination and the costs of the application and proceedings thereon as he shall think just, and such order shall be proceeded upon in like manner as the order mentioned in the section of this Act numbered one hundred and seventy-one.

affidavit, may be compelled to appear and be examined, or to produce papers, &c. (1854, s. 48.)

CLXXV. Upon the application of either party to any cause or civil proceeding in any of the Superior Courts, upon an affidavit by such party of his belief that any document to the production of which he is entitled for the purpose of discovery or otherwise, is in the possession or power of the opposite party, it shall be lawful for the Court or a Judge to order that the party against whom such application is made, or if such party is a body corporate that some Officer to be named of such body corporate, shall answer on affidavit stating what documents he or they has or have in his or their possession or power relating to the matters in dispute, or what he knows as to the custody they or any of them are in, and whether he or they objects or object (and if so, on what grounds) to the production of such as are in his or their possession or power, and upon such affidavit being made, the Court or Judge may make such further order thereon as shall be just.

Provision for the discovery of documents in the possession of the adverse party. (1854, s. 50.)

CLXXVI. In all causes in any of the Superior Courts, by order of the Court or a Judge, the Plaintiff may with the declaration, and the Defendant may with the plea, or either of them by leave of the Court or a Judge may at any other time, deliver to the opposite party or his attorney (provided such party if not a body corporate would be liable to be called and examined as a witness upon such matter,) interrogatories in writing upon any matter upon which discovery may be sought, and require such party, or in the case of a body corporate, any of the Officers of such body Corporate, within ten days to answer the questions in writing by affidavit to be sworn and filed in the ordinary way; and any party or Officer omitting without just cause, sufficiently to answer all questions as to which discovery may be sought, within the above time, or such extended time as the Court or a Judge shall allow, shall be deemed guilty of a contempt, and shall be liable to be proceeded against accordingly.

Interrogatories may be served on the opposite party, who shall be required to answer them. (1854, s. 51.)

Affidavit upon which the application for leave to serve such interrogatories must be founded.

CLXXVII. The application for such order shall be made upon an affidavit of the party proposing to interrogate, and his attorney or agent, or in the case of a body corporate, of their attorney or agent, stating that the deponents or deponent believe or believes that the party proposing to interrogate, whether Plaintiff or Defendant, will derive material benefit in the cause from the discovery which he seeks, that there is a good cause of action or of defence upon the merits, and if the application be made on the part of the Defendant, that the discovery is not sought for the purpose of delay; Provided that where it shall happen from unavoidable circumstances, that the Plaintiff or Defendant cannot join in such affidavit, the Court or a Judge may, if they or he think fit, upon affidavit of such circumstances by which the party is prevented from so joining therein, allow and order that the interrogatories may be delivered without such affidavit.

Proviso: Where the party is prevented from joining in such affidavit. (1854, s. 52.)

In case of omission to answer, the party may be examined orally, or commanded to produce the documents: and before whom. (1854, s. 53.)

CLXXVIII. In case of omission, without just cause, to answer sufficiently such written interrogatories, it shall be lawful for the Court or a Judge, at their or his discretion, to direct an oral examination of the interrogated party as to such points as they or he may direct, before a Judge or any other person to be specially named; and the Court or a Judge, may by such rule or order, or by any subsequent rule or order, command the attendance of such party or parties before the person appointed to take such examination for the purpose of being orally examined as aforesaid, or the production of any writings or other documents to be mentioned in such rule or order, and may impose therein such terms as to such examination and the costs of the application and of the proceedings thereon, and otherwise, as to such Court or Judge shall seem just, and such rule or order shall have the same force and effect and may be proceeded upon in like manner as an order made under the one hundred and seventy-first section of this Act.

Examination to be filed in the office of the Court.

CLXXIX. Whenever by virtue of this Act, an examination of any party or parties, witness or witnesses, has been taken before a Judge of either of the Superior Courts, or of any County Court, or before any Officer or other person appointed to take the same, the depositions taken down by such examiner shall be returned to and kept in the office of the Court (principal or Deputy Clerk's office, as the case may be,) in which the proceedings are being carried on, and office copies of such depositions may be given out, and the examinations and depositions certified under the hand of the Judge or other officer or person taking the same, shall and may without proof of the signature be received and read in evidence, saving all just exceptions.

May be used in evidence. (1854, s. 55.)

Examiner may make a special report to the Court.

CLXXX. It shall be lawful for every Judge, Officer or other person named in any such rule or order as aforesaid, for taking examinations under this Act, and he is hereby required to make if need

need be, a special report to the Court in which such proceedings are pending, touching such examination and the conduct or absence of any witness or other person thereon or relating thereto; and the Court is hereby required to institute such proceedings and make such order or orders upon such report as justice may require, and as may be instituted and made in any case of contempt of the Court.

Orders thereupon. (1854, s. 56.)

CLXXXI. The costs of every application for any rule or order to be made for the examination of parties or witnesses by virtue of this Act, and of the rule or order and proceedings thereon, shall be in the discretion of the Court or Judge by whom such rule or order is made.

As to costs of rule and examination. (1854, s. 57.)

And with respect to Execution; Be it enacted as follows:

Execution.

CLXXXII. In all actions brought in either of the said Courts, or in any County Court, the Judge before whom any issue joined in such action shall be to be tried, or damages to be assessed, in case the Plaintiff or Demandant therein shall become non-suit, or a verdict shall be given for the Plaintiff or Demandant, Defendant or Tenant, may certify under his hand on the back of the Record, at any time before the end of the Sittings or Assizes, that in his opinion, execution ought to issue in such action forthwith, or at some day to be named in such certificate, and subject or not to any condition or qualification, and in case of a verdict for the Plaintiff, then either for the whole or any part of the sum found by such verdict, in all which cases costs may be taxed in the usual manner and judgment entered forthwith, and execution may be issued forthwith or afterwards, according to the terms of such certificate, on any day in vacation or term, and the *postea* with such certificate as a part thereof, shall and may be entered of record as of the day on which the judgment shall be signed; Provided always, that the party entitled to such judgment may postpone the signing thereof.

After verdict or non-suit, Judge may certify that execution ought to issue forthwith. 16 V. c. 175.

Taxing costs. Execution. Entering *Postea.*

Proviso.

CLXXXIII. Every Judgment to be signed by virtue of the next preceding Section may be entered and recorded as the Judgment of the Court wherein the action shall be pending, though the Court may not be sitting on the day of the signing thereof, and shall be as effectual as if the same had been signed and recorded according to the course of the common law.

Entry and record of judgment. 16 V. c. 175.

CLXXXIV. Notwithstanding any Judgment signed or recorded or execution issued by virtue of the two next preceding Sections, the Court in which the action shall have been brought, may order such Judgment to be vacated and execution to be stayed or set aside, and may enter an arrest of Judgment or grant a new trial or a new assessment of damages, as justice may appear to require, and thereupon the party affected by such

Judgment may be set aside, &c. 16 V. c. 175.

Consequence of its being so. such Writ of Execution shall be restored to all that he may have lost thereby, in like manner as upon the reversal of a Judgment by Writ of Error, or otherwise as the Court may think fit to direct; Provided that any application to vacate such Judgment must be made within the first four days of the Term next after the rendering of the verdict.

Proviso.

On what affidavit writ of *Ca. Sa.* may issue. 2 G. 4, c. 1.

CLXXXV. In cases which the Defendant has been held to special bail, it shall not be necessary before suing out a *Capias ad Satisfaciendum*, to make or file any further or other affidavit than that upon which the Writ of *Capias* issued in the first instance, but where the Defendant has not been held to special bail, a writ of *Capias ad Satisfaciendum* may issue after Judgment upon an affidavit in the same form (*mutatis mutandis*) as is hereinbefore required to be made for the purpose of suing out a writ of *Capias* as aforesaid, or upon an affidavit by the Plaintiff, his servant or agent, that he hath reason to believe the Defendant hath parted with his property or made some secret or fraudulent conveyance thereof, in order to prevent its being taken in execution.

Writ to Sheriff of the County where the venue is laid, may be dispensed with. (1852, s. 121.)

CLXXXVI. It shall not be necessary to issue any writ directed to the Sheriff of the County or United Counties in which the venue is laid, but writs of execution may issue at once into any County or United Counties and be directed to and executed by the Sheriff of any County or United Counties without reference to the Counties or United Counties in which the venue is laid, and without any suggestion of the issuing of a prior writ into such County or United Counties.

If the Sheriff go out of office during currency of a writ against land.

Proviso.

CLXXXVII. If the Sheriff shall go out of office during the currency of any writ of execution against lands, and before the sale, such writ shall be executed and the sale and conveyance of the lands made by his successor in office, and not by the old Sheriff; Provided, that it shall be lawful for any Sheriff, after he has gone out of office, to execute any deed or conveyance necessary to effectuate and complete a sale of lands made by him while in office.

Advertisement during currency of writ, sufficient commencement of execution, &c.

CLXXXVIII. The advertisement in the *Official Gazette*, of any lands (giving some reasonable definite description of them,) for sale under a Writ of Execution, during the currency of the writ, shall be deemed and taken to be a sufficient commencement of such execution to enable the same to be completed after it shall be returnable, by a sale and conveyance of the lands.

Duration of writ of execution.

CLXXXIX. Every writ of execution issued after the commencement of this Act, shall bear date and be tested on the day on which it is issued, and shall remain in force for one year from the teste, and no longer if unexecuted, unless renewed in the manner hereinafter provided, but such writ may, at any time

time before its expiration, be renewed by the party issuing it, for one year from the date of such renewal, by being marked in the margin, with a memorandum to the effect following: "Renewed for one year from day of ," signed by the Clerk or Deputy Clerk who issued such writ or by his successor in office; and a writ of execution so renewed shall have effect and be entitled to priority according to the time of the original delivery thereof.

Renew

Effect of renewal. (1852, s. 124.)

CXC. The production of a writ of execution marked as renewed in manner aforesaid, shall be sufficient evidence of its having been so renewed.

Evidence of renewal. (1852, s. 125.)

CXCI. A written order under the hand of the Attorney in the cause by whom any writ of *Capias ad Satisfaciendum* shall have been issued, shall justify the Sheriff, Gaoler or person in whose custody the party may be under such writ, in discharging such party, unless the party for whom such Attorney professes to act, shall have given written notice to the contrary to such Sheriff, Gaoler or person in whose custody the opposite party may be, but such discharge shall not be a satisfaction of the debt unless made by the authority of the creditor, and nothing herein contained shall justify any Attorney in giving such order for discharge without the consent of his client.

As to order by the Plaintiff or his Attorney for discharge of Defendant. (1852, s. 126.)

CXCII. Writs of execution to fix bail may be tested and returnable in vacation.

Teste of writs to fix bail. (1851, s. 90.)

CXCIII. It shall be lawful for any creditor who has obtained a Judgment in any of the Superior Courts to apply to the Court or a Judge for a rule or order that the judgment debtor should be orally examined as to any and what debts are owing to him, before the Judge of any County Court or before any Clerk or deputy Clerk of the Crown, or any other person to be specially named; and the Court or Judge may make such rule or order for the examination of such Judgment debtor, and for the production of any books or documents, and the examination shall be conducted in the same manner, as in the case of an oral examination of an opposite party under this Act.

Examination of a judgment debtor, as to what debts are due to him. (1854, s. 60.)

CXCIV. It shall be lawful for a Judge upon the *ex parte* application of such Judgment creditor, either before or after such oral examination, and upon his affidavit or that of his Attorney, stating that Judgment has been recovered and that it is still unsatisfied and to what amount, and that any other person is indebted to the Judgment debtor and is within the jurisdiction, to order that all debts owing or accruing from such third person (hereinafter called the garnishee) to the Judgment debtor shall be attached to answer the Judgment; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the Judge or some officer of the Court to be specially named by such Judge, to shew cause why he

Judge may on application and affidavit, order attachment of such debts;

And may order the garnishee to appear, &c.

he should not pay the Judgment creditor the debt due from him to the Judgment debtor, or so much thereof as may be sufficient to satisfy the Judgment debt: Provided always that this section shall not apply in actions commenced or carried on against a Defendant as an absconding debtor.

Proviso. (1854, s. 61.)

Order or notice thereof to bind the garnishee. (1854, s. 62.)

CXCV. Service of an order that debts due or accruing to the Judgment debtor shall be attached, or notice thereof to the garnishee in such manner as the Judge shall direct, shall bind such debts in his hands.

Amount due by garnishee may be levied by execution, if not disputed (1854, s. 63)

CXCVI. If the garnishee does not forthwith pay into Court the amount due from him to the Judgment debtor, or an amount equal to the Judgment debt, and does not dispute the debt due or claimed to be due from him to the Judgment debtor, or if he does not appear upon summons, then the Judge may order execution to issue, and it may be sued forth accordingly, without any previous writ or process, to levy the amount due from such garnishee towards satisfaction of the Judgment debt.

Proceedings if the garnishee dispute the debt. (1854, s. 64.)

CXCVII. If the garnishee disputes his liability, the Judge, instead of making an order that execution shall issue, may order that the Judgment creditor shall be at liberty to proceed against the garnishee, by writ calling upon him to shew cause why there should not be execution against him for the alleged debt, or for the amount due to the Judgment debtor if less than the Judgment debt, and for costs of suit, and the proceedings upon such suit shall be the same, or as nearly as may be, as upon a writ of revivor issued under this Act.

Payment by garnishee to be a valid discharge to him. (1854, s. 65)

CXCVIII. Payment made by or execution levied upon the garnishee under any such proceeding as aforesaid, shall be a valid discharge to him as against the Judgment debtor to the amount paid or levied, although such proceeding may be set aside or the Judgment reversed.

Attachment book to be kept in the office of the Clerk of the Crown and his deputies. (1854, s. 66.)

CXCIX. In each of the Superior Courts there shall be kept at the several offices of the Clerk of the Crown and his deputies, a debt attachment book, and in such book entries shall be made of the attachment and proceedings thereon, with names, dates and statements of the amount recovered and otherwise; and the mode of keeping such books shall be the same in all the offices, and copies of any entries made therein may be taken by any person upon application to the proper officer.

Costs of such application. (1854, s. 67.)

CC. The costs of any application for an attachment of debt under this Act, and of any proceedings arising from or incidental to such application, shall be in the discretion of the Court or a Judge.

Specific delivery of a

CCI. The Court or a Judge shall have power if he or they see fit so to do, upon the application of the Plaintiff in any action

action for the detention of any chattel, to order that execution shall issue for the return of the chattel detained, without giving the Defendant the option of retaining such chattel upon paying the value assessed, and that unless the Court or a Judge should otherwise order, the Sheriff shall distrain the Defendant by all his lands and chattels in the said Sheriff's bailiwick, till the Defendant render such chattel, or at the option of the Plaintiff, that he cause to be made of the Defendant's goods the value of such chattel: Provided that the Plaintiff shall, either by the same or by a separate writ or writs of execution to be issued in the ordinary manner, be entitled to have made of the Defendant's goods or lands, the damages, costs and interest in such action.

chattel may be compelled, and how.

Option to the Plaintiff.

Proviso: as to damages, costs, &c. (1854, s. 78.)

And with respect to proceedings for the revival of Judgments and other proceedings, by and against persons not parties to the record; Be it enacted, as follows:

Revival of judgments, &c.

CCII. During the lives of the parties to a Judgment, or those of them during whose lives execution may at present issue within a year and a day without a *scire facias*, and within one year from the recovery of the Judgment, execution may issue without a revival thereof.

Execution without *scire facias* or revival. (1852, s. 128.)

CCIII. In case where it shall become necessary to revive a Judgment, either by reason of lapse of time or of a change by death or otherwise of the parties entitled, or liable to execution, the party alleging himself to be entitled to execution may either sue out a writ of revivor in the form hereinafter mentioned, or apply to the Court or a Judge for leave to enter a suggestion upon the roll, to the effect that it manifestly appears to the Court that such party is entitled to have execution of the Judgment, and to issue execution thereupon, such leave to be granted by the Court upon a rule to shew cause, or by a Judge upon a Summons to be served according to the present practice, or in such other manner as such Court or Judge may direct, and which rule or summons may be in the form contained in the Schedule (A) to this Act annexed marked No. 9, or to the like effect.

Application for revival of a Judgment and execution thereupon. (1852, s. 129.)

CCIV. Upon such application, in case it manifestly appears that the party making the same is entitled to execution, the Court or Judge shall allow such suggestion as aforesaid to be entered in the form contained in the Schedule (A) to this Act annexed marked No. 10, or to the like effect and execution to issue thereupon, and shall order whether or not the costs of such application shall be paid to the party making the same; and in case it does not manifestly so appear, the Court or Judge shall discharge the rule or dismiss the Summons with or without costs: Provided nevertheless, that in such last mentioned case, the party making such application shall be at liberty to proceed by writ of revivor or action upon the Judgment.

If the Court be satisfied

And if not.

Proviso. (1852, s. 130.)

CCV.

Writ of revivor and proceedings thereon.

CCV. The writ of revivor shall be directed to the party called upon to shew cause why execution shall not be awarded, and shall bear teste on the day of its issuing, and after reciting the reason why such writ has become necessary, it shall call upon the party to whom it is directed to appear within ten days after service thereof in the Court out of which it issues, to shew cause why the party at whose instance such writ has been issued should not have execution against the party to whom such writ is directed, and it shall give notice that in default of appearance, the party issuing such writ may proceed to execution; and such writ may be in the form contained in the Schedule (A) to this Act annexed marked No. 11, or to the like effect, and may be sued out and served in any County or Union of Counties, and otherwise proceeded upon whether in term or vacation in the same manner as a writ of Summons; and the venue in a declaration upon such writ may be laid in the County or Union of Counties in which the writ has been sued out; and the pleadings and proceedings thereupon, and the rights of the parties respectively to costs, shall be the same as in an ordinary action, and notice in writing to the Plaintiff, his Attorney or agent, shall be sufficient appearance to a writ of revivor.

Declaration, &c.

Costs. (1852, s. 131)

Certain writs of *scire facias* to be proceeded upon in like manner as writs of revivor.

CCVI. All writs of *scire facias* issued out of either the Court of Queen's Bench, or of Common Pleas, against bail on a recognizance, against members of a Joint Stock Company or other body, upon a Judgment recorded against a public officer or other person sued as representing such Company or body, or against such Company or body itself, by or against a husband to have execution of a Judgment for or against a wife, for restitution after a reversal on Error or Appeal, upon a suggestion of further breaches after Judgment, for any penal sum pursuant to the Statute passed in the Session holden the eighth and ninth years of the reign of King William the Third, intituled, *An Act for the better preventing frivolous and vexatious suits*,—shall be tested, directed and proceeded upon in like manner as writs of revivor.

Imperial Act, 8 & 9 W. 4, c. 11. (1852, s. 132.)

Age of judgment as respects writs of revivor. (1852, s. 134)

CCVII. A writ of revivor to revive a Judgment less than ten years old, shall be allowed without any rule or order; if more than ten years old, not without a rule of Court or Judge's Order; nor if more than fifteen years old without a rule to shew cause.

And with respect to the effect of death or marriage upon the proceedings in an action; Be it enacted as follows:

Death of Plaintiff or Defendant. (1832, s. 135.)

CCVIII. The death of a Plaintiff or Defendant shall not cause the action to abate, but it may be continued as hereinafter mentioned.

If there be more than one

CCIX. If there be two or more Plaintiffs or Defendants and one or more of them shall die, if the cause of such action shall survive

survive to the surviving Plaintiff or Plaintiffs, or against the surviving Defendant or Defendants, the action shall not be thereby abated, but such death being suggested on the record, the action shall proceed at the suit of the surviving Plaintiff or Plaintiffs against the surviving Defendant or Defendants.

Plaintiff or Defendant, and the cause of action survive to the others. (1832, s. 136.)

CCX. In case of the death of a sole Plaintiff or sole surviving Plaintiff, the legal representative of such Plaintiff may, by leave of the Court or a Judge, enter a suggestion of the death, and that he is such legal representative, and the action shall thereupon proceed; and if such suggestion be made before the trial, the truth of the suggestion shall be tried thereat, together with the title of the deceased Plaintiff, and such Judgment shall follow upon the verdict, in favor of or against the person making such suggestion, as if such person were originally the Plaintiff.

Death of sole Plaintiff. (1832, s. 137.)

CCXI. In case of the death of a sole Defendant or sole surviving Defendant where the action survives, the Plaintiff may make a suggestion either in any of the pleadings, if the cause has not arrived at issue, or by filing a suggestion with the other pleadings, if it has so arrived, of the death, and that a person named in such suggestion is the executor or administrator of the deceased, and may thereupon serve such executor or administrator with a copy of the writ and suggestion, and of the said other pleadings, and with a notice signed by the Plaintiff or his Attorney, requiring such executor or administrator to appear within ten days after service of the notice, inclusive of the day of such service, and that in default of his so doing the Plaintiff may sign Judgment against him as such executor or administrator; and the same proceedings may be had and taken in case of non-appearance after such notice as upon a writ against such executor or administrator in respect of the cause for which such action was brought; and in case no pleadings have taken place before the death, the suggestion shall form part of the declaration, and the declaration, with a notice to plead, and the suggestion, may be served together, and the new Defendant shall plead thereto at the same time, and within eight days after the service; and in case the Plaintiff shall have declared, but the Defendant shall not have pleaded before the death, the new Defendant shall plead at the same time to the declaration and suggestion within eight days after service of the suggestion; and in case the Defendant shall have pleaded before the death, the new Defendant shall be at liberty to plead to the suggestion only, and within eight days after the service thereof, by way of denial, or such plea as may be appropriate to and rendered necessary by his character of executor and administrator, unless by leave of the Court or a Judge he should be permitted to plead fresh matter in answer to the declaration; and in case the Defendant shall have pleaded before the death, but the pleadings shall not have arrived at issue, the new Defendant, besides pleading to the suggestion within eight days after the service

Death of sole or sole surviving Defendant.

If there have been pleadings.

If there have been no pleadings.

If Plaintiff have declared and Defendant has not pleaded.

If Defendant has pleaded.

service thereof, shall continue the pleadings to issue in the same manner as the deceased might have done, and the pleadings upon the declaration and the pleadings upon the suggestion shall be tried together; and in case the Plaintiff shall recover, he shall be entitled to the like Judgment in respect of the debt or sum sought to be recovered, and in respect of the costs prior to the suggestion, and in respect of the costs of the suggestion and subsequent thereto, as in an action originally commenced against the executor or administrator.

If Plaintiff recover. (1852 s. 138.)

Death between verdict and judgment (1852,s. 139.)

CCXII. The death of either party between the verdict and Judgment shall not hereafter be alleged for error, so as such Judgment be entered within two terms after such verdict.

Plaintiff dying between interlocutory and final judgment.

And if Defendant so die. (1852,s. 140.)

CCXIII. If the Plaintiff in any action happen to die after an interlocutory Judgment and before a final Judgment obtained therein, the action shall not abate by reason thereof if such action might be originally prosecuted or maintained by the executor or administrator of such Plaintiff; and if the Defendant die after such interlocutory Judgment and before final Judgment therein obtained, the action shall not abate if such action might be originally prosecuted or maintained against the executor or administrator of such Defendant; and the Plaintiff, or, if he be dead after such interlocutory Judgment, his executor or administrator, shall and may have a writ of revivor in the form contained in the Schedule (A) to this Act annexed, marked No. 11, or to the like effect, against the Defendant, if living, after such interlocutory Judgment, or if he be dead then against his executors or administrators, to show cause why damages in such action should not be assessed and recovered by the Plaintiff, or by his executor or administrator; and if such Defendant, his executor or administrator, shall appear at the return of such writ, and not show or allege any matter sufficient to arrest the final Judgment, or shall make default, the damages shall be assessed, or the amount for which final Judgment is to be signed shall be referred to the proper officer as hereinbefore provided; and after the assessment had, or the delivery of the order with the amount endorsed thereon to the Plaintiff, his executor or administrator, final Judgment shall be given for the Plaintiff, his executor or administrator, prosecuting such writ of revivor against such Defendant, his executor or administrator respectively.

Marriage of a woman Plaintiff or Defendant. (1852,s. 141.)

CCXIV. The marriage of a woman Plaintiff or Defendant shall not cause the action to abate, but the action may notwithstanding be proceeded with to judgment, and such judgment may be executed against the wife alone, or by suggestion or writ of revivor pursuant to this Act, judgment may be obtained against the husband and wife and execution issue thereon; and in case of a Judgment for the wife, execution may be issued thereupon by the authority of the husband without any writ of revivor or suggestion; and if in any such action the wife shall

sue

sue or defend by Attorney appointed by her when sole, such Attorney shall have authority to continue the action or defence, unless such authority be countermanded by the husband, and the Attorney changed according to the practice of the Court.

Right of Defendant in action which would have abated but for this Act. (1854, s. 92.)

CCXV. Where an action would but for the provisions of this Act have abated by reason of the death of either party and in which the proceedings may be revived and continued hereby, the defendant or person against whom the action may be so continued may apply by summons to compel the plaintiff or person entitled to proceed with the action to proceed according to the provisions of this Act within such time as the Judge shall order; and in default of such proceeding the defendant or other person against whom the action may be so continued as aforesaid shall be entitled to enter a suggestion of such default and of the representative character of the person by or against whom the action may be proceeded with as the case may be, and to have judgment for the costs of the action against the plaintiff, or against the person entitled to proceed in his room as the case may be, and in the latter case, to be levied of the goods of the testator or intestate.

Against Executors as to assets *in futuro*. (1854, s. 91.)

CCXVI. Proceedings against Executors upon a Judgment of assets in *futuro* may be had and taken in the manner herein provided as to Writs of revivor.

And with respect to the proceedings upon motions to arrest the Judgment and for Judgment *non obstante veredicto*; Be it enacted as follows:

Proceedings on motions in arrest of judgment, or for judgment *non obstante*. Suggestion of facts by party whose pleading is objected to. (1852, s. 143.)

CCXVII. Upon any motion made in arrest of Judgment or for Judgment *non obstante veredicto* by reason of the non averment of some material fact or facts, or material allegation or other cause, the party whose pleading is alleged or adjudged to be therein defective, may by leave of the Court, suggest the existence of the omitted fact or facts or other matter which if true would remedy the alleged defect: and such suggestion may be pleaded to by the opposite party within eight days after notice thereof, or such further time as the Court or a Judge may allow, and the proceedings for trial of any issues joined upon such pleadings shall be the same as in ordinary actions.

If suggestion be found true.

CCXVIII. If the fact or facts suggested be admitted or be found to be true, the party suggesting shall be entitled to such Judgment as he would have been entitled to, if such fact or facts or allegations had been originally stated in such pleading and proved or admitted on the trial, together with the costs of and occasioned by the suggestion and proceedings thereon; but if such fact or facts be found untrue, the opposite party shall be entitled to his costs of and occasioned by the suggestion and proceedings thereon, in addition to any other costs to which he may be entitled.

If untrue. (1852, s. 144.)

CCXIX.

Costs on arrest of judgment, or judgment *non obstante*. (1852, s. 145)

CCXIX. Upon an arrest of Judgment or Judgment *non obstante veredicto*, the Court shall adjudge to the party against whom such Judgment is given, the costs occasioned by the trial of any issues in fact arising out of the pleading for defect of which such Judgment is given, upon which such party shall have succeeded, and such costs shall be set off against any money or costs adjudged to the opposite party, and execution may issue for the balance, if any.

Ejectment.

And with respect to the action of Ejectment; Be it enacted as follows:

Ejectment, how commenced. Writ. (1852, s. 168.)

CCXX. The action of ejectment shall be commenced by Writ, directed to the persons in possession by name, and to all persons entitled to defend the possession of the property claimed, which property shall be described in the Writ with reasonable certainty.

Contents of writ.

Where to issue.

Duration. Form, &c. (1852, s. 169.)

CCXXI. The Writ shall state the names of all the persons in whom the title is alleged to be, and command the persons to whom it is directed to appear within sixteen days after service thereof, in the Court from which it is issued, to defend the possession of the property sued for, or such part thereof as they may think fit, and it shall contain a notice that in default of appearance they will be turned out of possession; and the Writ shall bear teste of the day on which it issued, and shall be issued out of the office in the County or Union of Counties wherein the lands mentioned in such Writ lie, and shall be in force for three months, and shall be in the form contained in the Schedule (A) to this Act annexed, marked No. 12, or to the like effect, and the name and abode of the Attorney issuing the same (or if no Attorney, the name and residence of the party) shall be indorsed thereon, in like manner as hereinbefore enacted with reference to the indorsements on a Writ of Summons in a personal action, and the same proceedings may be had to ascertain whether the Writ was issued by the authority of the Attorney whose name was indorsed thereon, and who and what the Claimants are, and their abode, and as to staying the proceedings upon Writs issued without authority, as in the case of Writs in personal actions.

Notice of nature of Claimant's title to be attached to the writ. *New.*

Not to contain more than one mode of setting up title, without leave.

CCXXII. To the Writ and to every copy thereof served on any party, shall be attached a notice of the nature of the title intended to be set up by the Claimant, as for example by grant from the Crown, or by deed, lease or other conveyance derived from or under the grantee of the Crown, or by marriage, descent or devise, stating to or from whom, or by length of possession, or otherwise, as the case may be, according to the nature of the Claimant's title, stating it with reasonable certainty: And such notice shall not contain more than one mode in which title is set up, without leave of the Court or a Judge, and at the trial the Claimant shall be confined to proof of the title set up

in the notice: Provided that nothing in this section shall be construed to require any Claimant to set out in such notice the dates or particular contents of any Letters Patent, Deeds, Wills or other instruments or writings, which shew or support his title, or the date of any marriage or death, unless it be specially directed by order of the Court or a Judge.

Proviso: Certain particulars not required except by order.

CCXXIII. The Writ shall be served in the same manner as an ejectment was formerly served, or in such manner as the Court or a Judge shall order, and in case of vacant possession, by posting a copy thereof upon the door of the dwelling house or other conspicuous part of the property.

Service of writ. (1852, s. 170.)

CCXXIV. The persons named as Defendants in such Writ, or either of them, shall be allowed to appear within the time appointed; and every person so appearing shall, with his appearance, file a notice addressed to the Claimant, stating that the Defendant, besides denying the title of the Claimant, asserts title in himself, or in some other persons, (stating whom) under whom he claims, and setting forth the mode in which such title is claimed, in like manner and to the same extent and subject to the same conditions, rules and restrictions as are set forth in the two hundred and twenty-second section of this Act, in respect to the notice of a Claimant's title, and the giving proof thereof at the trial.

Defendants, or any of them, may appear within time limited. (1852, s. 171.) *New.* Notice to be filed with appearance, stating nature of Defendants' title or claim &c. *New.*

CCXXV. Any other person not named in such Writ, shall, by leave of the Court or a Judge, be allowed to appear and defend, on filing an affidavit shewing that he is in possession of the land either by himself or his tenant.

Any other person may appear by leave. (1852, s. 172.)

CCXXVI. All appearances shall be entered in the Office from which the Writ issued, and all subsequent proceedings shall be conducted in the same Office.

Entry of appearance and proceedings. *New.*

CCXXVII. Any person appearing to defend as landlord in respect of property whereof he is in possession in person or by his tenant, shall state in his appearance that he appears as landlord, and such person shall be at liberty to set up any defence which a landlord appearing in an ejectment has heretofore been allowed to set up, and no other.

Person appearing to defend as landlord. (1852, s. 173.)

CCXXVIII. Any person appearing to such Writ shall be at liberty to limit his defence to a part only of the property mentioned in the Writ, describing that part with reasonable certainty in a notice entitled in the Court and cause, and signed by the party appearing or his Attorney, such notice to be served within four days after appearance, upon the Attorney whose name is endorsed on the Writ if any, and if none, then to be filed in the proper Office; and an appearance without such notice confining the defence to part, shall be deemed an appearance to defend for the whole.

Party appearing may limit his defence to part of the property. Notice of such limitation, &c. (1852, s. 174.)

Want of reasonable certainty in description, how cured. (1852, s. 175)

CCXXIX. Want of "*reasonable certainty*" in the description of the property or part of it, in the Writ or notice of defence, or in the notice of the title given by either party, shall not nullify them, but shall only be ground for an application to a Judge for better particulars of the land claimed or defended, or of the title thereto, which a Judge shall have power to order in all cases.

Defence by persons not in possession. (1852, s. 176)

CCXXX. The Court or a Judge shall have power to strike out or confine appearances and defences set up by persons not in possession by themselves or their tenants.

Judgment if no appearance, or appearance as to part only.

CCXXXI. In case no appearance shall be entered within the time appointed, or if an appearance be entered, but the defence be limited to part only, the Plaintiff shall be at liberty to sign a Judgment that the person whose title is asserted in the Writ shall recover possession of the land, or of the part thereof to which the defence does not apply, which Judgment if for all may be in the form contained in the Schedule (A) to this Act annexed, marked No. 13, or to the like effect, and if for part may be in the form contained in the Schedule (A) to this Act annexed, marked No. 14, or to the like effect.

Forms. (1852, s. 177.)

Issue may be made up by Claimant if appearance be entered.

CCXXXII. In case an appearance shall be entered, an issue may be made up without any pleadings, by the Claimants or their Attorney, setting forth the Writ and stating the fact of the appearance with its date, and the notice limiting the defence, if any, of each of the persons answering, so that it may appear for what defence is made, and directing the Sheriff to summon a Jury; and such issue, in case defence is made for the whole, may be in the form contained in the Schedule (A) to this Act annexed, marked No. 15, or to the like effect, and in case defence is made for part, may be in the form contained in the Schedule (A) to this Act annexed, marked No. 14, or to the like effect.

Forms. (1852, s. 178.)

Special case, by leave. (1852, s. 179.)

CCXXXIII. By consent of the parties and by leave of a Judge, a special case may be stated as in other actions.

Questions to be tried if no special case be agreed upon.

CCXXXIV. The Claimants may, if no special case be agreed to, proceed to trial in the same manner as in other actions, and the particulars of the claim and defence and of the notices of Claimant and Defendant of their respective titles, if any, or copies thereof, shall be annexed to the record by the Claimants; and the question at the trial shall, except in the cases hereinafter mentioned, be whether the statement in the Writ of the title of the Claimants is true or false, and if true, then which of the Claimants is entitled, and whether to the whole or part, and if to part, then to which part of the property in question; and the entry of the verdict may be made in the form contained in the Schedule (A) to this Act annexed, marked No. 16, or to the like effect, with such modifications as may be necessary to meet the facts.

Form of entry of verdict. (1852, s. 180)

CCXXXV.

CCXXXV. In case the title of the Claimant shall appear to have existed as alleged in the Writ, and at the time of service thereof, but it shall also appear to have expired before the time of trial, the Claimant shall, notwithstanding, be entitled to a verdict according to the fact, that he was entitled at the time of the bringing the action and serving the Writ, and to Judgment for his costs of suit.

If Claimant was entitled at service of writ, but not afterwards. (1852, s. 181.)

CCXXXVI. The Court or a Judge may, on the application of either party, on grounds shewn by affidavit, order that the trial shall take place in any County other than that in which the venue is laid, and such order being suggested on the record, the trial may be had accordingly.

Court may alter place of trial on affidavit. (1852, s. 182.)

CCXXXVII. If the Defendant appears, and the Claimant does not appear at the trial, the Claimant shall be non-suited, and if the Claimant appear and the Defendant does not appear, the Claimant shall be entitled to recover without any proof of his title.

Defendant appearing and Claimant making default, and *vice versa*. (1852, s. 183.)

CCXXXVIII. The Jury may find a special verdict, or either party may tender a bill of exceptions.

Special verdict, &c. (1852, s. 184.)

CCXXXIX. Upon the finding for the Claimant, Judgment may be signed and execution issue for the recovery of possession of the property or of such part therof as the Jury shall find the Claimant entitled to, and for costs, within such time not exceeding the fifth day in Term after the verdict, as the Court or Judge before whom the cause is tried, shall order, and if no such order be made, then on the fifth day in Term after the verdict.

Judgment if Claimant recover.

Execution and costs. (1852, s. 185.)

CCXL. Upon a finding for the Defendants or any of them, Judgment may be signed and execution issue for costs against the Claimants named in the Writ, within such time not exceeding the fifth day in Term after the verdict, as the Court or a Judge before whom the cause is tried shall order, and if no such order is made, then on the fifth day in Term after the verdict.

Costs to Defendant if Claimant fail. (1852, s. 186.)

CCXLI. Upon any Judgment in ejectment for recovery of possession and costs, there may be either one Writ or separate Writs of Execution for the recovery of possession, and for the costs, at the election of the Claimant.

One or more Writs of Execution may issue. (1852, s. 187.)

CCXLII. In case of such an action being brought by some or one of several persons entitled as joint tenants, tenants in common or coparcenary, any joint tenant, tenant in common or coparcener in possession, may, at the time of appearance or within four days after, give notice in the same form as the notice of a limited defence, that he or she defends as such and admits the right of the Claimant to an undivided share of the

As to Defendants being joint tenants, tenants in common, &c., admitting right of Claimant to

an undivided share, &c., (1852, s. 188.)

property (stating what share,) but denies any actual ouster of him, from the property, and may within the same time file an affidavit, stating with reasonable certainty, that he or she is joint tenant, tenant in common or coparcener, and the share of such property to which he or she is entitled, and that he or she has not ousted the Claimant, and such notice shall be entered in the issue in the same manner as the notice limiting the defence, and upon the trial of such an issue, the additional question of whether an actual ouster has taken place shall be tried.

Question to be tried, if such joint tenancy, &c., with Claimant, be found, &c., and the contrary. (1852, s. 189.)

CCXLIII. Upon the trial of such issue as last aforesaid, if it shall be found that the Defendant is joint tenant, tenant in common, or coparcener with the Claimant, then the question whether an actual ouster has taken place shall be tried, and unless such actual ouster shall be proved the Defendant shall be entitled to Judgment and costs; but if it shall be found either that the Defendant is not such joint tenant, tenant in common, or coparcener, or that an actual ouster has taken place, then the Claimant shall be entitled to such Judgment for the recovery of possession and costs.

Death of either party not to abate the action. (1852 s. 190.)

CCXLIV. The death of a Claimant or Defendant shall not cause the action to abate, but it may be continued as hereinafter mentioned.

Right of one Claimant surviving to another (1852, s. 191.)

CCXLV. In case the right of the deceased Claimant shall survive to another Claimant, a suggestion may be made of the death, which suggestion shall not be traversable, but shall only be subject to be set aside if untrue, and the action may proceed at the suit of the surviving Claimant; and if such a suggestion shall be made before the trial, then the surviving Claimant shall have a verdict and recover such Judgment as aforesaid, upon it being made to appear that he was entitled to bring the action either separately or jointly with the deceased Claimant.

If the right of the deceased Claimant does not survive to another, &c. (1852, s. 192.)

CCXLVI. In case of the death before trial of one of several Claimants, whose right does not survive to another or others of the surviving Claimants, when the legal representative of the deceased Claimant shall not become a party to the suit in the manner hereinafter mentioned, a suggestion may be made of the death, which suggestion shall not be traversable, but shall only be subject to be set aside if untrue, and the action may proceed at the suit of the surviving Claimant for such share of the property as he is entitled to and costs.

One or more of several Claimants dying after verdict for them, but be-

CCXLVII. In case of a verdict for two or more Claimants, if one of such Claimants die before execution executed, the other Claimant may, whether the legal right to the property shall survive or not, suggest the death in manner aforesaid, and proceed to Judgment and execution for the recovery of possession of the entirety of the property and the costs; but nothing herein contained

contained shall affect the right of the legal representative of the deceased Claimant, or the liability of the surviving Claimant to such legal representative, and the entry and possession of such surviving Claimant under such execution shall be considered an entry and possession on behalf of such legal representative in respect of the share of the property to which he shall be entitled as such representative, and the Court may direct possession to be delivered accordingly.

fore execution.
(1852, s. 193.)

CCXLVIII. In case of the death of a sole Claimant, or before trial of one of several Claimants whose right does not survive to another or others of the Claimants, the legal representative of such Claimant may, by leave of the Court or a Judge, enter a suggestion of the death, and that he is such legal representative, and the action shall thereupon proceed, and if such suggestion be made before the trial, the truth of the suggestion shall be tried thereat, together with the title of the deceased Claimant, and such Judgment shall follow upon the verdict in favor or against the person making such suggestion, as hereinbefore provided with reference to a Judgment for or against such Claimant; and in case such suggestion in the case of a sole Claimant be made after trial and before execution executed by delivery of possession thereupon, and such suggestion be denied by the Defendant within eight days after notice thereof, or such further time as the Court or a Judge may allow, then such suggestion shall be tried, and if upon the trial thereof, a verdict shall pass for the person making such suggestion, he shall be entitled to such Judgment as aforesaid, for the recovery of possession and for the costs of and occasioned by such suggestion, and in case of a verdict for the Defendant, such Defendant shall be entitled to such Judgment as aforesaid for costs.

Death of sole Claimant, or one whose right does not survive to another.

Costs.
(1852, s. 194.)

CCXLIX. In case of the death before or after Judgment of one of several Defendants in ejectment who defend jointly, a suggestion may be made of the death, which suggestion shall not be traversable, but only be subject to be set aside if untrue, and the action may proceeed against the surviving Defendant to Judgment and execution.

Death of one of several joint Defendants.
(1852, s. 195.)

CCL. In case of the death of a sole Defendant, or of all the Defendants in ejectment before trial, a suggestion may be made of the death, which suggestion shall not be traversable, but only be subject to be set aside if untrue, and the Claimants shall be entitled to Judgment for recovery of possession of the property, unless some other person shall appear and defend within the time to be appointed for that purpose, by the order of the Court or a Judge, to be made upon the application of the Claimants; and it shall be lawful for the Court or a Judge upon such suggestion being made, and upon such application as aforesaid, to order that the Claimants shall be at liberty to sign Judgment within such time as the Court or a Judge may think fit, unless the person then in possession by himself or his tenant or the legal

Death of sole Defendant, or of all the Defendants, before trial.
(1852, s. 196.)

legal representative of the deceased Defendant, shall within such time appear and defend the action ; and such order may be served in the same manner as the Writ, and in case such person shall appear and defend the same, proceedings may be taken against such new Defendant as if he had originally appeared and defended the action, and if no appearance be entered and defence made, then the Claimant shall be at liberty to sign Judgment pursuant to the order.

Death of sole Defendant or of all the Defendants, after verdict. (1852, s. 197.)

CCLI. In case of the death of a sole Defendant or of all the Defendants in ejectment, after verdict, the Claimants shall nevertheless be entitled to Judgment as if no such death had taken place, and to proceed by execution for recovery of possession without suggestion or revivor, and to proceed for the recovery of the costs in like manner as upon any other Judgment for money, against the legal representatives of the deceased Defendant.

Death before trial of a Defendant defending separately for part. (1852, s. 198.)

CCLII. In case of the death, before trial, of one of several Defendants in ejectment, who defends separately for a portion of the property for which the other Defendant or Defendants do not defend, the same proceedings may be taken as to such portion as in the case of a sole Defendant, or the Claimant may proceed against the surviving Defendants in respect of the portion of the property for which they defend.

Death before trial of a Defendant who defends separately, but for property for which others also defend. (1852, s. 199.)

CCLIII. In case of the death, before trial, of one of several Defendants in ejectment, who defends separately in respect to property for which surviving Defendants also defend, it shall be lawful for the Court or a Judge at any time before trial to allow the person in possession, at the time of the death, of the property, or the legal representative of the deceased Defendant, to appear and defend on such terms as may appear reasonable and just, upon the application of such person or representative, and if no such application be made or leave granted, the Claimant suggesting the death in manner aforesaid, may proceed against the surviving Defendants to Judgment and execution.

Claimant may discontinue as to one or more Defendants. (1852, s. 200.)

CCLIV. The Claimant in ejectment shall be at liberty at any time to discontinue the action as to one or more of the Defendants, by giving to the Defendant or his Attorney a notice, headed in the Court and cause, and signed by the Claimant or his Attorney, stating that he discontinues such action, and thereupon the Defendant to whom such notice is given shall be entitled to and may forthwith sign Judgment for costs in the form contained in the Schedule (A) to this Act annexed, marked No. 17, or to the like effect.

One of several claimants may discontinue. (1852, s. 201.)

CCLV. In case one of several Claimants shall be desirous to discontinue, he may apply to the Court or a Judge to have his name struck out of the proceedings, and an order may be made

made thereupon upon such terms as to the Court or Judge shall seem fit, and the action shall thereupon proceed at the suit of the other Claimants.

Claimant not proceeding to trial in due time after notice.

CCLVI. If after appearance entered, the Claimant without going to trial, allow the time fixed by the practice of the Court for going to trial in ordinary cases after issue joined to elapse, the Defendant in ejectment may give twenty days' notice to the Claimant to proceed to trial at the Assizes next after the expiration of the notice, and if the Claimant afterwards neglects to give notice of trial for such Assizes, or to proceed to trial in pursuance to the said notice given by the Defendant, and the time for going to trial shall not be extended by the Court or a Judge, the Defendant may sign Judgment in the form contained in the Schedule (A) to this Act annexed, marked No. 18, and recover the costs of the defence.

Right of Defendant in such case. (1852, s. 202.)

Sole Defendant or all the Defendants may confess the action as to the whole or part of the property. (1852, s. 203.)

CCLVII. A sole Defendant or all the Defendants in ejectment, shall be at liberty to confess the action as to the whole or a part of the property, by giving to the Claimant a notice headed in the Court and cause, and signed by the Defendant or Defendants, such signature to be attested by his or their Attorney, and thereupon the Claimant shall be entitled to and may forthwith sign Judgment and issue execution for the recovery of possession and costs, in the form contained in the Schedule (A) to this Act annexed, marked No. 19, or to the like effect.

And so may one of several Defendants, defending for a part for which others do not defend. (1852, s. 204.)

CCLVIII. In case one of several Defendants in ejectment, who defends separately for a portion of the property for which the other Defendant or Defendants do not defend, shall be desirous of confessing the Claimant's title to such portion, he may give a like notice to the Claimant, and thereupon the Claimant shall be entitled to and may forthwith sign Judgment and issue execution for the recovery of possession of such portion of the property, and for the costs occasioned by the defence relating to the same, and the action may proceed as to the residue.

And if others defend as to the same part. (1852, s. 205.)

CCLIX. In case one of several Defendants in ejectment, who defend severally in respect of property for which other Defendants also defend, shall be desirous of confessing the Claimant's title, he may give a like notice thereof, and thereupon the Claimant shall be entitled to and may sign Judgment against such Defendant for the costs occasioned by his defence, and may proceed in the action against the other Defendants to Judgment and execution.

Proceedings need not be enrolled before execution.

CCLX. It shall not be necessary before issuing execution on any Judgment in ejectment under the authority of this Act, to enter the proceedings upon any roll, but an *incipitur* thereof may be made upon paper, shortly describing the nature of the

Jugdment

Judgment according to the practice heretofore used, and Judgment may thereupon be signed, and costs taxed and execution issued; Provided nevertheless, that the proceedings shall be entered on the roll whenever the same may become necessary for the purpose of evidence or of bringing error, or appealing, or the like.

Proviso. (1852,s. 206.)

Effect of judgment.

CCLXI. The effect of a Judgment in an action of ejectment under this Act shall be the same as that of a Judgment in ejectment obtained before the passing of the Act of this Province, in the Session of Parliament held in the thirteenth and fourteenth years of Her Majesty's Reign, intituled, *An Act to alter and amend the practice and proceedings in actions of Ejectment in Upper Canada.*

13 & 14 V. c. 57. (1852,s. 207.)

Penalty on tenant receiving writ in ejectment and not notifying his landlord. (1852.s. 209.)

CCLXII. Every tenant to whom any Writ in ejectment shall be delivered, or to whose knowledge it shall come, shall forthwith give notice thereof to his landlord, or his bailiff or receiver, under the penalty of forfeiting the value of three years improved or rack rent of the premises demised or holden in the possession of such tenant, to the person of whom he holds, to be recovered by action in any Court of Common Law having jurisdiction for the amount.

Landlord having power to re-enter for non-payment of rent, may recover possession by ejectment.

CCLXIII In all cases between landlord and tenant, as often as it shall happen that one half year's rent shall be in arrear, and the landlord or lessor to whom the same is due, hath right by law to re-enter for the non-payment thereof, such landlord or lessor shall and may, without any formal demand or re-entry, serve a Writ in ejectment for the recovery of the demised premises, or in case the same cannot legally be served or no tenant be in actual possession of the premises, then such landlord or lessor may affix a copy thereof upon the door of any demised messuage, or in case such action in ejectment shall not be for the recovery of any messuage, then upon some notorious place of the lands, tenements or hereditaments comprised in such Writ in ejectment, and such affixing shall be deemed legal service thereof, which service or affixing of such Writ in ejectment shall stand instead and place of a demand and re-entry; and in case of Judgment against the Defendant for non-appearance, if it shall be made to appear to the Court wherein the said action is depending, by affidavit, or be proved upon the trial in case the Defendant appears, that half a year's rent was due before the said Writ was served, and that no sufficient distress was to be found on the demised premises countervailing the arrears then due, and that the lessor had power to re-enter, then and in every such case the lessor shall recover judgment and have execution in the same manner as if the rent in arrear had been legally demanded and a re-entry made; and in case the lessee or his assignee, or other person claiming or deriving under the said lease, shall permit and suffer Judgment to be had and recovered on such trial in ejectment and execution to be

And how such right shall be exercised.

Consequences of the exercise of such right.

be executed thereon, without paying the rent and arrears together with full costs, and without proceeding for relief in equity within six months after execution executed, then and in every such case the said lessee and his assignee and all other persons claiming and deriving under the said lease, shall be barred and foreclosed from all relief or remedy in law or equity, other than by bringing a Writ of appeal for reversal of such Judgment in case the same shall be erroneous, and the said landlord or lessor shall from thenceforth hold the demised premises discharged from such lease; and if on such ejectment, a verdict shall pass for the Defendant, or the Claimant shall be non-suited therein, then and in every such case, such Defendant shall have and recover his costs; Provided that nothing herein contained shall extend to bar the right of any mortgagee of such lease or any part thereof, who shall not be in possession, so as such mortgagee shall and do within six months after such Judgment obtained and execution executed, pay all rent in arrear and all costs and damages sustained by such lessor or person entitled to the remainder or reversion as aforesaid, and perform all covenants and agreements which on the part and behalf of the first lessee are or ought to be performed.

If verdict be for defendant, &c.

Proviso: as to mortgagees of lease. (1852, s. 210.)

CCLXIV. In case the said lessee, his assignee or other person claiming any right, title or interest in law or equity of, in or to the said lease shall, within the time aforesaid, proceed for relief in any Court of Equity, such person shall not have or continue any injunction against the proceedings at law on such ejectment, unless he does or shall, within forty days next after a full and perfect answer shall be made by the Claimant in such ejectment, bring into Court and lodge with the proper officer such sum of money as the lessor or landlord shall, in his answer, swear to be due and in arrear over and above all just allowances, and also the costs taxed in the said suit, there to remain until the hearing of the cause, or to be paid out to the lessor or landlord on good security, subject to the decree of the Court; and in case such proceedings for relief in equity shall be taken within the time aforesaid, and after execution is executed, the lessor or landlord shall be accountable only for so much and no more as he shall really and *bonâ fide* without fraud, deceit, or wilful neglect, make of the demised premises from the time of his entering into the actual possession thereof, and if what shall be so made by the lessor or landlord happen to be less than the rent reserved on the said lease, then the said lessee or his assignee, before he shall be restored to his possession, shall pay such lessor or landlord what the money so by him made fell short of the reserved rent for the time such lessor or landlord held the said lands.

Proceedings if the tenant ejected seek relief in Equity.

Rent must be paid into Court before injunction shall issue.

If such proceedings be after execution executed. (1852, s. 211.)

CCLXV. If the tenant or his assignee do and shall at any time before the trial in such ejectment, pay or tender to the lessor or landlord, his executors or administrators, or his or their Attorney in that cause, or pay into the Court wherein the same

Discontinuance if tenant pay arrears of rent and costs before trial, &c.

same cause is depending, all the rent and arrears together with the costs, then and in such case all further proceedings on the said ejectment shall cease and be discontinued; and if such lessee, his executors, administrators or assigns, shall, upon such proceeding as aforesaid, be relieved in equity, he and they shall have, hold and enjoy the demised lands according to the lease thereof made, without any new lease.

If he be relieved in Equity. (1852, s. 212.)

Proceedings when the term for which any tenants holds the lands leased, shall have expired, and the tenant shall refuse to deliver possession, after notice.

CCLXVI. Where the term or interest of any tenant now or hereafter holding under a lease or agreement in writing, any lands, tenements or hereditaments for any term or number of years certain, or from year to year, shall have expired, or been determined either by the landlord or tenant by regular notice to quit, and such tenant or any one holding or claiming by or under him, shall refuse to deliver up possession accordingly, after lawful demand in writing made and signed by the landlord or his agent, and served personally upon or left at the dwelling house or usual place of abode of such tenant or person, and the landlord shall thereupon proceed by action of ejectment for recovery of possession, it shall be lawful for him at the foot of the Writ in ejectment, to address a notice to such tenant or person, requiring him to find such bail, if ordered by the Court or a Judge, and for such purposes as are hereinafter next specified, and upon the appearance of the party, or in case of non-appearance on making and filing an affidavit of service of the Writ and notice, it shall be lawful for the landlord producing the lease or agreement, or some counterpart or duplicate thereof and proving the execution of the same by affidavit, and upon affidavit that the premises have been actually enjoyed under such lease or agreement, and that the interest of the tenant has expired or been determined by regular notice to quit, as the case may be, and that possession has been lawfully demanded in manner aforesaid, to move the Court or to apply to a Judge at Chambers for a rule or summons for such tenant or person, to shew cause, within a time to be fixed by the Court or Judge on the consideration of the situation of the premises, why such tenant or person should not enter into a recognizance by himself and two sufficient sureties, in a reasonable sum, conditioned to pay the costs and damages which shall be recovered by the Claimant in the action, and it shall be lawful for the Court or Judge upon cause shewn or upon affidavit of the service of the rule or summons, in case no cause shall be shewn, to make the same absolute in whole or in part, and to order such tenant or person within a time to be fixed upon a consideration of all the circumstances, to find such bail, with such conditions and in such manner, as shall be specified in the said rule or summons, or such part of the same so made absolute, and in case the party shall neglect or refuse so to do, and shall lay no ground to induce the Court or Judge to enlarge the time for obeying the same, then the lessor or landlord filing an affidavit that such rule or order has been made or served and not complied with, shall be at liberty to sign

Notice to tenant to find security.

Rule to shew cause why tenant should not give security.

And if no cause be shewn, judgment for landlord.

Judgment

Judgment for recovery of possession and costs of suit, in the form contained in Schedule (A) to this Act annexed, marked No. 20, or to the like effect: Provided always, that nothing herein contained shall be held to prevent or restrict any landlord from proceeding against his tenant, who shall wrongfully hold over after his term has expired, according to the provisions contained in an 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 amend the law respecting real property, and to render the proceedings for recovering possession thereof in certain cases, less difficult and expensive.*

Proviso.

Landlord may proceed under Act of U. C., 4 W. 4, c. 1. (1852, s. 213.) New.

CCLXVII. Whenever it shall appear on the trial of any ejectment at the suit of a landlord against a tenant, that such tenant or his Attorney hath been served with due notice of trial, the Judge before whom such cause shall come on to be tried, shall, whether the Defendant shall appear upon such trial or not, permit the claimant on the trial, after proof of his right to recover possession of the whole or of any part of the premises mentioned in the Writ in ejectment, to go into evidence of the mesne profits thereof which shall or might have accrued from the day of the expiration or determination of the tenant's interest in the same, down to the time of the verdict given in the cause, or to some preceding day to be specially mentioned therein, and the Jury on the trial finding for the Claimant shall in such case give their verdict upon the whole matter, both as to the recovery of the whole or any part of the premises, and also as to the amount of the damages to be paid for such mesne profits, and in such case the landlord shall have Judgment within the time hereinbefore provided, not only for the recovery of possession and costs, but also for the mesne profits found by the Jury; Provided always, that nothing hereinbefore contained shall be construed to bar any such landlord from bringing any action for the mesne profits which shall accrue from the verdict, or from the day so specified therein, down to the day of the delivery of possession of the premises recovered in the ejectment.

Court may allow proof of mesne profits at trial, as soon as the landlord shall have established his right to recover possession, &c.

Proviso: as to mesne profits after verdict, &c. (1852, s. 214.)

CCLXVIII. In all cases in which such security shall have been given as aforesaid, if upon the trial a verdict shall pass for the Claimant, unless it shall appear to the Judge before whom the same shall have been had, that the finding of the Jury was contrary to the evidence or that the damages given were excessive, such Judge may in his discretion order that Judgment may be entered and execution issue in favour of the Claimant at the expiration of six days next after the giving of such verdict.

Court may order execution within six days, in cases where security is given, unless, &c. (1852, s. 215.)

CCLXIX. All recognizances and securities entered into in pursuance of the Section of this Act numbered two hundred and sixty-six, may and shall be taken respectively in such manner

As to recognizances under Section 266,

and proceedings on them. (1852, s. 216.)

manner and by and before such persons as are provided and authorized in respect of recognizances of bail upon actions and suits depending in the said Superior Courts, and subject to the like fees and charges; but no action or other proceeding shall be commenced upon any such recognizance or security after the expiration of six months from the time when possession of the premises or any part thereof shall actually have been delivered to the landlord.

Rights of landlords not prejudiced by this Act. (1852, s. 218.)

CCLXX. Nothing herein contained shall be construed to prejudice or affect any other right of action or remedy which landlords may possess in any case hereinbefore provided for, otherwise than hereinbefore expressly enacted.

Mortgagor sued in ejectment by his mortgagee, may pay into Court the amount of the mortgage debt, interest and costs, and shall thereon be discharged, and mortgagee may be ordered to recovery. (1852, s. 219.)

CCLXXI. Where an action of ejectment shall be brought by any mortgagee, his heirs, executors, administrators or assignees for the recovery of the possession of any mortgaged lands, tenements or hereditaments, and no suit shall be then depending in the Court of Chancery for or touching the foreclosing or redeeming of such mortgaged lands, tenements or hereditaments, if the person having right to redeem such mortgaged lands, tenements or hereditaments, and who shall appear and become Defendant in such action, shall at any time pending such action, pay unto such mortgagee, or in case of his refusal shall bring into the Court where such action shall be depending, all the principal moneys and interest due on such mortgage, and also all such costs as have been expended in any suit at law or in equity upon such mortgage, (such money for principal, interest and costs, to be ascertained and computed by the Court where such action is or shall be pending, or by the proper officer by such Court to be appointed for that purpose), the moneys so paid to such mortgagee or brought into such Court shall be deemed and taken to be in full satisfaction and discharge of such mortgage, and the Court shall and may discharge every such mortgagor or Defendant of and from the same accordingly, and shall and may by rule of the same Court compel such mortgagee to assign, surrender or re-convey such mortgaged lands, tenements and hereditaments, and such estate and interest as such mortgagee has therein, and to deliver up all deeds, evidences and writings in his custody relating to the title of such mortgaged lands, tenements and hereditaments unto such mortgagor who shall have paid or brought such moneys into the Court, his heirs, executors or administrators, or to such other persons as he or they shall, for that purpose, nominate and appoint.

Next preceding Section not to extend to cases where the right to redeem, or the sum due is contested.

CCLXXII. Nothing herein contained shall extend to any case when the person against whom the redemption is or shall be prayed, shall (by writing under his hand or the hand of his Attorney, Agent or Solicitor to be delivered before the money shall be brought into such Court of law to the Attorney or Solicitor for the other side), insist either that the party praying a redemption

redemption has not a right to redeem, or that the premises are chargeable with other or different principal sums than what appear on the face of the mortgage or shall be admitted on the other side, or to any case where the right of redemption to the mortgaged lands and premises in question in any cause or suit shall be contravened or questioned by or between different Defendants in the same cause or suit, or shall be any prejudice to any subsequent mortgage or subsequent incumbrance, any thing herein contained to the contrary thereof in any wise notwithstanding.

Or to prejudice any subsequent mortgage, &c. (1852, s. 220.)

CCLXXIII. If any persons shall bring an action of ejectment after a prior action of ejectment shall have been unsuccessfully brought by such person or by any person through or under whom he claims, against the same Defendant or against any person through or under whom he defends, the Court or a Judge, may, if they or he think fit, on the application of the Defendant at any time after such Defendant has appeared to the Writ, order that the Plaintiff shall give to the Defendant security for the payment of the Defendant's costs, and that all further proceedings in the cause shall be stayed until such security be given, whether the prior action shall have been disposed of by discontinuance or by non-suit, or by Judgment for the Defendant.

The same Claimant in subsequent action for the same property may be ordered to give security for costs. (1854, s. 93.)

CCLXXIV. The several Courts and the Judges thereof respectively, shall and may exercise over the proceedings in ejectment under this Act, the like jurisdiction as exercised in the old action of ejectment, so as to ensure a trial of the title and of actual ouster when necessary, and for all other purposes for which such jurisdiction might have been exercised.

Courts may exercise the same jurisdiction as formerly; over proceedings in ejectment. (1852, s. 221.)

And in order to give to Plaintiff a further remedy by Writ of *Mandamus*; Be it enacted as follows:

Mandamus.

CCLXXV. The Plaintiff, in any action in either of the Superior Courts, except replevin or ejectment, may indorse upon the Writ and copy to be served, a notice that the Plaintiff intends to claim a Writ of *Mandamus*, and the Plaintiff may thereupon claim in the declaration, either together with any other demand which may now be enforced in such action, or separately, a Writ of *Mandamus* commanding the Defendant to fulfil any duty in the fulfilment of which the Plaintiff is personally interested.

Plaintiff giving notice thereof on the writ, may claim *Mandamus* for enforcing any duty of Defendant towards him. (1854, s. 68.)

CCLXXVI. The declaration in such action shall set forth sufficient ground upon which such claim is founded, and shall set forth that the Plaintiff is personally interested therein, and that he sustains or may sustain damage by the non-performance of such duty, and that performance thereof has been demanded by him and refused or neglected.

What shall be stated in the declaration in such case. (1854, s. 69.)

CCLXXVII. The pleadings and other proceedings in any action in which a Writ of *Mandamus* is claimed, shall be the same

Proceedings in such action.

Costs. (1854, s. 70.) same in all respects as nearly as may be, and costs shall be recoverable by either party, as in an ordinary action for the recovery of damages; and in case Judgment shall be given for the Plaintiff that a *Mandamus* do issue, it shall be lawful for the Court in which such Judgment shall be given, if it shall see fit, besides issuing execution in the ordinary way for the costs and damages, also to issue a peremptory Writ of *Mandamus* to the Defendant, commanding him forthwith to perform the duty to be enforced.

Judgment and execution.

Peremptory *Mandamus.* (1854, s. 71.)

Form of such peremptory writ.

CCLXXVIII. Such Writ need not recite the declaration or other proceedings or the matter therein stated, but shall simply command the performance of the duty, and in other respects shall be in the form of an ordinary Writ of Execution, except that it shall be directed to the party and not to the Sheriff, and may be issued in term or vacation and returnable forthwith, and no return thereto, except that of compliance, shall be allowed, but time to return it may upon sufficient ground be allowed by the Court or a Judge, either with or without terms.

To whom addressed.

Return thereto. (1854, s. 72.)

Its effect and how enforced. (1854, s. 73.)

CCLXXIX. The Writ of *Mandamus* so issued as aforesaid, shall have the same force and effect as a peremptory Writ of *Mandamus*, and in case of disobedience, may be enforced by attachment.

Court may order the thing to be done by the Plaintiff at the costs of the Defendant.

CCLXXX. The Court may upon application by the Plaintiff, besides or instead of proceeding against the disobedient party by attachment, direct that the act required to be done may be done by the Plaintiff or some other person appointed by the Court, at the expense of the Defendant, and upon the act being done, the amount of such expense may be ascertained by the Court either by Writ of enquiry or reference to the proper officer, as the Court or a Judge may order, and the Court may order payment of the amount of such expenses and costs, and enforce payment thereof by execution.

Execution for such costs. (1854, s. 74.)

Present power to issue prerogative *Mandamus* not affected. (1854, s. 75.)

CCLXXXI. Nothing herein contained shall take away the Jurisdiction of either of the Superior Courts to grant Writs of *Mandamus;* nor shall any Writ of *Mandamus* issued out of such Courts be invalid by reason of the right of the prosecutor to proceed by action for *Mandamus* under this Act.

Provisions concerning the issue of prerogative Writ of *Mandamus.* (1854, s. 76.) (1854, s. 77.)

CCLXXXII. Upon application by motion for any Writ of *Mandamus*, the rule may in all cases be absolute in the first instance, if the Court shall think fit, and the Writ may bear teste on the day of its issuing and may be made returnable forthwith whether in term or in vacation, but time may be allowed to return it by the Court or a Judge either with or without terms; and the provisions of this Act, so far as they are applicable, shall apply to the pleadings and proceedings upon a prerogative Writ of *Mandamus* issued by either of the Superior Courts.

And

And in order to give to Plaintiff a further remedy by Writ of injunction; Be it enacted as follows : *Injunction.*

CCLXXXIII. In all cases of breach of contract or other injury, where the party injured is entitled to maintain and has brought an action, he may in like case and manner as hereinbefore provided, with respect to *Mandamus*, claim a Writ of injunction against the repetition or continuance of such breach of contract or other injury, or the committal of any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right, and he may also in the same action include a claim for damages or other redress.

In case of breach of contract or other injury, Plaintiff may claim injunction against repetion,&c., and also damages. (1854, s. 79.)

CCLXXXIV. The Writ of Summons in such action shall be in the same form as the Writ of Summons in any personal action, but on every such Writ and copy thereof, there shall be indorsed a notice, that in default of appearance the Plaintiff may, besides proceeding to Judgment and execution for damages and costs, apply for and obtain a Writ of injunction.

Form of writ and notice to be indorsed on it. (1854, s. 80.)

CCLXXXV. The proceedings in such action shall be the same as nearly as may be, and subject to the like control as the proceedings in an action to obtain a *Mandamus* under the provisions hereinbefore contained, and in such action Judgment may be given that the Writ of injunction do or do not issue as justice may require ; and in case of disobedience, such Writ of injunction may be enforced by attachment by the Court of when such Court shall not be sitting by a Judge.

Proceedings and judgment in such case.

Enforcing injunction. (1854, s. 81.)

CCLXXXVI. It shall be lawful for the Plaintiff at any time after the commencement of the action, and whether before or after Judgment, to apply *ex parte* to the Court or a Judge for a Writ of injunction to restrain the Defendant in such action from the repetition or continuance of the wrongful act or breach of contract complained of, or the committal of any breach of contract or injury of a like kind, arising out of the same contract or relating to the same property or right ; and such Writ may be granted or denied by the Court or Judge upon such terms as to the duration of the Writ—keeping an account—giving security—or otherwise, as to such Court or Judge shall seem reasonable and just ; and in case of disobedience, such Writ may be enforced by attachment by the Court, or when such Court shall not be sitting, by a Judge ; Provided always, that any order for a Writ of injunction made by a Judge, or any Writ issued by virtue thereof may be discharged, or varied or set aside by the Court on application made thereto by any party dissatisfied with such order.

Plaintiff may apply *ex parte* for injunction at any stage of the case.

Court may impose terms.

Enforcing injunction.

Proviso : Order made by a Judge may be set aside by the Court. (1854, s. 82.)

And as to the action of replevin ; Be it enacted as follows : *Replevin.*

CCLXXXVII. It shall be lawful for the Plaintiff or Defendant in replevin, in any cause in either of the Superior Courts in

Equitable defence may be pleaded.

in which, if Judgment were obtained, he would be entitled to relief against such Judgment on equitable grounds, to plead the facts which entitle him to such relief by way of defence, and the said Courts are hereby empowered to receive such defence by way of plea; provided that such plea shall begin with the words "for defence on equitable grounds," or words to the like effect.

Commencement of plea. (1854, s. 83.)

Equitable defence by way of *auditâ querelâ.* (1854, s. 84.)

CCLXXXVIII. Any such matter which if it arose before or during the time for pleading would be an answer to the action by way of plea, may, if it arise after the lapse of the period during which it could be pleaded, be set up by way of *auditâ querelâ.*

Replication on equitable grounds. (1854, s. 85.)

CCLXXXIX. The Plaintiff may reply, in answer to any plea of the Defendant, facts which avoid such plea upon equitable grounds, provided that such replication shall begin with the words "for replication on equitable grounds," or words to the like effect.

Striking out any such plea &c., which cannot be dealt with by a Court of Law. (1854, s. 86.)

CCXC. Provided always, that in case it shall appear to the Court or any Judge thereof, that any such equitable plea or equitable replication cannot be dealt with by a Court of Law so as to do justice between the parties, it shall be lawful for such Court or Judge to order the same to be struck out, on such terms, as to costs and otherwise, as to such Court or Judge may seem reasonable.

And whereas the power of amendment now vested in the Courts, and the Judges thereof is insufficient to enable them to prevent the failure of Justice by reason of mistakes and objections of form; Be it enacted as follows:

The Courts may and must make all such amendments in any civil proceedings as may be necessary to do full justice. (1852, s. 222.)

CCXCI. It shall be lawful for the Superior Courts of Common Law, and every Judge thereof, and any Judge sitting at *Nisi Prius*, at all times to amend all defects and errors in any proceeding in civil causes, whether there is any thing in writing to amend by or not, and whether the defect or error be that of the party applying to amend or not, and all such amendments may be made with or without costs, and upon such terms as to the Court or Judge may seem fit, and all such amendments as may be necessary for the purpose of determining in the existing suit the real question in controversy between the parties, shall be so made.

Negotiable Instruments.

And with regard to actions on Bills of Exchange or other negotiable instruments; Be it enacted as follows:

Court may order loss, &c., not to be made a defence, on

CCXCII. In case of any action founded on a bill of exchange or other negotiable instrument, it shall be lawful for the Court or a Judge to order that the loss of such instrument shall not be set up, provided an indemnity be given to the satisfaction of the

the Court or Judge or any officer of the Court, to whom the same may be referred by such Court or Judge, against the claims of any other person upon such negotiable instrument.

indemnity being given. (1854, s. 87.)

And with respect to proceedings in error and appeal; Be it enacted as follows:

CCXCIII. No Judgment, decree or other proceeding, either at law or in equity, shall be reversed or avoided for any error or defect therein, unless the Writ of appeal be sued out and prosecuted with effect within four years after such Judgment, decree or proceeding shall have been entered of record, made, pronounced, had or completed.

Appeal must be brought within four years. (1852, s. 146.)

CCXCIV. If any person who is or shall be entitled to bring error or appeal as aforesaid, shall be at the time such title accrued, within the age of twenty-one years, *feme covert*, *non compos mentis*, or without the limits of this Province, then such person shall be at liberty to sue out his Writ of appeal so as such person commences or brings and prosecutes the same with effect within six years after coming to or being of full age, *discovert*, of sound memory, or return to the Province; and if the opposite party shall, at the time the title to bring error and appeal accrued, be without the limits of this Province, then the Writ of appeal may be sued out, provided the proceeding be commenced and prosecuted with effect within six years after the return of such party to this Province.

Further time allowed in cases of disability to bring appeal at the time before limited. (1852, s. 147.)

And with respect to the payments of weekly allowance to insolvent debtors, and as to Gaol limits, and to the discharge of such debtors; Be it enacted as follows:

The provisions under this head amend and consolidate the repealed provisions of— 45 G. 3, c. 7— 2 G. 4, c. 8— 8 G. 4, c. 8— 4 W. 4, c. 3— 5 W. 4, c. 3— 10 & 11 V. c. 15— (*Insolvent Debtors*)—*and* 11 G. 4, c. 3— 4 W 4, c. 10— 16 V. c. 175— (*Gaol limits.*)

CCXCV. If any debtor in close custody upon any mesne process, or in execution, or upon an attachment, or other process issued by any Court in Upper Canada, for non-payment of costs, or for non-payment of any sum of money awarded, or for the non-payment of any claim in the nature of a debt or demand due, being a sum certain or capable of being ascertained by computation, and not in the nature of a penalty to enforce the doing of some act, other than the payment of a sum of money, (in which several cases, the debtor shall be deemed to be a prisoner in execution,) shall make oath that he is a prisoner in close custody, setting forth on which of the causes of detention above specified, and that he is unable to find security for the limits, and is not worth the sum of five pounds, and in case he is in custody on mesne process that he is unable to procure bail to the action, and that he does not believe the demand of the Plaintiff to be just, and for that cause and no other he resists payment of the same and refuses to confess Judgment for the sum sworn to, it shall be lawful for the Court from which the process against such debtor issued, or any Judge having authority to dispose of matters arising in suits in such Court, to make a rule or order on the

In what cases a debtor in close custody shall be entitled to weekly allowance. 45 G. 3, c. 7. 4 W. 4, c. 3. 8 G. 4, c. 8.

Plaintiff

Plaintiff at whose suit such debtor is detained, to pay to such debtor on the third Monday after the service of such rule or order, and upon each Monday thereafter, so long as such debtor shall be detained in prison at the suit of such Plaintiff for such cause, the sum of ten shillings, such payment to be made to the debtor or to the Gaoler in whose custody he is, for the use of such debtor, and in default of such payment such debtor shall after service of a rule *nisi* or Judges' Summons, to be obtained on oath of the default, be discharged from custody by rule or order, unless sufficient cause to the contrary be shewn: Provided always that such discharge shall not, when the debtor was confined on mesne process, prevent the Plaintiff from proceeding to Judgment and execution against the body, lands or goods according to the practice of the Court, and that such discharge shall not, when the debtor was a prisoner in execution, be construed as a release or satisfaction of the Judgment or other debt or demand for the non-payment whereof such debtor was in custody, or to deprive the Plaintiff of any remedy against the lands or goods of such debtor.

The allowance; and how payable.

Discharge if not paid.

Proviso.

CCXCVI. Whenever any such debtor shall apply for the weekly allowance, or to be discharged from custody for the non-payment thereof, it shall be lawful for the Plaintiff at whose suit he is confined, to file interrogatories for the purpose of discovering any property or effects which such debtor may be possessed of or entitled to, or which may be in the possession or under the control of some other person for the use or benefit of such debtor, or which such debtor, having been in possession of may have fraudulently disposed of to injure his creditor, and to serve a copy of such interrogatories on such debtor, and thereupon and until such debtor shall have fully answered such interrogatories upon oath to the satisfaction of the Court or Judge, and filed his answers and given sufficient notice of such filing to the Plaintiff or his Attorney, no rule or order for the payment of such weekly allowance shall be made, or if previously made no order for his discharge for non-payment thereof shall be made.

Debtor not entitled to allowance or to his discharge in default of payment thereof, until he shall have answered interrogatories touching his property.
2 G. 4, c. 8.
4 W. 4, c. 3.

CCXCVII. Where any such debtor shall have obtained the order for payment of the weekly allowance, the Plaintiff at whose suit he is confined may at any time file and serve such interrogatories as aforesaid, and it shall be lawful for the Court from which the process issued or a Judge as aforesaid, on application of the Plaintiff, to stay further payment until the debtor shall have sworn to and filed his answers, and have given to the Plaintiff or his Attorney four clear days' notice thereof.

Filing interrogatories to debtor, &c.
2 G. 4, c. 8.

CCXCVIII. Whenever such debtor is a prisoner in close custody in several suits or matters, he must make all the Plaintiffs in such suits or matters parties to his application for the weekly allowance, and he shall only be entitled to one weekly

Defendant in custody on several writs only entitled

weekly sum of ten shillings, although he is in custody in several suits and matters; and in any such case if the weekly allowance be unpaid, the debtor shall have the same right as when he is in custody in one suit only, to be discharged from custody in all the suits or matters named in the order for payment, and the Plaintiffs named in such order must all be made parties on any application for the debtor's discharge on account of non-payment, and all such Plaintiffs must join in administering interrogatories to the Defendant, as if they were Plaintiffs in one suit, and such Plaintiffs shall regulate among themselves the apportionment of the weekly allowance and the arrangement for payment thereof.

to one allowance, &c.

Interrogatories in such case.

CCXCIX. The Plaintiff in any suit shall be entitled to recover from his debtor all sums paid to him for weekly allowance while a prisoner on *mesne* process, and upon proof of the amount of such payment before the proper taxing Officer, such sums shall be allowed as disbursements in the suit and be taxed as part of the costs thereof.

Allowance may be recovered from debtor as costs.
4 W. 4, c. 3.

CCC. Any debtor according to the intent and meaning of this Act, who shall have been confined in close custody in execution for three successive calendar months, may, (on giving to the party at whose suit he is a prisoner or to his Attorney, fifteen days' notice of his intention to apply to be discharged from custody) upon proof of such notice, and upon making oath that he is not worth five pounds exclusive of his necessary wearing apparel and that of his family, and their beds and bedding and their ordinary household utensils, not exceeding in the whole the value of ten pounds, and that he hath answered all interrogatories which have been filed by the Plaintiff, and hath given due notice of such answers (or if no interrogatories have been served, that he hath not been served with any interrogatories), apply to the Court from which the process on which he is confined issued, or to a Judge as aforesaid, for a rule or summons to shew cause why he should not be discharged from custody, and upon the return of such rule or summons, and where there are interrogatories if the answers thereto are deemed sufficient by such Court or Judge, such debtor shall be by rule or order discharged from custody, and such discharge shall have the same and no other effect as a discharge for non-payment of the weekly allowance: Provided that the Court or Judge may on the return of the rule or summons, if the Plaintiff has already filed interrogatories (which he is hereby authorized to do in like manner as on an application for the weekly allowance), and if further inquiry appears requisite for the ends of Justice, allow to the Plaintiff a reasonable time to file further interrogatories, and for the debtor to answer them before the rule or summons be finally disposed of: Provided also, that the Court or Judge may make it a condition of the debtor's discharge, that he shall first assign and convey to the party at whose suit he is in custody any right or interest which he may have or be presumed

Debtor in prison over three months may obtain his discharge on certain conditions.
5 W. 4, c. 3

Proviso: for the interrogatories.

Proviso: Assignment by debtor may be required.

presumed to have in and to any property, credits and effects other than the wearing apparel, beds, bedding and household utensils before mentioned, such assignment or conveyance to be approved by the Court or Judge; Provided lastly, that if it shall appear that the debt for which such debtor is confined was contracted by any manner of fraud or breach of trust, or that he is confined by reason of any Judgment in an action for breach of promise of marriage, seduction, criminal conversation, libel or slander, the Court or Judge may order the Applicant to be recommitted to close custody for any period not exceeding twelve calendar months and to be then discharged.

Proviso: if debt arose from fraud, breach of trust, &c.

Limits of Counties to be limits of gaols thereof. 10 & 11 V. c. 15. *See also*—18 V. c. 69.

CCCI. The limits of each County and Union of Counties in Upper Canada for judicial purposes, shall be and are hereby declared to be the limits of the Gaols of such Counties or Unions of Counties respectively.

Sheriff may take security from any debtor that he will keep the limits, obey all lawful orders of the Court, &c. 11 G. 4, c. 3. 10 & 11 V. c. 15. 16 V. c. 176.

CCCII. The Sheriff of any such County or Union of Counties may take from any debtor confined in the Gaol thereof in execution or upon mesne process, a bond with not less than two or more than four sufficient sureties, to be jointly and severally bound in a penalty double the amount for which such debtor is so confined, conditioned that such debtor shall remain and abide within the limits of such Gaol and shall not depart therefrom, unless discharged from custody in the suit or matter upon which he was so confined by due course of law, and also that such debtor shall and will during all the time that he shall be upon the limits subject to such custody, observe and obey all notices, orders or rules of Court touching or concerning such debtor, or his answering interrogatories, or his returning and being remanded into close custody, and that they will produce such debtor to the Sheriff when they or either of them shall be required, upon reasonable notice; and the Sheriff may also require each surety when there are only two, to make oath in writing, to be annexed to the bond, that he is a freeholder or householder in some part of Upper Canada, stating where, and is worth the sum for which the debtor is in custody, (naming it) and fifty pounds more over and above what will pay all his debts, or where there are more than two sureties, then that each surety shall make oath as aforesaid, that he is a freeholder or householder as aforesaid, and is worth one half the sum for which the debtor is in custody, (naming it) and fifty pounds more, over and above what will pay all his debts.

Justification of the sureties.

On receipt of such security Sheriff may allow the debtor the limits, without being liable for an escape. 11 G. 4, c. 3.

CCCIII. Upon receipt of such bond, accompanied by an affidavit of a subscribing witness of the due execution thereof, and by the sureties' affidavits of solvency, if required by the Sheriff, it shall be lawful for the Sheriff to permit and allow the debtor to go out of close custody in Gaol, into and upon the Gaol limits, and so long as such debtor shall remain within the said limits without departing therefrom, and shall in all other respects observe, fulfil and keep on his part the condition of

of the said bond, such Sheriff shall not be liable to the party at whose suit such debtor was confined, in any action, for the escape of such debtor from Gaol.

CCCIV. In case the Sheriff shall have good reason to apprehend that such sureties or either of them, have, after entering into such bond, become insufficient to pay the amount severally sworn to by them, it shall be lawful for him again to arrest the debtor, and to detain him in close custody, and the sureties of such debtor may plead such arrest and detention in bar of any action to be brought against them upon the bond so entered into by them, and such plea if sustained in proof shall wholly discharge them from such action; Provided always, that such debtor may again obtain the benefit of the Gaol limits, on giving a new bond with sureties as aforesaid, to the Sheriff.

If the sureties become insolvent, &c., Sheriff may re-take the debtor, &c. 16 V. c. 175.

Proviso. 4 W. 4, c. 10.

CCCV. Upon any breach of the condition of such bond, the party at whose suit the debtor is confined, may require the Sheriff to assign the same to him, which assignment shall be made in writing, under the seal of the Sheriff, and attested by at least one witness, and the assignee of the Sheriff or the executors or administrators of such assignee, may maintain an action in his or their own names upon such bond, which action the Sheriff shall have no power to release; but upon executing such assignment at such request, the Sheriff shall be thenceforth discharged from all liability on account of the debtor or his safe custody.

In case of breach, Sheriff may be required to assign the Bond, and on doing so shall be discharged from liability. 11 G. 4, c. 3. 16 V. c. 175.

CCCVI. The sureties of any such debtor may surrender him into the custody of the Sheriff at the gaol, and it shall be the duty of the Sheriff, his Deputy or Gaoler, there to receive such debtor into custody, and the sureties may plead such surrender or an offer to surrender, and the refusal of the Sheriff, his Deputy or Gaoler to receive such debtor into custody at the gaol, in bar of any action brought on the bond for a breach of the condition happening after such surrender or tender and refusal, and such plea, if sustained in proof, shall discharge them from any such action: Provided always, that such debtor may again obtain the benefit of the limits on giving a new bond with sureties as aforesaid, to the Sheriff.

Sureties may make or tender a surrender of the debtor.

Proviso. 11 G. 4, c. 3.

CCCVII. The party at whose suit any debtor is confined, may at any time while the debtor enjoys the benefit of the limits, file and serve such interrogatories, to be answered by such debtor in manner aforesaid; and in case such debtor shall neglect or omit for the space of fifteen days next after service thereof, to answer such interrogatories and to file the answers, and to give immediate notice of such filing to the party at whose suit he is in custody, or to the Attorney of that party, the Court or a Judge as aforesaid, may make a rule or order for such debtor's being committed to close custody, and it shall be the duty of the Sheriff on due notice of such rule or order, forthwith to

Debtor on limits bound to answer interrogatories.

Penalty for refusal. 11 G. 4, c. 3. 4 W. 4, c. 10. 16 V. c. 175.

to take such debtor and re-commit him to close custody until he shall obtain a rule of Court or Judge's order for again admitting him to the limits, on giving the necessary bond as aforesaid, (which rule or order may be granted on the debtor's shewing that he has filed his answers to such interrogatories, and has given to the Plaintiff or his Attorney ten days' notice thereof, and of his intention to apply), or until he shall be otherwise discharged by due course of law.

Plaintiff may have execution against property of debtor on the limits.

CCCVIII. The party at whose suit any debtor is confined in execution, may, whenever such debtor shall take the benefit of the limits, sue out any execution against his lands or goods, notwithstanding such debtor was charged in execution, and such execution shall not be stayed, but shall be proceeded with until executed, although such debtor has been re-committed to close custody; Provided always, that the wearing apparel of such debtor and that of his family, and their beds and bedding, and household utensils, not exceeding together the value of ten pounds, and the tools and implements of the trade of such debtor, not exceeding in value ten pounds, shall be protected from such subsequent execution.

Proviso.

Exemptions from execution. 11 G. 4, c. 3.

Foregoing provisions not to extend to persons in custody, &c., on any criminal charge. 11 G. 4, c. 3. *See also*— 11 G. 4, c. 4.

CCCIX. None of the foregoing provisions relative to the weekly allowance, discharge from custody on account of insolvency or Gaol limits, shall extend or be applicable to debtors who shall, at the same time be in custody upon any criminal charge.

False swearing under preceding Sections to be perjury. 11 G. 4, c. 3.

CCCX. Every person who shall upon any examination upon oath or affirmation or in any affidavit made or taken in any proceedings under this Act, wilfully and corruptly give false evidence or wilfully and corruptly swear or affirm any thing which shall be false and shall be thereof convicted, shall be liable to the penalties of wilful and corrupt perjury.

And with respect to costs; Be it enacted as follows:

Costs on writs under this Act to be as heretofore until otherwise ordered.

Proviso as to mileage.

New temporary.

CCCXI. Until otherwise ordered by rule of Court, the costs of Writs issued under the authority of this Act and of all other proceedings under the same, shall be and remain as nearly as the nature thereof will allow, the same as heretofore, but in no case greater than those already established; Provided always, that hereafter no mileage shall be taxed or allowed for the service of any Writ, paper or proceeding, without an affidavit being made and produced to the proper taxing officer, stating the sum actually disbursed and paid for such mileage, and the name of the party to whom such payment was made.

Plaintiff in trespass or trespass on the case, to re-

CCCXII. If the Plaintiff in any action of trespass or trespass on the case brought or to be brought in either of the said Courts or in any county Court in Upper Canada, shall recover by the verdict of a Jury less damages than forty shillings, such Plaintiff shall

shall not be entitled to recover in respect of such verdict any costs whatever, whether the verdict be given on any issue tried or Judgment have passed by default, unless the Judge or Presiding officer before whom such verdict shall be obtained shall immediately afterwards certify on the back of the record or of the writ of trial or inquiry that the action was really brought to try a right besides the right to recover damages for the trespass or grievance in respect of which the action was brought, or that the trespass or grievance in respect of which the action was brought was wilful and malicious: Provided always, that nothing herein contained shall extend or be construed to extend to deprive the Plaintiff of costs in any action brought for a trespass or trespasses over any lands, wastes, closes, woods, plantations or inclosures, or for entering into any dwelling, out building or premises in respect to which notice not to trespass shall have been previously served by or on behalf of the owner or occupier of the land trespassed over, upon or left at the last reputed or known place of abode of the Defendant in such action; Provided also, that nothing in this section shall be construed to entitle any Plaintiff to recover costs as of an action brought in a Superior Court in any case where by law his action might properly have been brought in an inferior Court.

cover no costs if the verdict be for less than forty shillings, unless the Judge certify certain facts.

Proviso: This shall not extend to certain trespasses

Proviso: as to actions which might have been brought in an Inferior Court. 16 V. c. 175, s. 26.

And in order to enable the Courts and Judges to carry this Act thoroughly into effect, and to enable them from time to time to make rules and regulations, and to frame Writs and proceedings for that purpose; Be it enacted, as follows:

CCCXIII. It shall be lawful for the Judges of the said Courts or any four or more of them of whom the Chief Justices shall be two, from time to time to make all such general rules and orders for the effectual execution of this Act, and of the intention and object hereof, and for fixing the costs to be allowed for and in respect of the matters herein contained and the performance thereof, and for apportioning the costs of issues, and for the purpose of enforcing uniformity of practice in the allowance of costs in the said Courts, as in their judgment shall be necessary or proper, and for that purpose to meet from time to time as occasion may require; and it shall also be lawful for the said Judges, or any four or more of them of whom the Chief Justices shall be two, by any rule or order to be from time to time by them made in Term or Vacation at any time within five years after this Act shall come into force, to make such further alterations in the time and mode of pleading in the said Courts and in the mode of entering and transcribing pleadings, judgments and other proceedings in actions at law, and in the time and manner of objecting to errors in pleadings and other proceedings, and in the mode of verifying pleas and obtaining final judgment without trial in certain cases, as to them may seem expedient, any thing in this Act to the contrary notwithstanding; and all such Rules, Orders or Regulations shall be laid before both Houses of the Parliament of this Province, if

Power to make rules for giving effect to this Act. (1852, s. 223.)

To make further alterations in mode of pleading, &c.

Rules, &c., to be laid before

Parliament

Parliament, and not to have effect for a certain time thereafter.

Parliament be then sitting, immediately upon making the same, or if Parliament be not sitting, then within twenty days after the next meeting thereof; and no such Rule, Order or Regulation, shall have effect until three months after the same shall have been so laid before both Houses of Parliament, and any Rule, Order or Regulation so made shall, from and after such time as aforesaid, be binding and obligatory on the said Courts and on all Courts of error and appeal in this Province, into which the Judgments of the said Courts or either of them shall be removed, and be of like force and effect as if the provisions contained therein had been expressly enacted by the Parliament of this Province: Provided always, that it shall be lawful for the Governor of this Province, by proclamation, or for either of the Houses of Parliament, by any resolution, at any time within three months next after such Rules, Orders and Regulations shall have been laid before Parliament, to suspend the whole or any part of such Rules, Orders or Regulations, and in such case the whole or such part thereof as shall be so suspended, shall not be binding or obligatory on the said Courts or on any Court of error and appeal; Provided also, that nothing herein contained shall be construed to restrain the authority or limit the jurisdiction of the said Courts or the Judges thereof, to make rules or orders, or otherwise to regulate and dispose of the business therein.

Proviso: such rules may be disallowed in whole or in part. *New.*

Proviso: existing power to make rules not affected (1852, s. 223.)

As to issue, &c., of new or altered writs.

CCCXIV. Such new or altered writs and forms of proceedings may be issued, entered and taken, as may by the Judges of the said Court, or any four or more of them of whom the Chief Justices shall be two, be deemed necessary or expedient for giving effect to the provisions hereinbefore contained, and in such forms as the Judges as aforesaid shall from time to time think fit to order; and such writs and proceedings shall be acted on and enforced in such and the same manner as writs and proceedings of the said Courts are now acted upon and enforced, or as near thereto as the circumstances of the case will admit; and any existing writ or proceeding, the form of which shall be in any manner altered in pursuance of this Act, shall, nevertheless, be of the same force and virtue as if no alteration had been made therein, except so far as the effect thereof may be varied by this Act.

As to existing writs of which the form is altered by this Act. (1852, s. 224)

This Act not to affect powers given to any Judge by 13 & 14 V. c. 51. (1852, s. 224.)

CCCXV. Nothing in this Act contained shall in any way restrict or limit the powers now vested by law in any one of the Judges of the Superior Courts of law, sitting apart from the others of them, in Term time, or sitting in Chambers, but all the powers conferred by an Act of the Parliament of this Province, passed in the Session held in the thirteenth and fourteenth years of Her Majesty's Reign, and intituled, *An Act to confirm and give effect to certain rules and regulations made by the Judges of Her Majesty's Court of Error and Appeal for Upper Canada, and for other purposes, relating to the powers of the Judges of the Courts of Law and Equity in that part of the*

the Province, and the practice and decisions of certain of those Courts, shall continue to be exercised by such Judges, and shall extend to all matters and questions to arise and be decided under this Act, and wherever any power is given by this Act to the Court or a Judge, the words "a Judge" shall be held to authorize any Judge of either of the said Superior Courts, to exercise such power, altho' the particular proceeding may not be in a cause pending in the Court whereof he is a Judge.

Judges may sit after term for the sole purpose of giving judgment.

CCCXVI. It shall be lawful for the Judges of the Superior Courts during each term to appoint one or more days within three weeks next ensuing the last day of such term, on which they will give Judgment; and such Superior Courts on the days appointed may sit in Banc for the purpose only of giving Judgment and of making Rules and Orders in matters which have been moved and argued in such Courts respectively; and all Judgments, Rules and Orders which shall be pronounced and made on such days in pursuance of the authority hereby given, shall have the same effect to all intents and purposes, as if they had been pronounced or made in Term time.

Short Title of this Act. (1852, s. 225.)

CCCXVII. In citing this Act in any instrument, document or proceeding, it shall be sufficient to use the expression "The Common Law Procedure Act 1856."

Acts and parts of Acts repealed.

CCCXVIII. And be it enacted, That from the time when this Act shall commence and take effect, the fourth, fifth, sixth, seventh, eighth, ninth, fourteenth and thirty-fifth Sections of an Act of the Parliament of Upper Canada, passed in the second year of the Reign of the late 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;* the whole of an Act passed in the fifty-ninth year of the Reign of the late King George the Third, intituled, *An Act to prevent the abatement of any action against a joint obligor or contractor or partner, on account of the other joint parties not being made defendants;* the whole of an Act passed in the Session of Parliament held in the fourth and fifth years of Her Majesty's Reign, intituled, *An Act to facilitate the despatch of business in the Court of Queen's Bench in Upper Canada;* the forty-fourth Section of an Act of the Parliament of this Province, passed in the eighth year of Her Majesty's Reign, intituled, *An Act for the relief of insolvent debtors in Upper Canada, and for other purposes therein mentioned;* the whole of an Act of the Parliament of this Province, passed in the eighth year of Her Majesty's Reign, intituled, *An Act to allow the issuing of testatum Writs of Capias ad respondendum in the several districts of Upper Canada, and for other purposes therein mentioned;* the twentieth, twenty-first, twenty-second, twenty-third, twenty-fourth, twenty-fifth, twenty-sixth, twenty-seventh, twenty-eighth, thirtieth, thirty-first, thirty-third, thirty-fourth and thirty-sixth Sections

Part of Act of U. C., 2 G. 4, c. 1.

Act of U. C., 59 G. 3, c. 25.

Act of Canada, 4 & 5 V. c. 5.

Part of Act of Canada, 8 V. c. 48.

Act of Canada, 8 V. c. 36.

Sections of an Act of the Parliament of this Province, passed in the twelfth year of Her Majesty's Reign, intituled, *An Act to make further provision for the Administration of Justice by the establishment of an additional Superior Court of Common Law, and also a Court of Error and Appeal, in Upper Canada, and for other purposes;* the first Section of an Act of the Parliament of this Province, passed in the twelfth year of Her Majesty's Reign, intituled, *An Act to amend and extend the provisions of the Act of this Province, intituled, 'An Act to 'allow the issuing of testatum writs of capias ad respondendum 'in the several districts of Upper Canada, and for other pur-'poses therein mentioned;'* the whole of an Act of the Parliament of this Province, passed in the Session holden in the fourteenth and fifteenth years of Her Majesty's Reign, intituled, *An Act to alter and settle the mode of proceeding in the action of Ejectment;* the whole of an Act of the Parliament of this Province, passed in the Session holden in the fourteenth and fifteenth years of Her Majesty's Reign, intituled, *An Act to alter the period for holding certain Courts in the County of York;* the whole of an Act of the Parliament of this Province, passed in the Session holden in the fourteenth and fifteenth years of Her Majesty's Reign, intituled, *An Act to provide a remedy against absent Defendants;* the whole of an Act of the Parliament of this Province, passed in the sixteenth year of Her Majesty's Reign, intituled, *An Act to explain an Act intituled, 'An Act to provide a remedy against absent Defendants;'* the first twelve Sections inclusive, the fifteenth, twenty-sixth, twenty-seventh, twenty-eighth and twenty-ninth Sections of an Act passed in the sixteenth year of Her Majesty's Reign, intituled, *An Act to provide for the more equal distribution of business in and to improve the practice of the Superior Courts of Common Law in Upper Canada, and for other purposes therein mentioned;* the forty-third, forty-fourth and forty-fifth Sections of an Act passed in the eighteenth year of Her Majesty's Reign, intituled, *An Act to amend the Criminal Law of this Province;* the whole of the Act of the Parliament of Upper Canada, passed in the second year of the Reign of the late King William the Fourth, intituled, *An Act to afford means for attaching the property of Absconding Debtors;* the whole of an Act of the Parliament of Upper Canada, passed in the fifth year of the Reign of the late King William the Fourth, intituled, *An Act to continue and amend the law for attaching the property of Absconding Debtors;* the whole of an Act of the Parliament of this Province, passed in the twelfth year of Her Majesty's Reign, intituled, *An Act to reduce the expense of proceedings in Upper Canada against the property of Absconding or Concealed Debtors;* the whole of an Act of the Parliament of Upper Canada, passed in the forty-fifth year of the Reign of the late King George the Third, intituled, *An Act for the relief of Insolvent Debtors;* the whole of an Act of the Parliament of Upper Canada, passed in the second year of the Reign of the late King George the Fourth, intituled,

Part of Act of Canada, 12 V. c. 63.

Part of Act of Canada, 12 V. c. 68.

Act of Canada, 14, 15 V. c. 114.

Act of Canada, 14, 15 V. c. 15.

Act of Canada, 14, 15 V. c. 10.

Act of Canada, 16 V. c. 88.

Part of Act of Canada, 16 V. c. 175.

Part of Act of Canada, 18 V. c. 92.

Act of U. C., 2 W. 4, c. 5.

Act of U. C., 5 W. 4, c. 5.

Act of Canada, 12 V. c. 67.

Act of U. C., 45 G. 3, c. 7.

intituled, *An Act to make further regulations respecting the weekly maintenance of insolvent debtors;* the whole of an Act of the Parliament of Upper Canada, passed in the eighth year of the Reign of the late King George the Fourth, intituled, *An Act for the further relief of Insolvent Debtors;* the whole of an Act of the Parliament of Upper Canada, passed in the fourth year of the Reign of the late King William the Fourth, intituled, *An Act to afford relief to persons confined on mesne process;* the whole of an Act of the Parliament of Upper Canada, passed in the eleventh year of the Reign of the late King George the Fourth, intituled, *An Act to repeal and amend the laws now in force respecting the limits of the respective Gaols in this Province;* the whole of an Act of the Parliament of Upper Canada, passed in the fourth year of the Reign of the late King William the Fourth, intituled, *An Act to extend the limits assigned to the respective Gaols in this Province, and to afford to Plaintiffs the means in some cases of more effectually compelling the payment of debts due to them by Defendants in execution;* the whole of an Act of the Parliament of Upper Canada, passed in the fifth year of the Reign of the late King William the Fourth, intituled, *An Act to mitigate the law in respect to imprisonment for debt;* the whole of an Act of the Parliament of this Province, passed in the Session held in the tenth and eleventh years of the Reign of Her Majesty, intituled, *An Act to amend the law of imprisonment for debt in Upper Canada*, together with all other Acts or parts of Acts of the Parliament of Upper Canada or of this Province, at variance or inconsistent with the provisions of this Act, shall be and the same are hereby repealed, except so far as the said Acts or any of them, or any thing therein contained, repeal any former Act or Acts or any part thereof, all which last mentioned Act or Acts shall remain and continue so repealed, and excepting also so far as the said Acts or parts of Acts hereby repealed, and the provisions thereof or of any of them, shall and may be necessary for supporting, continuing and upholding any writs that shall have been issued or proceedings that shall have been had or taken before the commencement of this Act, and any further proceedings taken or to be taken thereon.

Act of U. C., 2 G. 4, c. 8.

Act of U. C., 8 G. 4, c. 8.

Act of U. C., 4 W. 4, c. 5.

Act of U. C., 11 G. 4, c. 3.

Act of U. C., 4 W. 4, c. 10.

Act of U. C., 5 W. 4, c. 3.

Act of Canada, 10, 11 V. c. 15.

Other inconsistent enactments.

Exception.

SCHEDULE A.

No. 1.—(*Vide* Section 16.)

WRIT OF SUMMONS WHEN THE DEFENDANT RESIDES WITHIN THE JURISDICTION.

Upper Canada, } VICTORIA, by the Grace of God, &c.
County of } To C. D. of in the County of

(SEAL.)

We command you that within ten days after the service of this Writ on you, inclusive of the day of such service, you do cause an appearance

1852. *Schedule A* No. 1.

appearance to be entered for you in our Court of in an action at the suit of A. B.; and take notice that in default of your so doing the said A. B. may proceed therein to Judgment and Execution.

Witness, &c.

In the margin.

Issued from the Office of the Clerk (*or* Deputy Clerk) of the Crown and Pleas, in the County of

(*Signed,*) J. H., Clerk (*or* Deputy Clerk.)

Memorandum to be subscribed on the Writ.

N. B.—This Writ is to be served within six calendar months from the date thereof, or if renewed, from the date of such renewal, including the day of such date, and not afterwards.

Indorsements to be made on the Writ before the service thereof.

This Writ was issued by E. F., of , Attorney for the said Plaintiff, *or* this Writ was issued in person by A. B., who resides at (*mention the City, Town, incorporated or other Village, or Township within which such Plaintiff resides*).

Also the indorsement required by the twenty-sixth Section of the Act.

Indorsement to be made on the Writ after service thereof.

This Writ was served by X. Y. on C. D., (the Defendant *or* one of the Defendants) on the day of one thousand eight hundred and

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No. 2.—(*Vide* Section 22.)

Writ of Capias.

Upper Canada, County of } Victoria, &c., To the Sheriff of, &c.

(Seal.)

We command you that you take C. D., if he shall be found in your (County *or* United Counties), and him safely keep until he shall have given you bail in an action (on promise *or* of debt, &c.,) at the suit of A. B., or until the said C. D. shall by other lawful means be discharged from your custody: And we do

do further command you, that on execution hereof you do deliver a copy hereof to the said C. D.; and We hereby require the said C. D. to take notice that within ten days after execution hereof on him, inclusive of the day of such execution, he cause special bail to be put in for him in our Court of , according to the warning hereunder written (*or* indorsed hereon), and that in default of his so doing, such proceedings may be had and taken as are mentioned in the said warning: And We do further command you the said Sheriff, that immediately after the execution hereof, you do return this Writ to the said Court, together with the manner in which you shall have executed the same, and the day of the Execution thereof, or if the same shall remain unexecuted and shall not be renewed according to law, then that you do return the same at the expiration of six calendar months from the date hereof, or of the last renewal hereof, or sooner if you shall be required thereto by order of the Court or of a Judge.

Witness, &c.

In the margin.

Issued from the Office of the Clerk (*or* Deputy Clerk) of the Crown and Pleas, in the County of

(*Signed,*) J. H. Clerk (*or* Deputy Clerk.)

Memorandum to be subscribed on the Writ.

N. B.—This Writ is to be executed within six calendar months from the date hereof, or if renewed, then from the date of such renewal, including the day of such date, and not afterwards.

Warning to the Defendant.

1. If a Defendant being in custody shall be detained on this Writ, or if a Defendant being arrested thereon shall go to prison for want of bail, the Plaintiff may declare against any such Defendant before the end of the Term next after such arrest, and proceed thereon to Judgment and execution.

2. If a Defendant having given bail to the Sheriff on the arrest, shall omit to put in special bail conditioned for his surrender to the Sheriff of the County from which the Writ of Capias issued, and to file the bail piece in the Office of the Clerk or Deputy Clerk of the Crown and Pleas for the same County, the Plaintiff may proceed against the Sheriff or on the bail bond.

3. If a Defendant having been served with this Writ and not arrested thereon, shall not enter an appearance within ten days after

after such service, in the Office of the Clerk or Deputy Clerk of the Crown from which the Writ issued, the Plaintiff may proceed to Judgment and execution.

Indorsement to be made on the Writ before the Service thereof.

This Writ was issued by E. F. of Attorney, &c., *as in form No.* 1.

Bail for £ by affidavit, *or* by Judge's order, *as the case may be.*

Also the Indorsement required by the twenty-sixth Section of the Act.

Indorsement to be made on the Writ after execution thereof.

This Writ was executed by X. Y., by arresting C. D., *or as the case may be, as to service on any Defendant,* on the day of one thousand eight hundred and

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No. 3.—(*Vide* Section 35.)

WRIT WHERE THE DEFENDANT BEING A BRITISH SUBJECT RESIDES OUT OF UPPER CANADA.

Upper Canada, } VICTORIA, &c.
County of } To C. D., of

(SEAL.)

1852. *Schedule A* No. 2.

We command you that within (*here insert a sufficient number of days according to the directions in the Act,*) days after the service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our Court of , in an action at the suit of A. B.; and take notice that in default of your so doing, the said A. B. may, by leave of the Court or a Judge, proceed therein to Judgment and execution.

Witness, &c.

In the margin.

Issued from the Office of, &c., (*as in foregoing cases.*)

Memorandum to be subscribed on the Writ.

N. B.—This Writ is to be served within six calendar months from the date thereof, or if renewed, then from the date of such renewal, including day of such date, and not afterwards.

Indorsements

Indorsements to be made on the Writ before the Service thereof.

This Writ is for service out of Upper Canada, and was issued by E. F. of , Attorney for the Plaintiff, *or* this Writ was issued in person by A. B. who resides at (*mentioning Plaintiff's residence, as directed in form No.* 1.)

(*Also the indorsement required by the twenty-sixth Section of the Act, allowing the Defendant two days less than the time limited for appearance, to pay the debt and costs.*

No. 4.—(*Vide* Section 36.)

WRIT WHERE THE DEFENDANT NOT BEING A BRITISH SUBJECT RESIDES OUT OF UPPER CANADA.

Upper Canada, } VICTORIA, &c.
County of } To C. D., late of in the County of

(SEAL.)

We command you that within days (*insert a sufficient number according to the directions of the Act*) after notice of this Writ is served on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our Court of in an action at the suit of A. B.; and take notice that in default of your so doing, the said A. B. may, by leave of the Court or a Judge, proceed thereon to Judgment and execution.

1852. *Schedule A* No. 3.

Memorandum to be subscribed on the Writ.

The same as on form No. 3.

Indorsement also as on form No. 3.

And in the margin.

Issued from the Office of, &c., (*as in foregoing cases.*)

Notice of the foregoing Writ.

To C. D., late of (the City of Hamilton, in Upper Canada,) *or* (now residing at Buffalo, in the State of New York.)

Take notice that A. B., of , in the County of , Upper Canada, has commenced an action at law against you, C. D., in Her Majesty's Court of , by a Writ of that Court, dated the day of ,

A.

A. D. one thousand eight hundred and , and you are required within days after the receipt of this notice, inclusive of the day of such receipt, to defend the said action, by causing an appearance to be entered for you in the Office of the (Clerk *or* Deputy Clerk) for the County of , to the said action, and in default of your so doing, the said A. B. may, by leave of the Court or a Judge, proceed thereon to Judgment and execution.

(*Signed,*) A. B., the Plaintiff in person.
or
E. F., Plaintiff's Attorney.

No. 5.—(*Vide* Section 41.)

SPECIAL INDORSEMENT.

(*After the Indorsement required by the twenty-sixth Section of the Act, this special Indorsement may be inserted.*)

1852. *Schedule A* No. 4.

The following are the particulars of the Plaintiff's claim:

1851.

January	10.—Five barrels of Flour, at 20s...........	£ 5	0
July	2.—Money lent to the Defendant..........	30	0
October	1.—A Horse sold to Defendant...........	25	0
		£60	0
	Paid..................	7	10
	Balance due...........	£52	10

Or,

To Bread, (*or* Butcher's Meat,) supplied between the 1st January, 1851, and the 1st January, 1852....	£40	0
Paid..................	12	10
Balance due............	£27	10

(*If any account has been delivered, it may be referred to with its date, or the Plaintiff may give such a description of his claim as on a particular of demand, so as to prevent the necessity of an application for further particulars.*)

Or,

£100, principal and interest, due on a bond, dated the day of , conditioned for the payment of £200 and interest.

Or,

£100, principal and interest, due on a covenant contained in a deed dated the day of , to pay £500 and interest.

Or,

Or,

£100, on a Bill of Exchange for that amount, dated the 2nd February, 1851, accepted (*or* drawn *or* indorsed) by the Defendant, with interest and Notarial charges.

Or,

£100, on a Promissory Note for that amount, dated the 2nd February, 1851, made (*or* indorsed) by the Defendant, with interest and Notarial charges.

Or,

£100, on a Guarantee, dated the 2nd February, 1851, whereby the Defendant guaranteed the due payment by E. F., of goods supplied (*or* to be supplied) to him.

(*In all cases where interest is lawfully recoverable, and is not above expressed, add* " the Plaintiff claims interest on £ from the day of until Judgment.")

N. B.—Take notice, that if a Defendant served with this Writ within Upper Canada, do not appear according to the exigency thereof, the Plaintiff will be at liberty to sign final Judgment for any sum not exceeding the sum above claimed (with interest) and the sum of for costs, and issue execution at the expiration of eight days from the last day for appearance.

No. 6.—(*Vide* Section 42.)

WRIT OF CAPIAS IN AN ACTION ALREADY COMMENCED.

Upper Canada, } VICTORIA, &c.
County of } To the Sheriff of, &c.

(SEAL.)

We command you, that you take C. D., if he shall be found in your (*County or United Counties*), and him safely keep, until he shall have given you bail in the action (on promises *or* of debt, &c.), which A. B. has commenced against him, and which action is now pending, or until the said C. D. shall, by other lawful means, be discharged from your custody. And we do further command you, that on execution hereof, you do deliver a copy to the said C. D., and that immediately after execution hereof, you do return this writ to our Court of together with the manner in which you shall have executed the same and the day of the execution hereof; and if the same shall remain unexecuted and shall not be renewed according to law, then that you do so return the same at the expiration of six calendar months from the date hereof, or of the last renewal hereof, or sooner if you shall be required thereto by order of the said Court or a Judge. And We do hereby require the said C. D., that within ten days after execution hereof

hereof on him, inclusive of the day of such execution, he cause special bail to be put in for him in our said Court, according to the warning hereunder written or indorsed hereon, and that in default of his so doing, proceedings may be had and taken as are mentioned in the warning in that behalf.

Witness, &c.

In the margin.

Issued from the office of the (Clerk *or* Deputy Clerk), of the Crown and Pleas, in the County of .

(*Signed*,) J. H., (*Clerk* or *Deputy Clerk*).

Memorandum to be subscribed on the Writ.

N. B.—This writ is to be executed within six calendar months from the date hereof, or if renewed, then from the date of such renewal, including the day of such date, and not afterwards.

Warning to the Defendant.

1. This suit which was commenced by the service of a Writ of Summons, will be continued and carried on in like manner as if the Defendant had not been arrested on this Writ of Capias.

2. If the Defendant having given bail to the Sheriff on the arrest on this writ, shall omit to put in special bail for his surrender to the Sheriff of the County from which the Writ of Capias issued, and to file the bail piece in the office of the Clerk or Deputy Clerk of the Crown and Pleas for the County of , the Plaintiff may proceed against the Sheriff or on the bail bond.

Indorsements to be made on the Writ before the execution thereof.

1. This writ was issued by E. F. of, &c., (*As in form No.* 1).

2. Bail for £ by affidavit *or* by Judge's order, (*as the case may be*).

Also the indorsement required by the twenty-sixth section of the Act.

Indorsement to be made on the Writ after the execution thereof.

This Writ was executed by arresting C. D., (*according to the facts*,) on the day of 18 .

No. 7.

No. 7.—(*Vide* Section 43.)

WRIT OF ATTACHMENT.

Upper Canada, } VICTORIA, &c.
County of } To the Sheriff of, &c.

(SEAL.)

We command you, that you attach, seize and safely keep all the real and personal property, credits and effects, together with all evidences of title or debts, books of account, vouchers and papers belonging thereto, of C. D., to secure and satisfy A. B., a certain debt (*or* demand) of £ (*the sum sworn to*) with his costs of suit, and to satisfy the debt and demand of such other creditors of the said C. D. as shall duly place their Writs of Attachment in your hands or otherwise lawfully notify you of their claim, and duly prosecute the same. And we also command the said C. D., that within (*the time named in the Judge's order or rule of Court*,) days after the service of this Writ on him, inclusive of the day of such service, he do cause special bail to be entered for him in our Court of , in an action to recover £ (*the sum sworn to*) at the suit of the said A. B.: And we require the said C. D. to take notice, that his real and personal property, credits and effects in Upper Canada have been attached at the suit of the said A. B., and that in default of his putting in special bail as aforesaid, the said A. B. may, by leave of the Court or a Judge, proceed therein to Judgment and execution, and may sell the property so attached: And we command you, the said Sheriff, that as soon as you have executed this Writ you return the same with the inventory and appraisement of what you have attached thereunder.

Witness, &c.

In the margin.

Issued from the Office of, &c., (*as in foregoing cases*).

Memorandum to be subscribed on the Writ.

N. B.—This Writ is to be served within six calendar months from the date thereof, or if renewed, then from the date of such renewal, including the day of such date, and not afterwards.

Indorsement to be made on the Writ before service thereof.

This Writ may be served out of Upper Canada, and was issued by E. F., of , Attorney, &c. (*as on a Writ of Summons.*)

No. 7. (*bis.*)—(*Vide* Section 60.)

In the (Q. B. *or* C. P.)

On the day of , A. D. 18 .

(*Day of signing Judgment.*)

1852, *Schedule A* No. 5.

Upper Canada, to wit: } A. B., in his own person (*or* by his Attorney) sued out a Writ of Summons against C. D., indorsed according to The Common Law Procedure Act, 1856, as follows:

(*Here copy special Indorsement.*)

And the said C. D. has not appeared, therefore it is considered that the said A. B. recover against the said C. D., £ together with £ for costs of suit.

No. 8—(*Vide* Section 77.)

In the (Q. B. *or* C. P.)

1852. *Schedule A* No. 6.

The day of , in the year of our Lord, 18 .

County of to wit: } Whereas A. B. has sued C. D. and affirms and denies,

(*Here state the question or questions of fact to be tried.*)

And it has been ordered by the Honorable Mr. Justice according to The Common Law Procedure Act, 1856, that the said question shall be tried by a Jury, therefore let the same be tried accordingly.

No. 9.—(*Vide* Section 203.)

FORM OF A RULE OR SUMMONS WHERE A JUDGMENT CREDITOR APPLIES FOR EXECUTION AGAINST A JUDGMENT DEBTOR.

(*Formal parts as at present.*)

1852. *Schedule A* No. 7.

C. D., to show cause why A. B., (*or as the case may be,*) should not be at liberty to enter a suggestion on the roll in an action wherein the said A. B. was Plaintiff, and the said C. D., Defendant, and wherein the said A. B. obtained Judgment for £ , against the said C. D., on the day of , that it manifestly appears to the Court that the said A. B. is entitled to have execution of the said Judgment,

Judgment, and to issue execution thereupon, and why the said C. D. should not pay to the said A. B. the costs of this application to be taxed.

NOTE.—*The above may be modified so as to meet the case of an application by or against the representative of a party to the Judgment.*

No. 10.—(*Vide* Section 204.)

FORM OF SUGGESTION THAT THE JUDGMENT CREDITOR IS ENTITLED TO EXECUTION AGAINST THE JUDGMENT DEBTOR.

1852. *Schedule A* No. 8.

And now, on the day of it is suggested and manifestly appears to the Court, that the said A. B. (*or* E. F., as executor of the last Will and Testament of the said A. B., deceased, *or as the case may be,*) is entitled to have execution of the Judgment aforesaid, against the said C. D., (*or* against G. H., as executor of the last Will and Testament of the said C. D., *or as the case may be,*) therefore it is considered by the Court, that the said A. B., (*or* E. F., as such executor as aforesaid, *or as the case may be,*) ought to have execution of the said Judgment against the said C. D., (*or* against G. H., as such executor as aforesaid, *or as the case may be.*)

No. 11.—(*Vide* Section 205.)

FORM OF WRIT OF REVIVOR.

VICTORIA, &c.,

To C. D., of GREETING :

1852. *Schedule A* No. 9.

We command you, that within ten days after the service of this Writ upon you, inclusive of the day of such service, you appear in our Court of , to shew cause why A. B., (*or* E. F., as executor of the last Will and Testament of the said A. B., deceased, *or as the case may be,*) should not have execution against you, (*if against a representative, here insert,* as executor of the last Will and Testament of , deceased, *or as the case may be,*) of a Judgment whereby the said A. B., *or as the case may be,* recovered against you, (*or as the case may be,*) £ and take notice that in default of your doing so, the said A. B., (*or as the case may be,*) may proceed to execution.

Witness, &c.,

No. 12.

No. 12.—(*Vide* Section 221.)

EJECTMENT.

1852. *Schedule A* No. 13.

VICTORIA, &c.,

To X., Y. and Z., and all persons entitled to defend the possession of (*describe the property with reasonable certainty*,) in the Township of , in the County of , to the possession whereof A. B., and C, some or one of them claim to be (*or* to have been on and since the day of , A. D.,) entitled, and to eject all other persons therefrom. These are to will and command you or such of you as deny the alleged title, within sixteen days of the service hereof, to appear in our Court of , to defend the said property or such part thereof as you may be advised, in default whereof Judgment may be signed, and you turned out of possession.

Witness, &c.,

No. 13.—(*Vide* Section 231.)

JUDGMENT IN EJECTMENT IN CASE OF NON-APPEARANCE.

In the Q. B., (*or* C. P.)

The day of , 18 (*date of the Writ.*)

1852. *Schedule A* No. 14.

County f to wit: } On the day and year above written, a Writ of our Lady the Queen issued out of this Court in these words, that is to say:

VICTORIA, &c., (*copy the Writ*,) and as no appearance has been entered or defence made to the said Writ, therefore it is considered that the said (*insert the names of the persons in whom title is alleged in the Writ*,) do recover possession of the land in the said Writ mentioned, with the appurtenances.

No. 14.—(*Vide* Sections 231, 232.)

In the Q. B., (*or* C. P.)

On the day of , 18 , (*date of the Writ.*)

1852. *Schedule A* No. 15

County of to wit: } On the day and year above written, a Writ of our Lady the Queen issued out of this Court, in these words, that is to say:

VICTORIA, &c., (*copy the Writ*,) and C. D. has on the day of , appeared by , his Attorney (*or* in

in person,) to the said Writ, and has defended for a part of the land in the Writ mentioned, that is to say, (*state the part*,) and no appearance has been entered or defence made to the said Writ, except as to the said part; therefore, it is considered that the said A. B., (*the Claimant*,) do recover possession of the land in the said Writ mentioned, except the said part, with the appurtenances, and that he have execution thereof forthwith; and as to the rest, let a Jury come, &c.

No. 15.—(*Vide* Section 232.)

In the Q. B., (*or* C. P.)

On the day of , 18 , (*date of the Writ.*)

County of to wit: } On the day and year above written, a Writ of our Lady the Queen issued out of this Court, in these words, that is to say:

1852. *Schedule A* No. 16.

VICTORIA, &c., (*Copy the Writ*,) and C. D. has on the day of , appeared by , his Attorney, (*or* in person,) to the said Writ, and defended for the whole of the land therein mentioned; therefore, let a Jury come, &c.

No. 16.—(*Vide* Section 234.)

Afterwards on the day of , A. D., before Justice of our Lady the Queen, assigned to take the assizes in and for the within County, come the parties within mentioned, and a Jury of the said County being sworn to try the matters in question between the said parties, upon their oath, say: that A. B. (*the Claimant*,) within mentioned, on the day of , A. D., was and still is entitled to the possession of the land within mentioned, as in the Writ alleged; therefore, &c.

1852. *Schedule A* No. 17.

No. 17.—(*Vide* Section 254.)

In the Q. B., (*or* C. P.)

On the day of , 18 , (*date of the Writ.*)

County of to wit: } On the day and year above written, a Writ of our Lady the Queen issued out of this Court in these words, that is to say:

1852. *Schedule A* No. 18.

VICTORIA, &c., (*Copy the Writ*,) and C. D. has on the day of , appeared by , his Attorney, (*or* in person,)

person,) to the said Writ, and A. B. has discontinued the action; therefore, it is considered that the said C. D. be acquitted, and that he recover against the said A. B., £ for his costs of defence.

No. 18.—(*Vide* Section 256.)

In the Q. B., (*or* C. P.)

On the day of , 18 , (*date of Writ.*)

1842. *Schedule A* No. 19.

County of } On the day and year above written, a Writ of to wit : } our Lady the Queen issued out of this Court, in these words, that is to say :

Victoria, &c., (*copy of the Writ,*) and C. D. has on the day of , appeared by , his Attorney, (*or* in person,) to the said Writ, and A. B., has failed to proceed to trial, although duly required so to do; therefore, it is considered that the said C. D. be acquitted, and that he do recover against the said A. B. £ for his costs of defence.

No. 19.—(*Vide* Section 257.)

In the Q. B., (*or* C. P.)

The day of , 18 , (*date of the Writ.*)

1852. *Schedule A* No. 20.

County of } On the day and year above written, a Writ of to wit : } our Lady the Queen issued out of this Court in these words, that is to say :

Victoria, &c., (*copy the Writ,*) and C. D. has on the day of , appeared by , his Attorney, (*or* in person,) to the said Writ, and the said C. D. has confessed the said action (*or* has confessed the said action as to part of the said land, that is to say : (*state the part*) ; therefore, it is considered that the said A. B. do recover possession of the land in the said Writ mentioned, (*or* of the said part of the said land,) with the appurtenances, and £ , for costs.

No 20.

No. 20.—(*Vide* Section 266.)

In the Q. B., (*or* C. P.)

The day of , 18 , (*date of Writ.*)

County of } On the day and year above written, a Writ
to wit : } of our Lady the Queen issued out of this Court, with a notice thereunder written, the tenor of which Writ and notice follows in these words, that is to say :

1852. *Schedule A* No. 21.

(*Copy the Writ and notice, which latter may be as follows* :)

"Take notice that you will be required, if ordered by the "Court or a Judge, to give bail by yourself and two sufficient "sureties, conditioned to pay the costs and damages which "shall be recovered in the action."

And C. D. has appeared by , his Attorney, (*or* in person,) to the said Writ, and has been ordered to give bail pursuant to the Statute, and has failed so to do ; therefore, it is considered that the said (*landlord's name*,) do recover possession of the land in the said Writ mentioned, with the appurtenances, together with £ , for costs of suit.

SCHEDULE B.

Forms of Pleadings (*Vide* Section 140.)

On Contracts.

1. Money payable by the Defendant to the Plaintiff for (*these words* " money payable," &c., *should precede money counts like* 1 *to* 11, *but need only be inserted in the first*) goods bargained and sold by the Plaintiff to the Defendant.

1852. *Schedule B* No. 1.

2. Work done and materials provided by the Plaintiff for the Defendant at his request. No. 2.

3. Money lent by the Plaintiff to the Defendant. No. 3.

4. Money paid by the Plaintiff for the Defendant at his request. No. 4.

5. Money received by the Defendant for the use of the Plaintiff. No. 5.

6. Money found to be due from the Defendant to the Plaintiff on accounts stated between them. No. 6.

7. A messuage and lands sold and conveyed by the Plaintiff to the Defendant. No. 7.

8.

No. 9. 8. The Defendant's use by the Plaintiff's permission of messuage and lands of the Plaintiff.

No. 12. 9. The hire of (*as the case may be*) by the Plaintiff let to hire to the Defendant.

No. 13. 10. Freight for the conveyance of the Plaintiff for the Defendant at his request of goods in (ships, &c.)

No. 14. 11. The demurrage of a (ship) of the Plaintiff kept on demurrage by the Defendant.

No. 15. 12. That the Defendant on the day of A. D. by his Promissory Note now overdue, promised to pay to the Plaintiff £ (*two*) months after date, but did not pay the same.

No. 16. 13. That one A, on, &c., (*date*) by his Promissory Note now overdue, promised to pay to the Defendant or order £ (*two*) months after date, and the Defendant indorsed the same to the Plaintiff, and the said Note was duly presented for payment and was dishonored, whereof the Defendant had due notice, but did not pay the same.

No. 17. 14. That the Plaintiff on, &c., (*date*) by his Bill of Exchange now overdue, directed to the Defendant, required the Defendant to pay to the Plaintiff £ (*two*) months after date, and the Defendant accepted the said Bill, but did not pay the same.

No. 18. 15. That the Defendant on, &c., (*date*), by his Bill of Exchange to A, required A to pay to the Plaintiff £ (*two*) months after date, and the said Bill was duly presented for acceptance and was dishonored, of which the Defendant had due notice, but did not pay the same.

No. 19. 16. That the Plaintiff and Defendant agreed to marry one another, and a reasonable time for such marriage has elapsed, and the Plaintiff has always been ready and willing to marry the Defendant, yet the Defendant has neglected and refused to marry the Plaintiff.

No. 20. 17. That the Defendant by warranting a horse to be then sound and quiet to ride, sold the said horse to the Plaintiff, yet the said horse was not then sound and quiet to ride.

No. 22. 18. That the Plaintiff and Defendant agreed by charter party, that the Plaintiff's schooner called the *Toronto*, should with all convenient speed sail to *Hamilton*, and that the Defendant should there load her with a full cargo of flour and other lawful merchandize, which she should carry to *Kingston* and there deliver, on payment of freight per barrel, and that the Defendant should be allowed four days for loading and four days for

for discharging, and four days for demurrage, if required, at £ per day; and that the Plaintiff did all things necessary on his part to entitle him to have the agreed cargo loaded on board the said schooner at *Hamilton*, and that the time for so loading has elapsed, yet the Defendant made default in loading the agreed cargo.

19. That the Plaintiff let the Defendant a house, being (*designate it*) for years to hold from the day of A. D. at £ a year, payable quarterly, of which rent quarters are due and unpaid. No. 23.

20. That the Plaintiff by deed let to the Defendant a house, (*designate it*) to hold for seven years from the day of A. D. and the Defendant by the said deed covenanted with the Plaintiff, well and substantially to repair the said house during the said terms (*according to the covenant*,) yet the said house was during the said term out of good and substantial repair. No. 24.

For wrongs independent of Contract.

21. That the Defendant broke and entered certain land of the Plaintiff called lot No. &c., and depastured the same with cattle. No. 25.

22. That the Defendant assaulted and beat the Plaintiff, gave him into custody to a Constable, and caused him to be imprisoned in the Common Gaol. No. 26.

23. That the Defendant debauched and carnally knew the Plaintiff's wife. No. 27.

24. That the Defendant converted to his own use (*or* wrongly deprived the Plaintiff of the use and possession of) the Plaintiff's goods, that is to say—(*mentioning what articles, as for instance*, household furniture.) No. 28.

25. That the Defendant detained from the Plaintiff his title deeds of land called lot No. &c. in &c. that is to say, (*describe the deeds.*) No. 29.

26. That the Plaintiff was possessed of a mill, and by reason thereof was entitled to the flow of a stream for working the same, and the Defendant, by cutting the bank of the said stream, diverted the water thereof away from the said mill. No. 30.

27. That the Defendant having no reasonable or probable cause for believing that the Plaintiff was immediately about to leave Upper Canada with intent and design to defraud the Defendant, maliciously caused the Plaintiff to be arrested and held to bail for £

No. 32.

28. That the Defendant falsely and maliciously spoke and published of the Plaintiff the words following, that is to say, "He is a thief" (*if there be any special damage, here state it, with such reasonable particularity as to give notice to the Defendant of the peculiar injury complained of, as for instance*, whereby the Plaintiff lost his situation as shopman in the employ of N.)

No. 33.

29. That the Defendant falsely and maliciously published of the Plaintiff in a newspaper called the words following, that is to say: "He is a regular prover under bankruptcies," the Defendant meaning thereby that the Plaintiff had proved, and was in the habit of proving, fictitious debts against the estates of bankrupts, with the knowledge that such debts were fictitious.

COMMENCEMENT OF PLEA.

No. 34.

30. The Defendant by his Attorney (*or* in person) says (*here state the substance of the Plea.*)

No. 35.

31. And for a second Plea the Defendant says (*here state the second Plea.*)

Plea in Actions on Contracts.

No. 36.

32. That he never was indebted as alleged. (N. B.—*This plea is applicable to other declarations like those numbered* 1 *to* 11.)

No. 37.

33. That he did not promise as alleged. (*This plea is applicable to other declarations on simple contracts not on bills or notes, such as those numbered* 16 *to* 19. *It would be objectionable to use* "did not warrant," "did not agree," *or any other appropriate denial.*)

No. 38.

34. That the alleged deed is not his deed.

No. 39.

35. That the alleged cause of action did not accrue within years (*state the period of limitation applicable to the case*) before the suit.

No. 40.

36. That before action he satisfied and discharged the Plaintiff's claim by payment.

No. 41.

37. That the Plaintiff, at the commencement of this suit, was, and still is, indebted to the Defendant in an amount equal to (*or* greater than) the Plaintiff's claim for (*state the cause of set off as in a declaration, see form ante,*) which amount the Defendant is willing to set off against the Plaintiff's claim, (*or*, and the Defendant claims to recover a balance from the Plaintiff.)

38.

38. That after the claim accrued, and before this suit, the Plaintiff, by deed, released the Defendant therefrom. No. 42.

PLEAS IN ACTIONS FOR WRONGS INDEPENDENT OF CONTRACT.

39. That he is not guilty. No. 43.

40. That he did what is complained of by the Plaintiff's leave. No. 44.

41. That the Plaintiff first assaulted the Defendant, who thereupon necessarily committed the alleged assault in his own defence. No. 45.

42. That the Defendant, at the time of the alleged trespass, was possessed of land, the occupiers whereof, for twenty years before this suit, enjoyed, as of right and without interruption, a way on foot and with cattle from a public highway over the said land of the Plaintiff to the said land of the Defendant, and from the said land of the Defendant over the said land of the Plaintiff, to the said public highway, at all times of the year, for the more convenient occupation of the said land of the Defendant, and that the alleged trespass was the use by the Defendant of the said way. No. 46.

REPLICATIONS.

43. The Plaintiff takes issue upon the Defendant's first, second, &c., pleas. No. 48.

44. The Plaintiff as to the second Plea, says: (*here state the answer to the plea, or in the following forms.*) No. 49.

45. That the alleged release is not the Plaintiff's deed. No. 50.

46. That the alleged release was procured by the fraud of the Defendant. No. 51.

47. That the alleged set off did not accrue within six years before this suit. No. 52.

48. That the Plaintiff was possessed of land whereon the Defendant was trespassing and doing damage, whereupon the Plaintiff requested the Defendant to leave the said land, which the Defendant refused to do, and thereupon the Plaintiff gently laid his hands upon the Defendant in order to secure him, doing no more than was necessary for that purpose, which is the alleged first assault by the Plaintiff. No. 53.

49. That the occupiers of the said land did not for twenty years before this suit, enjoy, as of right and without interruption, the alleged way. No. 54.

NEW

NEW ASSIGNMENT.

No. 55.

50. The Plaintiff as to the and pleas, says, that he sues not for the trespasses therein admitted, but for trespasses committed by the Defendant in excess of the alleged rights, and also in other parts of the said land, and on other occasions and for other purposes than those referred to in the said pleas.

If the Plaintiff replies and new assigns, the new assignment may be as follows:

No. 56.

51. And the Plaintiff as to the and pleas, further says that he sues, not only for the trespasses in those pleas admitted, but also for, &c.

No. 57.

If the Plaintiff replies and new assigns to some of the pleas, and new assigns only to the other, the form may be as follows:

52. And the Plaintiff as to the and pleas, further says that he sues, not for the trespasses in the pleas (*the pleas not replied to*) admitted, but for the trespasses in the pleas, (*the pleas replied to*) admitted, and also for, &c.

CAP. XLIV.

An Act to amend the Militia Law.

[*Assented to* 19*th June*, 1856.]

Preamble.

18 V. c. 77.

WHEREAS it is expedient to amend the Act passed in the eighteenth year of Her Majesty's Reign, and intituled, *An Act to regulate the Militia of this Province, and to repeal the Acts now in force for that purpose:* Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

Number of Military Districts may be increased in either part of the Province.

I. Notwithstanding any thing in the Act cited in the Preamble to this Act, the Commander in Chief may from time to time, by any Militia General Order, alter the division of the Province into Military Districts, and may, if he shall see fit, increase the number of such Districts beyond the number of nine in either portion of the Province; and to the Military Districts to be so constituted all the provisions of the said Act shall apply, and a Colonel and proper Staff Officers may be appointed in each of them.

II.