

*The Provincial Statutes of Canada*, passed in the year 1843. Kingston: Stewart Derbshire & George Desbarats, 1843.

7 Victoria – Chapter 16

**An Act to repeal certain Acts and Ordinances therein mentioned, and to make better provision for the Administration of Justice in Lower Canada. 9th December 1843.**

Whereas experience hath shewn the necessity of making certain changes in the constitution and jurisdiction of the Courts of law in Lower Canada, in order to render the Administration of Justice more easy and less expensive; Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, intituled, *An Act to reunite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by this Authority of the same, that a certain Act of the Legislature of this Province, passed in the Session held in the fourth and fifth years of Her Majesty's reign, and intituled, *An Act to provide for the more easy and expeditious administration of justice in civil causes and matters involving small pecuniary value, in that part of this Province heretofore Lower Canada*, shall be and the same is hereby repealed, and the District Courts and Division Courts thereby established, shall be and the same are hereby abolished: Provided nevertheless, that all acts, ordinances and provisions of law repealed by the said Act shall remain repealed, and all Courts and Jurisdictions thereby abolished shall remain abolished.

II. And be it enacted, that the several Courts in Lower Canada, heretofore called and known as Courts of King's Bench, shall hereafter be called and known as Courts of Queen's Bench, whenever the Sovereign on the Throne of the United Kingdom of Great Britain and Ireland is a Queen, and as Courts of King's Bench, whenever the Sovereign is a King; and the words "Court (or Courts) of Queen's Bench," when used in this Act shall be understood and applied accordingly; but this shall not be construed to make the said Courts new Courts, or in any way to affect their powers, or to make any new commission or letters patent necessary for any Justice or Officer thereof.

III. And whereas it is inconvenient that there should be any difference in the powers and duties of the Chief Justices and Justices of the several Courts in Lower Canada; Be it therefore enacted, that the powers, duties and authority of any Chief Justice and of the Puisné Justices, members of the same Court of Queen's Bench, shall be equal and similar to all intents and purposes whatsoever, whether the same be to be exercised or performed in such Court or in any other, within or without the District for which such Court is constituted, in Court or out of Court, in term, or out of term, or in vacation, so that whatever power or duty might heretofore be exercised by any Chief Justice, shall and may hereafter be performed and exercised by any Puisné Justice, and whatever power or duty might heretofore be exercised by any Puisné Justice, shall and may hereafter be exercised or performed by any Chief Justice; and the words "Justice" or "Justices" wherever they occur in this Act, shall be understood to mean and include the Chief Justice, who shall be a member of any Court of Queen's Bench, as well as a Puisné Justice or the Puisné Justices

of such Court, unless such meaning be inconsistent with the context; and the Provincial Judge for the district of St. Francis, shall be to all intents and purposes whatever, one of the Justices of the Court of Queen's Bench for the said District, and as such, shall, within the said District, have the same powers and authority as the other Justices of the said Court, and all writs and process issuing therefrom, shall be tested in his name; and the said Provincial Judge shall also have the same powers, authority and duty in and with regard to the Court of Queen's Bench, for the District of Three Rivers, as any Chief Justice or Puisné Justice of the Court of Queen's Bench for the District of Quebec, or for the District of Montreal: Provided always, that nothing herein contained shall affect the salary of the said Provincial Judge; any thing in any Act or law to the contrary notwithstanding: And provided also, that in order to ensure the performance of the duties of the resident Judge of the District of Three Rivers, and of the said Provincial Judge in certain cases, the Commissioner of Bankrupts in the District of Three Rivers shall, during each Superior Term of the Court of Queen's Bench at Sherbrooke, and during the three days next before, and the three days next after such term, have within the District of Three Rivers the same powers as if he were appointed an Assistant Judge of the Court of Queen's Bench for the said District, and the Commissioner of Bankrupts in the District of St. Francis shall, during each Superior Term of the Court of Queen's Bench, at Three Rivers, and during the three days next before and three days next after such term, have within the District of St. Francis the same powers as if he were appointed an Assissant Judge of the said District: Provided always, that the powers hereby given to any such Commissioner of Bankrupts, shall not be exercised by him, except during the absence of the said Resident Judge or Provincial Judge from his District: Provided also, that such Commissioners of Bankrupts shall be advocates of at least five years' standing at the Bar of Lower Canada.

IV. And be it enacted, that when and so often as a vacancy shall occur in the office of Chief Justice of Lower Canada, the person to be appointed to fill that office may be appointed, as heretofore, to be a member of the Court of Queen's Bench for the District of Quebec, and to preside therein, or he may, at Her Majesty's pleasure, be appointed to be a member of the Court of Queen's Bench for the District of Montreal, and to preside therein, in which latter case a Chief Justice shall be appointed for the District of Quebec, to be a member of the Court of Queen's Bench for that District, and to preside therein; any law to the contrary notwithstanding.

V. And be it enacted, that no person shall be appointed to be a Justice of any of the Courts of Queen's Bench in Lower Canada, unless such person be, at the time of his appointment as aforesaid, an Advocate of ten years' standing at the Bar of Lower Canada; nor shall any person be appointed to be one of the Circuit Judges hereinafter mentioned, unless such person be, at the time of his appointment as aforesaid, an Advocate of five years' standing at the said Bar; and that no such Justice or Circuit Judge shall sit or vote in the Executive Council, or in the Legislative Council, or in the Legislative Assembly of this Province, or shall hold any other place of profit under the Crown in this Province, so long as he shall hold the said office of Justice of any of the said Courts of Queen's Bench, or of Circuit Judge.

VI. And be it enacted, that it shall be lawful for the Governor of this Province, from time to time, and whenever by reason of illness or necessary absence, with permission of the Governor of this Province, or of suspension from office, any Justice of the said Courts of Queen's Bench for the

Districts of Quebec or Montreal, or the resident Judge for the District of Three Rivers, or the Provincial Judge for the District of St. Francis, cannot sit in Court or perform his functions as a Judge, to supply his place, and by an instrument under the Great Seal of this Province, to nominate, constitute and appoint some Advocate, of at least five years' standing at the Bar of Lower Canada, an Assistant Judge to sit and act in the place and stead of such Justice or Judge, as the case may be, during such illness, necessary absence or suspension from office; and the Assistant Judge to be so appointed shall have the same jurisdiction, power and authority, as well in Court, as out of Court, in term, as out of term, and in vacation, in any Court, District or place whatsoever, as the Justice or Judge, in whose place or stead he shall have been appointed, would himself have had if sitting or acting as such: Provided always, that nothing herein contained shall be construed to give precedence to any such Assistant Judge over any Puisné Justice of the Court.

VII. And be it enacted, that each final judgment, and each interlocutory judgment from which an appeal may lie, rendered by any Court of Queen's Bench in any Superior Term thereof, as well in any suit or action by default or *ex parte* which shall be dismissed, as in any suit or action where issue shall have been joined, shall contain a summary statement of the points of fact and law, and the reasons upon which such judgment shall be founded, and the names of the Justices who shall have concurred therein or entered their dissent therefrom.

VIII. And be it enacted, that the Court of Queen's Bench for the District of St. Francis shall have cognizance of all crimes and criminal offences committed within the said District, in like manner as the Court of Queen's Bench for the District of Three Rivers hath cognizance of crimes and criminal offences, committed within the same, and with like powers to the Judges and Officers of the Court in all matters incidental to or consequent upon the cognizance thereof: and the said District of St. Francis shall be separate and distinct from those of Montreal and Three Rivers respectively, as well for criminal as for civil matters: Provided always, that in all cases where the offender shall have been indicted or committed for trial in either of the said Districts of Montreal or Three Rivers, before this Act shall be in force, the Court of Queen's Bench for the District in which lie shall have been so indicted, or in which he shall have been imprisoned, shall proceed to the trial of such offender, and with regard to all matters incident to or consequent upon such trial, as if this Act had not been passed.

IX. And be it enacted, that so much of a certain Act of the Legislature of the late Province of Lower Canada, passed in the thirty-fourth year of the reign of His late Majesty King George the Third, and intituled, *An Act for the division of the Province of Lower Canada, for amending the Judicature thereof and for repealing certain laws therein mentioned*, or of any other Act or Law as relates to the times for holding the several Terms or Sessions of the said Courts of Queen's Bench, shall be and is hereby repealed; and Terms or Sessions of the said Courts, respectively, shall be holden at the times hereinafter appointed, in every year, that is to say: In the District of Quebec, for the cognizance of all crimes and criminal offences, from the first to the tenth day of each of the months of February and August, both days inclusive: In the said District, for the cognizance of all suits or actions of a civil nature, or where the Crown may be a party, cognizable by the said Courts in Superior Term, from the fifteenth to the twenty-ninth of each of the months of January and July — from the seventeenth to the thirty-first day of each of the months of March and May — and

from the sixteenth to the thirtieth day of each of the months of September and November, both days in every case inclusive: In the District of Montreal, for the cognizance of all crimes and criminal offences, from the first to the fifteenth day of each of the months of February and August, both days inclusive: In the said District, for the cognizance of all suits or actions of a civil nature, or where the Crown may be a party, cognizable by the said Courts in Superior Term, from the fifteenth to the twenty-ninth day of each of the months of January and July — from the seventeenth to the thirty-first day of each of the months of March and May — and from the sixteenth to the thirtieth day of each of the months of September and November, both days in every case inclusive: In the District of Three Rivers, for the cognizance of all crimes and criminal offences, and of all suits or actions of a civil nature, or where the Crown may be a party, cognizable by the said Courts in the Superior Terms or Sessions thereof, from the twelfth to the twenty-sixth day of the month of February, and from the fourteenth to the twenty-eighth day of October, both days in each case inclusive; and for the cognizance of such suits or actions as aforesaid, but not for the cognizance of crimes and criminal offences, from the nineteenth to the twenty-eighth day of June, both days inclusive: In the District of St. Francis, for the cognizance of all crimes and criminal offences, and of all suits or actions of a civil nature, or where the Crown may be a party, cognizable by the said Courts in Superior Term, from the seventh to the eighteenth day of January, and from the nineteenth to the thirty-first day of August, both days inclusive; And the said Courts shall sit for the purposes aforesaid on each and every day during the said Terms or Sessions, Sundays and Holidays excepted; and every juridical day during the same shall be a Return day.

X. And be it enacted, that every writ or process issued before this Act shall be in force, which shall have been made returnable into any Court of Queen's Bench, in the exercise of its criminal or of its civil Jurisdiction on any day subsequent to the commencement of this Act, shall be returned into such Court of Queen's Bench on that juridical day of any Term of such Court held for the cognizance of matters of the nature of that in which such writ or process shall have issued, which shall be next after the day on which such writ or process shall have been made returnable.

XI. And be it enacted, that the said Courts of Queen's Bench shall, in the Superior Terms thereof aforesaid, take cognizance of all suits or actions (those purely of Admiralty jurisdiction excepted) which shall not be cognizable by the said Courts in the Inferior Terms thereof hereinafter mentioned, or in the Circuit Courts hereinafter established, or which shall be evoked or otherwise removed from the said Inferior Terms, or from the said Circuit Courts, or from any other Court or Jurisdiction, into the said Superior Terms, and of such suits or actions only, unless in any case it be otherwise provided by this Act, and excepting always such suits, actions or proceedings, as shall be pending in any such Court of Queen's Bench immediately before the time when this Act shall come into force.

XII. And be it enacted, that the *Enquêtes* in causes cognizable in the Superior Terms of the said Courts of Queen's Bench shall be taken before a single Justice, or before more than one Justice of the said Courts respectively, as well in Term as in Vacation; and that for that purpose it shall be lawful for the Justices of the Court to assign one room, or more than one room, in the Court-House in which the Court is held, for the taking of such *Enquêtes* therein, and to fix the number of

clerks or writers whom the Clerk or Prothonotary of the Court shall employ for taking such *Enquêtes*, accordingly as the case shall require.

XIII. And be it enacted, that the Justices of each of the said Courts of Queen's Bench, or any one of them, shall and they are hereby authorized, in all cases of trial by jury in civil matters, to try the issue of fact and to receive the verdicts of juries in Vacation between the Superior Terms of the said Courts, on such days as during the said Terms they shall have appointed for that purpose: any law to the contrary notwithstanding.

XIV. And be it enacted, that whenever any or more of the said Justices of any one of the said Courts of Queen's Bench shall be lawfully recused or disqualified, or rendered incompetent, either by interest or otherwise, to sit in such Court in the Superior Term thereof, in any cause cognizable therein, so as to leave the said Court without a quorum to take cognizance of such cause, it shall be the duty of the Clerk or Prothonotary of the said Court, when thereunto duly required in writing by any of the parties, to report the fact, under his hand and the seal of the Court, to the Governor of this Province; and it shall then be lawful for the Governor of this Province, by an instrument under his hand and seal, to appoint and empower, *ad hoc*, any one or more of the Justices of any other of the said Courts of Queen's Bench to sit in the place and stead of the said Justice or Justices, so recused or disqualified, or rendered incompetent, for the purpose of hearing and determining such cause; and the said Justice or Justices so appointed, *ad hoc*, when acting as such, shall have, during the continuance of such appointment, the same powers and authority, in and with respect to the said cause, as the said Justice or Justices so recused, disqualified or rendered incompetent, would otherwise have had.

XV. And be it enacted, that whenever the four Justices of the Court of Queen's Bench for the District of Quebec or of Montreal shall be equally divided in any cause or matter, so that no judgment can be given therein, it shall be the duty of the Clerk or Prothonotary of the Court, when thereunto duly required in writing by any of the parties, to report the fact, under his hand and the seal of the Court, to the Governor of this Province; and it shall be lawful for the said Governor, by an instrument under his hand and seal, to appoint and empower any one of the Justices of any other of the said Court of Queen's Bench, or any Circuit Judge, to sit, *ad hoc*, with the Justices of the said Court so equally divided, for the purpose of hearing and determining the cause or matter in which they shall be so divided; and the Justice so appointed *ad hoc*, when acting as such, shall have, during the continuance of his said appointment, and with regard to such cause or matter, as aforesaid only, the same powers and authority as any other Justice of the said Court of Queen's Bench.

XVI. And be it enacted, that if the defendant in any suit or action instituted in any Court of Queen's Bench in any Superior Term thereof, should not appear personally, or by his Attorney, on the day fixed for the return of the writ of summons, his default shall be recorded; and in such case it shall not be necessary that the said defendant be called on the third day, or at any other time thereafter, nor shall he be entitled to appear within the term of three days after the day of the return of the writ of summons, or at any other time after the said day, and have the said default taken off, unless express permission be given him by the Court, any law, usage or custom to the

contrary notwithstanding; and after the said default shall have been so recorded, the Court shall proceed to hear, try and determine the said suit or action in due course of law; and every such writ of summons shall be served at least ten days (of which neither the day of service nor the day of the return shall be reckoned as one,) before the day fixed for the return thereof if there be not more than five leagues from the place of service of the writ to the place where the Court shall be held; and if, in any such case, there be more than five leagues, then there shall be an additional delay of one day for every additional five leagues.

XVII. And be it enacted, that all writs of summons issuing from any Court of Queen's Bench, and returnable in any Superior Term thereof, except writs of *capias ad respondendum*, *saisie arrêt* before judgment, *saisie gagerie* or *saisie revendication*, shall be directed to and executed and returned by any of the Bailiffs of such Court, any law or custom to the contrary notwithstanding: save and except all cases where any such writ shall be to be executed, wholly or in part, in any District other than that for which such Court is established, in which cases the said writs of summons, as well as writs of *capias ad respondendum*, *saisie arrêt* before judgment, *saisie gagerie* or *saisie revendication*, in all cases in Superior Term, except those with regard to which other provision is hereinafter made, shall continue to be directed to and executed and returned by Sheriffs as heretofore; and when any such writ of summons shall be directed to Bailiffs as aforesaid, the copies of the same to be served upon parties according to law, shall be certified as true copies, either by the Clerk or Prothonotary of the said Court, or by the Attorney of the party suing out such writ.

XVIII. And be it enacted, that every writ or process issuing out of any Court of Queen's Bench, (whether in the superior or in the inferior term thereof,) or out of any of the Circuit Courts hereinafter established, shall be in both the English and the French languages, any law, usage or custom to the contrary notwithstanding.

XIX. And be it enacted, that Inferior Terms of each of the said Courts of Queen's Bench shall be held by the Chief Justice, or one of the Puisné Justices thereof, in each of the said Districts of Quebec, Montreal, Three Rivers and Saint Francis, at the times hereinafter appointed, in every year, and at the places in which the said Courts are by law directed to sit in Superior Term, that is to say: In the said Districts of Quebec and Montreal, from the seventeenth to the twenty-third day of February; from the twenty-fourth to the thirtieth day of April; from the twenty-first to the twenty-seventh day of each of the months of June, August and October; and from the first to the seventh day of December, both days in every case inclusive: In the said District of Three Rivers, by the Resident Judge for that District, from the first to the seventh day of each of the months of February, April, June, August, October and December, both days in every case inclusive: In the said District of Saint Francis, by the Provincial Judge of the said District, from the first to the seventh days of each of the said months of February, April, June, August, October and December, both days in every case inclusive.

XX. And be it enacted, that the said Courts of Queen's Bench, in the said Inferior Terms thereof, shall have cognizance of, hear, try and determine, in a summary manner, all civil suits or actions, or where the Crown may be a party, (those purely of Admiralty jurisdiction excepted,) wherein the

sum of money or the value of the thing demanded shall not exceed the sum of twenty pounds currency, and wherein no writ of *capias ad respondendum* shall be sued out; and if the said sum or value shall not exceed six pounds five shillings currency, then the suit or action shall be determined according to equity and good conscience: Provided always, that if any such suit or action shall relate to any title to lands or tenements, or to any sum of money payable to Her Majesty, or to any fee of office, duty or rent, revenue, annual rents, or such like matters or things, where the rights in future may be bound, or shall be a suit or action in which a trial by jury may by law be had, it shall be lawful for the party defendant, before making his defence to the merits of any such suit or action, to evoke the same, and by such evocation to require that the said suit or action be removed and carried to hearing, trial and judgment in the same Court sitting in Superior Term, and every such evocation shall be filed and entered on record, and the said suit or action shall thereupon be removed into the Superior Term of the Court; which Court, so sitting in Superior Term, shall proceed to hear and determine, in a summary manner, whether the said evocation be well founded; and if it should maintain the said evocation, and adjudge the same to be well founded, proceedings shall thereupon be had in the said Court so sitting in Superior Term, to trial, judgment and execution, according to the rules of proceeding in such Superior Term, and as if the said suit or action had been originally instituted in the said Superior Term; and if the said evocation should be overruled, the said suit or action shall be remitted to the next Inferior Term of the Court, there to be heard, tried and finally determined.

XXI. And be it enacted, that if in any suit or action which may be so evoked, as aforesaid, the defendant shall not evoke the same, but shall make any plea or defence by which the plaintiff's title to any lands or tenements shall be disputed or called in question, or by which, if maintained, his rights in future would be impaired or injuriously affected, it shall then be lawful for the plaintiff to evoke such suit or action, in the same manner and with the same effect, as the defendant might have done, and such evocation, and the suit or action so evoked, shall be subject to the provisions herein-before made as to suits or actions evoked by the defendant.

XXII. And be it enacted, that each of the said Courts of Queen's Bench, in the Inferior Terms thereof, shall have concurrent jurisdiction, throughout the District for which it is established, with the Circuit Courts hereinafter mentioned, sitting within, the said District: Provided always, that if any action which might have been brought at a Circuit Court, shall be brought at any such Inferior Term, no greater sum shall be recoverable by the plaintiff as costs for mileage or allowance to witnesses than would have been incurred if the action had been brought at such Circuit Court, unless the action shall have been brought at the Inferior Term with the consent of the defendant.

XXIII. Provided always, and be it enacted, that the said Courts of Queen's Bench, sitting in Superior Term, shall have original cognizance of, hear, try and determine, in due course of law, any suit or action in which a writ of *capias ad respondendum* shall be sued out, or in which a trial by Jury may by law be had, and the plaintiff shall, in and by his declaration therein filed, declare his choice and option to have a trial by Jury, although the sum of money, or the value of the thing demanded, in any such suit or action, shall not exceed or shall be under twenty pounds currency: Provided always, that such declaration of the choice and option of the plaintiff to have a trial by Jury shall bind all parties to proceed accordingly, whenever the suit or action shall be ready for

such trial; nor shall any other mode of trial be allowed therein, except by consent of all the parties; and saving always, the discretionary power of the Court over the costs in any case it may deem to have been vexatiously or unnecessarily brought in or removed into a Superior Court, instead of being brought or left to be determined in any Inferior Court in which it would have been cognizable: Provided also, that the Court of Queen's Bench for the District of Three Rivers, in Superior Term, shall have original cognizance of any suit or action to which the Resident Judge of that District shall be a party, and the Court of Queen's Bench for the District of St. Francis, in Superior Term, shall have original cognizance of any suit or action to which the Provincial Judge of the said District shall be a party, and which would otherwise be cognizable in the said Courts, respectively, in Inferior Term, but such suit or action shall be heard, tried and determined, in a summary manner, according to the course and practice of the Inferior Term, and with like costs.

XXIV. And be it enacted, that the word "Sterling," in any Act or Ordinance relative to the Administration of Justice, and in force in Lower Canada, shall, with regard to any suit or action to be commenced after this Act shall come into force, and with regard to all proceedings therein, be held to have the meaning assigned to the said word by the Act of the Legislature of this Province, passed in the Session held in the fourth and fifth years of Her Majesty's reign, and intituled, *An Act to regulate the Currency of this Province*, that is to say: each pound Sterling, in any sum mentioned in such Act or Ordinance, shall be held to be equal to one pound four shillings and four pence, Currency.

XXV. And be it enacted, that it shall be lawful for the Governor of this Province, by instruments under the Great Seal thereof, to appoint not more than three persons to be and to be called Circuit Judges, in and for the District of Quebec, and not more than four persons to be and to be called Circuit Judges, in and for the District of Montreal, and from time to time remove any or all of them; and the persons so appointed shall, by virtue of such appointment, be also Commissioners of Bankrupts and Justices of the Peace, and shall act as Chairmen of the Quarter Sessions, in and for the Districts for which they shall be respectively appointed; and all the powers and duties vested in or assigned to any Commissioner of Bankrupts, in the said Districts of Quebec and Montreal, by any Act, Ordinance or Law, shall be and are hereby assigned and transferred to and vested in the Circuit Judges aforesaid, and shall be exercised by no other person or officer whomsoever in the said Districts, respectively: and the said Circuit Judges shall also have such powers and duties as are hereinafter assigned to them, or as may be assigned to them by any other Act of the Legislature; and all the powers and duties so assigned to any two or more Circuit Judges, in any of their qualities aforesaid, appointed in and for the same District, may be exercised and performed by each and every of them singly, (and alternately if need shall be) in like manner as powers and duties assigned to the Justices of any Court may be exercised in matters wherein any one of such Justices is empowered to sit or act singly, and in such manner also as that any Circuit Judge may continue or complete any matter or proceeding begun or continued by any other Circuit Judge in and for the same District, or begun or continued before this Act shall be in force by any Commissioners of Bankrupts, Chairman of the Quarter Sessions, or Justice of Peace in the same District; but nothing herein contained shall prevent any two or more of the Circuit Judges for any District from sitting or acting together, if they shall deem it expedient, in any matter with regard to which it shall not be otherwise provided by this Act: Provided always, that no such



Circuit Judge shall act as Advocate, Attorney or Counsel, in any Court of Law in Lower Canada, or in or with regard to any matter pending in or to be brought before any such Court.

XXVI. And be it enacted, that so much of the Ordinance of the Governor and Special Council aforesaid, passed in the second year of Her Majesty's Reign, and intituled, *An Ordinance concerning Bankrupts, and the administration and distribution of their estates and effects*, as may be in any wise inconsistent with the enactments and provisions of this Act, and more especially so much of the Ordinance last cited as may be construed to provide for the appointment of Commissioners of Bankrupts in the Districts of Quebec and Montreal, shall be, and so much of the said Ordinance is hereby repealed: Provided always, that nothing in this Act shall be construed to derogate from the powers or authority of any Commissioner of Bankrupts appointed or to be appointed in any of the other Districts of Lower Canada, or to prevent the Governor of this Province from appointing such number of Commissioners of Bankrupts in the said other Districts as he may deem it expedient to appoint: And provided further, that the Commissioners of Bankrupts appointed or to be appointed in such other Districts, respectively, shall be *ex officio*, Justices of the Peace, and shall be Chairmen of the Quarter Sessions in and for the Districts in which they shall be respectively resident: but nothing in this Act shall be construed to render any Court of Quarter Sessions incompetent by reason of the absence of any Circuit Judge or Commissioner of Bankrupts, who if present, would be the Chairman of the Court: And provided also, that the provisions of the Act passed in the sixth year of Her Majesty's Reign, and intituled, *An Act for the qualification of Justices of the Peace*, shall not extend to any Circuit Judge or Commissioner of Bankrupts, any thing in the said Act to the contrary notwithstanding.

XXVII. And be it enacted, that the salary of each of the said Circuit Judges shall not exceed five hundred pounds per annum, and such Salary shall be in lieu of all fees, emoluments, or allowances whatever, whether for travelling expenses or otherwise: Provided always, that the fees and emoluments heretofore payable to any Commissioner of Bankrupts in the Districts of Quebec and Montreal, shall continue to be payable and shall be paid, under the same provisions of law, to the Circuit Judges who shall become Commissioners of Bankrupts as aforesaid, but shall by them be accounted for and paid over, at such times and in such manner as the Governor of this Province shall from time to time appoint to the Receiver General of this Province, and shall form part of the Consolidated Revenue Fund thereof, and shall be accounted for to Her Majesty, in the same manner as any other moneys forming part of the said Fund.

XXVIII. And be it enacted, that Courts of Record to be called Circuit Courts, shall be holden every year in each of the said Districts of Quebec, Montreal, Three Rivers and St. Francis, in the manner following, that is to say: In the District of Quebec, by the Chief Justice, or any other of the Justices of the Court of Queen's Bench for that District, or by one of the Circuit Judges for the same; and in the District of Montreal, by the Chief Justice or by any other of the Justices of the Court of Queen's Bench for that District, or by one of the Circuit Judges for the same: Provided, that one Circuit Judge be always left in each of the Cities of Quebec and Montreal: In the District of Three Rivers, by the Resident Judge for that District; and in the District of St. Francis, by the Provincial Judge of that District: and that every such Circuit Court, within the limits of the Circuit thereof, shall have concurrent jurisdiction with the Court of Queen's Bench for the same District in Inferior Term, and

shall accordingly have cognizance of suits and actions of the class and nature of those cognizable by the said Court in Inferior Term, subject to the same provisions as to the mode in which they shall be brought, heard, tried and determined, and as to the evocation thereof to the Superior Term of the said Court of Queen's Bench, and the consequences of such evocation; except only, that if such evocation be not maintained, the said Court sitting in Superior Term may in its discretion remit the cause either to the Circuit Court from which it shall have been evoked, or to the Inferior Term of the said Court of Queen's Bench, to be dealt with as if it had been originally brought in the said Inferior Term,

XXIX. And be it enacted, that it shall be lawful for any person under the age of twenty-one years, and above the age of fourteen years, to prosecute any suit in any Inferior Term or Circuit Court held under this Act, for any sum of money not exceeding six pounds five shillings, currency, which may be due to sum for wages, in the same manner as if he were of full age; any law to the contrary notwithstanding.

XXX. And be it enacted, that the said Circuit Courts shall be holden in every year at the times and places hereinafter appointed; and the local extent and limits of the jurisdiction of each of the said Circuit Courts, respectively, shall be as follows, that is to say:

In the said District of Quebec:

In the parish of St. Germain, in and for the Circuit to be called the Rimouski Circuit, from the first to the seventh day, inclusively, of each of the months of February, June and October; and the said Circuit shall include and consist of the County of Rimouski, except the Parishes of Rivière du Loup and Cacona;

In the Parish of St. Louis de Kamouraska, in and for the Circuit to be called the Kamouraska Circuit, from the tenth to the sixteenth day, inclusively, of each of the months of February, June and October: and the said Circuit shall include and consist of the County of Kamouraska, and the Parishes of Rivière du Loup and Cacona;

In the Parish of St. Thomas, in and for the Circuit to be called the St. Thomas Circuit, from the nineteenth to the twenty-fifth day, inclusively, of each of the months of February, June and October: and the said Circuit shall include and consist of the County of L'Islet, including so much of the Parish of St Pierre, Rivière du Sud, as may be within the County of Bellechasse and the Parishes of Berthier, St. Vallier, St. Michel and St. François, Rivière du Sud, in the County of Bellechasse;

In the Parish of Ste. Marie, Nouvelle Beauce, in and for the Circuit to be called the Beauce Circuit, from the thirteenth to the nineteenth day, inclusively, of each of the months of February, June and October; and the said Circuit shall include and consist of the County of Dorchester, (except the Seigniority [Seigneurie] of Lauzon;)

In the Township of Leeds, in and for the Circuit to be called the Leeds Circuit, from the seventh to the thirteenth day, inclusively, of each of the months of January, May and September, and the said

Circuit shall include and consist of the County of Megantic, and the Parishes of St. Sylvester and St. Giles in the County of Lotbinière;

In the Parish of Ste. Croix, in and for the Circuit to be called the Lotbinière Circuit, from the seventh to the thirteenth day, inclusively, of each of the months of January, May and September; and the said Circuit shall include and consist of the County of Lotbinière, except the Parishes of St. Sylvester and St. Giles;

In the Parish of Cap Santo, in and for the Circuit to be called the Portneuf Circuit, from the seventh to the thirteenth day, inclusively, of each of the months of January, May and September; and the said Circuit shall include and consist of the County of Portneuf;

In the Parish of Les Eboulemens, in and for the Circuit to be called the Saguenay Circuit, from the first to the seventh day, inclusively, of each of the months of March, July and November; and the said Circuit shall include and consist of the County of Saguenay;

In the said District of Montreal:

In the Parish of Berliner, in and for the Circuit to be called the Berthier Circuit, from the first to the seventh day, inclusively, of each of the months of March, July and November; and the said Circuit shall include and consist of the County of Berthier, and all the Islands in the River St. Lawrence, which lie within the County of Richelieu, except those on the south side of the main or ship Channel;

In the Parish of St. Pierre de l'Assomption, in and for the Circuit to be called the Assomption Circuit, from the ninth to the fifteenth day, inclusively, of each of the months of March, July and November; and the said Circuit shall include and consist of the County of Leinster, except the Parishes of Lachenaye, St. Henri de Mascouche and St. Lin;

In the Parish of St. Louis de Terrebonne, in and for the Circuit to be called the Terrebonne Circuit, from the seventh to the thirteenth day, inclusively, of each of the months of January, May and September; and the said Circuit shall include and consist of the County of Terrebonne, and the said Parishes of Lachenaye, St. Henri de Mascouche and St. Lin, in the County of Leinster;

In the Parish of St. Benoit, in and for the Circuit to be called the Two Mountains Circuit, from the seventeenth to the twenty-third day, inclusively, of each of the months of February, June and October; and the said Circuit shall include and consist of the County of Two Mountains, except Isle Bizarre;

At the village of Aylmer, in and for the Circuit to be called the Ottawa Circuit, from the seventh to the thirteenth day, inclusively, of each of the months of January, May and September; and the said Circuit shall include and consist of the County of Ottawa;

In the Parish of St. Michel de Vaudreuil, in and for the Circuit to be called the Vaudreuil Circuit, from the tenth to the sixteenth day, inclusively, of each of the months of February, June and October; and the said Circuit shall include and consist of the County of Vaudreuil;

In the Parish of St. Clement de Beauharnois, in and for the Circuit to be called the Beauharnois Circuit, from the seventeenth to the twenty-third day, inclusively, of each of the months of February, June and October; and the said Circuit shall include and consist of the County of Beauharnois, except the Township of Hemmingford;

In the Parish of St. John the Evangelist, in and for the Circuit to be called the St. John's Circuit, from the first to the seventh day, inclusively, of each of the months of February, June and October; and the said Circuit shall include and consist of the Seigniories of Lacolle and De Léry, and the Islands in the River Richelieu lying wholly or partly opposite the same, and the Township of Sherrington, all in the County of Huntingdon, — the Township of Hemmingford in the County of Beauharnois, — the Parishes of St. John the Evangelist and St. Luc, in the County of Chambly, — and the Parish of Ste. Marguerite de Blairfindie [l'Acadie], lying partly in the County of Chambly and partly in that of Huntingdon, — the County of Missisquoi, except the Townships of Dunham and Sutton, — and the County of Rouville, except the Parishes of St. Mathias, St. Hilaire and St. Jean Baptiste de Rouville;

At or near the West Church, in the Township of Shefford, in and for the Circuit to be called the Shefford Circuit, from the ninth to the fifteenth day, inclusively, of each of the months of March, July and November; and the said Circuit shall include and consist of the County of Shefford, (except the Township of Milton,) of so much of the County of Stanstead as does not lie in the District of St. Francis, and of the Townships of Dunham and Sutton, in the County of Missisquoi;

At the Village of St. Hyacinthe, in and for the Circuit to be called the St. Hyacinthe Circuit, from the tenth to the sixteenth day, inclusively, of each of the months of February, June and October; and the said Circuit shall include and consist of the County of St. Hyacinthe, the Township of Milton, in the County of Shefford, the Parishes of St Charles and St. Barnabé, in the County of Richelieu, and the Parishes of St. Hilaire and St. Jean Baptiste de Rouville, in the County of Rouville;

In the Parish of St. Ours, in and for the Circuit to be called the Richelieu Circuit, from the seventh to the thirteenth day, inclusively, of each of the months of January, May and September; and the said Circuit shall include and consist of the County of Richelieu, (except the Parishes of St. Charles and St. Barnabé, and the Islands in the said County which lie in the River St. Lawrence, on the north side of the Main or Ship Channel,) and of the Parishes of Contrecoeur and St. Antoine, in the County of Verchères;

In the Parish of St. Antoine de la Baie du Febvre, in and for the Circuit to be called the Yamaska Circuit, from the twenty-third to the twenty-ninth day, inclusively, of each of the months of January, May and September; and the said Circuit shall include and consist of the County of Yamaska and the Seigniorie [Seigneurie] of Nicolet, and its augmentation, in the County of Nicolet,

and so much of the County of Drummond as lies within the District of Three Rivers, except the Townships of Aston, Bulstrode, Stanfold and Artliabaska;

In the Parish of Gentilly, in and for the Circuit to be called the Gentilly Circuit, from the fifteenth to the twenty-first day, inclusively, of each of the months of March and July, and from the twenty-third to the twenty-ninth day of the month of November; and the said Circuit shall include and consist of all that part of the District of Three Rivers, lying on the south side of the River St. Lawrence, which is not included in the Yamaska Circuit;

In the said District of St. Francis:

At the Village of Richmond, in the Township of Shipton, in and for the Circuit to be called the Richmond Circuit, from the twenty-third to the twenty-ninth day, inclusively, of each of the months of January and July; and the said Circuit shall include and consist of the Townships of Durham, Kingsey, Tingwick and Chester, in the County of Drummond, and the Townships of Shipton, Melbourne, Brampton and Windsor, in the County of Sherbrooke;

At Eaton Corner, in the Township of Eaton, in and for the Circuit to be called the Eaton Circuit, from the sixteenth to the twenty-second day, inclusively, of each of the months of March and September; and the said Circuit shall include and consist of the Townships of Eaton, Newport, Clifton, Hereford, Hampden, Chesham, Emberton, Bury, Lingwick, Stratford, Marston, Ditton, Clinton, Auckland, and Whitton, all in the County of Sherbrooke;

At Stanstead Plain, in the Township of Stanstead, in and for the Circuit to be called the Stanstead Circuit, from the sixteenth to the twenty-second day, inclusively, of each of the months of May and December; and the said Circuit shall include and consist of the Townships of Stanstead, Barnston, Barford, and Hatley, and so much of the Township of Bolton as lies within the District of Saint Francis;

Provided always, that the three first Juridical days only of each Term shall be Return days; and at the close of the third Juridical day, or at any time thereafter, the Judge may, if there be then no business before the Court, close the sitting thereof until the then next term: Provided also, that if by illness, accident or any other cause, the Judge by whom any Circuit Court ought to be holden shall not be present on the first or any other Juridical day, being a Return day in any Term, it shall be lawful for the Clerk of such Circuit Court to receive all returns to be made on such day, and to cause any defendant, or party summoned, to appear on such day to be called, and to enter his appearance or record his default, notwithstanding the absence of the Judge;

XXXI. And be it enacted, that in any suit or action to be brought either in any Circuit Court or in any Inferior Term of the said Courts of Queen's Bench, the first process to be issued for bringing the defendant before the said Courts respectively, to answer the *demande* made in such suit or action, shall be a writ of summons, in which the plaintiffs cause of action shall be briefly stated, unless there shall be attached to such writ of summons a declaration setting forth the cause of action, in which case it shall be sufficient that in the writ of summons reference be made to the

declaration for the cause of action; and such writ of summons may be in the form contained in the Schedule (A.) to this Act subjoined; and shall be served at least six days before the day fixed for the return thereof, if there be not more than five leagues from the place of service to the place where the Court shall be held; and if, in any such case, there be more than five leagues, then there shall be an additional delay of one day for every additional five leagues; and such writ of summons shall be directed to and executed by any Bailiff of the Court of Queen's Bench in and for the District in which the same shall have been issued, any law or custom to the contrary notwithstanding; and the copies of the writ of summons, and of the declaration, if any there be, to be served upon parties according to law, shall be certified as true copies, either by the Clerk or Prothonotary of the Court, or by the Attorney of the plaintiff: Provided always, that in all cases cognizable by the Courts of Queen's Bench in Inferior Term, or by any Circuit Court, where such writ of summons may by law be executed in any District other than the District in which the same shall have issued, such writ of summons shall be directly addressed to the Sheriff of such other District, and being endorsed by any Justice of the Court of Queen's Bench for such District, or by any Circuit Judge for the same, shall be executed and returned by such Sheriff to the Court from which it shall have issued, according to the exigency of such writ and to law.

XXXII. And be it enacted, that if there be two or more defendants in any suit or action instituted in any Circuit Court, it shall be sufficient to give jurisdiction over all the said defendants to the Circuit Court in which such action may be brought, that any one of the said defendants be domiciliated, or have been legally served with process within the limits of the Circuit for which such Court shall be held, and that all the said defendants be legally served with such process, within the limits of the District in which the Circuit shall lie: Provided always, that the process may in such cases be served out of the limits of the Circuit, by any Bailiff of the Court of Queen's Bench in and for the District in which such process shall have issued.

XXXIII. And be it enacted, that in any suit or action instituted in any Circuit Court, or in any Court of Queen's Bench in Inferior Term, it shall be lawful for the said Courts, respectively, in their discretion, to require the plaintiff to file a new declaration, setting forth in a more special manner the cause of action, or to require that any pleading be in writing, if they shall deem it more conducive to the ends of justice.

XXXIV. And be it enacted, that if the defendant in any suit or action instituted either in any Court of Queen's Bench in Inferior Term, or in any Circuit Court, shall not appear personally or by his Attorney, on the day fixed for the return of the writ of summons, his default shall be recorded; and in any such case it shall not be necessary that the defendant be called on the third day, or at any other time thereafter, nor shall he be entitled to appear within the term of three days after the return of the writ of summons, or at any other time, and have the said default taken off, (as heretofore allowed by law in certain cases,) unless express permission be given him by the Court, any law, usage or custom to the contrary notwithstanding; and after the default shall have been so recorded, it shall be lawful for the said Courts, respectively, after due proof of the service of the writ of summons, in a summary manner to receive evidence and hear the plaintiff in support of his *demande* in such suit or action, and thereupon to make and render such judgment as law and justice may require; and if the said defendant should appear on the said day, either personally or

by his Attorney, and the plaintiff should not appear personally or by his attorney, or appearing should not prosecute his suit or action, the same shall be dismissed, with costs to the defendant against the plaintiff; and if the plaintiff in any such suit or action should establish his demand, lie shall be entitled to recover the sum of money or thing by him demanded, and costs against the defendant.

XXXV. And be it enacted, that in any suit or action before any Court of Queen's Bench, in Inferior Term, or in any of the said Circuit Courts, it shall not be necessary to reduce to writing the depositions of the witnesses, but such witnesses shall be examined *vivâ voce*, in open Court, any law, custom or usage to the contrary notwithstanding: Provided always, that if any such suit or action be of the class of those suits or actions in which, by this Act, an appeal may lie to the Superior Term of the Court of Queen's Bench, it shall be the duty of the Justice or Circuit Judge hearing the cause, to take notes in writing of the material parts of the said depositions; which notes, being signed by him, shall be filed, and remain of record in the cause, and shall have, to all intents and purposes, the same legal force and effect as the said depositions would have had if they had been reduced to writing, according to the law heretofore in force in that behalf.

XXXVI. And be it enacted, that the Justice or Circuit Judge, holding any Circuit Court, shall have power, when he shall deem it conducive to the ends of justice, to order that the record and proceedings in any suitor action before such Circuit Court be removed to the Inferior Term of the Court of Queen's Bench, in and for the District in which such Circuit Court shall sit, there to be heard and determined: of which order the Clerk or Prothonotary of such Circuit Court shall make an entry in the Register thereof: and thereupon it shall be his duly forthwith to certify, under his signature and the seal of the Court, and to cause to be transmitted to the office of the Clerk or Prothonotary of the said Court of Queen's Bench, the said record and proceedings, which shall then be filed by tire last mentioned officer among the records of the Inferior Term of the said Court of Queen's Bench, and there shall continue to remain even after judgment, as if the said suit or action had been originally instituted in the said Inferior Term: Provided always, that the said Justice or Circuit Judge shall be bound to order such removal of any suit or action from the Circuit Court to the Inferior Term of the Court of Queen's Bench, in the manner aforesaid, whenever any of the parties shall require such removal, with the consent of the other parties.

XXXVII. And be it enacted, that the said Courts of Queen's Bench in Inferior Term, and the said Circuit Courts, respectively, shall have power and authority, in causes and matters cognizable therein, to issue Writs of *Saisie Arrêt* before or after Judgment, *Saisie Gagerie*, *Saisie Revendication*, to be made returnable in the said Courts respectively, in the same and in like cases and circumstances in which such writs might immediately before the period hereinafter appointed for the commencement of this Act, lawfully be issued from and be made returnable in other Her Majesty's Courts of Civil Jurisdiction in Lower Canada, and under and subject to the rules of law in such cases provided; and that in all cases where such Writs shall be issued from any Court of Queen's Bench, in Inferior Term, or from any of the said Circuit Courts, as well as in all cases where such Writs, and Writs of *Capias ad respondendum* and of Attachment before Judgment, against the body, or the estate, debts and effects of any debtor, shall be issued from any Court of (Queen's Bench, in the Superior Term thereof, it shall and may be lawful for the Clerks or Prothonotaries of

the said Courts, respectively, to take and receive the necessary oath, affidavit, or proof, in such cases by law required, and thereupon to issue, without the *fiat* of a Judge, any of the above mentioned Writs, in like manner as if the same had been granted or awarded by a Judge: Provided always, that nothing herein contained shall prevent any Justice of any Court of Queen's Bench, or Circuit Judge, from granting or awarding any such Writ aforesaid, in cases where lie could otherwise do so according to law: And provided always, that in all cases in which a Writ of *Capias ad respondendum*, or a Writ of *Saisie Arrêt* before Judgment in an action cognizable by the said Court of Queen's Bench in Superior Term, may by law be issued, the Clerk or Prothonotary of any Circuit Court, shall have the same power and authority as are vested in the Clerks or Prothonotaries of the said Courts of Queen's Bench to receive the requisite affidavit, and to issue such last mentioned Writ of *Capias ad respondendum*, or of *Saisie Arrêt* before Judgment, and to make the same returnable in the Superior Term of the said Court of Queen's Bench in and for the District in which the same shall have issued; and the writs last mentioned shall, in any such case be addressed directly either to the Sheriff of the said District, or to any Bailiff of the Court of Queen's Bench in and for the same, and by them respectively executed and returned; and when such writ shall be so addressed to any such Bailiff, such Bailiff shall without delay proceed to execute the same, without any previous warrant from (lie Sheriff, and shall deliver the writ, with a report of his proceedings thereon to the Sheriff, to whom he shall also deliver the body or the goods attached, (as the case may be,) to be dealt with according to law, and by whom the writ and the proceedings thereon shall then be returned to the Court of Queen's Bench, in Superior Term: Provided always, that in such case, the Sheriff shall not be responsible for any act done by the Bailiff, until the Officer last named shall have complied with the foregoing requirements; and in every such case service of the declaration in the cause may be made in the same manner, and within the same delay as if the writ had been issued by the Prothonotary of the Court of Queen's Bench, and addressed to and executed by the Sheriff: Provided always, that in all cases where any such writ of attachment against the body or goods shall be issued by the Clerk or Prothonotary of any Circuit Court, and made returnable in the Superior Term of any Court of Queen's Bench, the defendant shall be entitled to the same relief on giving security or otherwise to the Sheriff, and in default shall be committed to the Common Gaol of the District, in like manner as if such writ had been issued by the Clerk or Prothonotary of such Court of Queen's Bench.

XXXVIII. And be it enacted, that all powers vested in any Court of Queen's Bench in Lower Canada, or in the Justices or Officers of such Court, respectively, in any suit or action pending in the Superior Term thereof, with regard to the summoning of Defendants *en garantie*, — the admission of parties to intervene, — the summoning of witnesses and the adduction of evidence, — the production of papers or other things in the possession of any witness or party, — the examination of any witness or party, and the oaths to be deferred, referred or required of them, — the issuing of any *Commission Rogatoire*, or Commission in the nature of a *Commission Rogatoire*, the examination of any witness sick or about to leave Lower Canada, — the enforcing of the attendance of witnesses duly summoned, and the punishment of such as shall disobey any writ of *Subpoena*, — the imprisonment (*contrainte par corps*,) of any Defendant or party resisting or fraudulently endeavouring to evade the execution of any writ against his goods or chattels, or with regard to other matters relative to or connected with the conduct of such suit or action and the proceedings therein, shall be and all such powers are hereby vested in the said Courts of



Queen's Bench in Inferior Term, and in the said Circuit Courts and the Justices or Circuit Judges by whom the same are to be held, and in the Officers of the said Courts, respectively, and may be exercised by them (in so far as such powers and the provisions of law thereunto relating shall not be repugnant to or inconsistent with the provisions of this Act,) as fully and effectually, and under the same conditions and provisions of law as if the several Acts, Ordinances and Laws conferring the said powers were herein recited and re-enacted, and in such manner as shall be most conformable to and consistent with the other enactments of this Act.

XXXIX. Provided always, and be it enacted, that no person shall be bound to attend any such Circuit Court as a witness in any Suit or Action pending therein, unless lie be a resident within the Circuit, or within ten leagues of the place at which such Circuit Court is held: And provided also, that nothing herein contained shall authorize any Circuit Court to appoint Commissioners for receiving affidavits to be used therein (save by *Commission Rogatoire* as aforesaid,) but all Commissioners appointed to receive affidavits to be used in any Court of Queen's Bench shall, by virtue of such appointment, become and be empowered to receive affidavits to be used in the Circuit Courts in the same District.

XL. And be it enacted, that the said several Courts of Queen's Bench, shall and may at any Superior Term thereof, make such rules of practice and other regulations touching the forms of proceeding in Inferior Term, and in the Circuit Courts to be holden in the District, as they shall deem best adapted to ensure the due administration of Justice therein, and to give effect to the provisions of this Act according to the true intent or object thereof, and from time to time to alter and amend the same; and such rules of practice and regulations, not being contrary to any enactment of this Act, or to any other Act, Ordinance or Law, in force in Lower Canada, shall be obeyed accordingly.

XLI. And be it enacted, that all writs of process issued out of the Inferior Term of any Court of Queen's Bench, or out of any Circuit Court, shall run in the name of Her Majesty, Her Heirs or Successors, and shall be tested in the name of the Chief Justice, (or if that office be vacant, then in the name of the senior Puisné Justice,) entitled to sit in such Inferior Term or Circuit Court, and shall be sealed with the seal of the Court, and signed by the Clerk or Prothonotary, whose duty it shall be to prepare the same.

XLII. And be it enacted, that whenever any Justice or Circuit Judge, sitting in Inferior Term or in any Circuit Court, shall be lawfully recused in any suit or action, or shall be disqualified or rendered incompetent either by reason of interest, relationship or otherwise, from taking cognizance of the same, such Justice or Circuit Judge shall nevertheless receive the return of the writ of summons therein, but shall immediately cause an entry to be made on the record of such recusation, or of the reasons of such disqualification or incompetence, and shall thereupon order that the record and proceedings in such suit or action be removed to the Superior Term of the Court of Queen's Bench, in and for the District in which the said suit or action shall have been brought, there to be in a summary manner heard, tried and finally determined, in the case of such disqualification or incompetence as above mentioned; but, in the case of a recusation, the Court of Queen's Bench, so sitting in Superior Term, shall first proceed in a summary manner to determine whether such

recusation be well founded, and if it should maintain the said recusation and adjudge the same to be well founded, proceedings shall thereupon be had in a summary manner to trial, judgment and execution; and if it should dismiss the said recusation, the said suit or action shall be remitted to the next Inferior Term of the said Court, if it shall have been brought originally in Inferior Term, or if not, either to the said next Inferior Term of the said Court, or to the next Term of the Circuit Court in which it shall have been so originally brought; and when, in any case of recusation, disqualification or incompetence, as aforesaid, an order shall have been made for the removal of the suitor action, as above required, the Clerk or Prothonotary of the Court shall make an entry of such order in the register thereof, and thereupon it shall be his duty forthwith to certify under his hand and the seal of the Court to the Justices of the Court of Queen's Bench sitting in Superior Term, and to cause to be transmitted to the said Justices the record and proceedings in the cause, which shall then be filed among the records of the Superior Term of the said Court of Queen's Bench, and there shall continue to remain, even after judgment, as if the suit or action had been originally instituted in the said Superior Term — except only in cases where a recusation shall have been made and dismissed as aforesaid, in which case the said record and proceedings shall be remitted as hereinbefore directed.

XLIII. And be it enacted, that from any judgment rendered by a Circuit Court, or by any Court of Queen's Bench sitting in Inferior Term, in any suit or action, in which the sum of money or the value of the thing demanded shall exceed ten pounds currency, or which shall relate to any titles to lands or tenements, or to any sum of money payable to Her Majesty, fee of office, duty or rent, revenue, annual rents, or such like matters or things, where the rights in future may be bound, an appeal shall lie to the Court of Queen's Bench, sitting in Superior Term in and for the District within which the suit or action shall have been originally instituted; which said Court so sitting in Superior Term, shall proceed to hear and adjudge on such appeal, as to law may appertain, and in the manner hereinafter provided.

XLIV. And be it enacted, that the party appealing from any judgment rendered as aforesaid by a Circuit Court, or by any Court of Queen's Bench in Inferior Term, shall, within fifteen days after the rendering of the judgment to be appealed from, (but without being bound to give previous notice thereof to the adverse party) give good and sufficient security, by sureties who shall justify their sufficiency to the satisfaction of the person before whom it shall be given as hereinafter provided, that lie will effectually prosecute the said appeal and answer the condemnation, and also pay such costs and damages as shall be awarded by the Court appealed to, if the judgment appealed from should be affirmed; which said security shall be given either before any of the Justices of the Court appealed to, or the Clerk or Prothonotary thereof, and the bond shall then be deposited and remain of record in the office of the latter; or it shall be given before any Justice or Circuit Judge, when holding the Circuit Court in which the said judgment appealed from shall have been rendered, or before the Clerk or Prothonotary of such Circuit Court, and the bond shall then be deposited and remain of record in the office of the latter; and anyone surety, being a proprietor of landed property of the value of fifty pounds, currency, over and above all incumbrances payable out of or affecting the same, shall suffice to render such security valid; and the said Justices, and Clerks or Prothonotaries, are hereby respectively authorized to administer all oaths required by law in such cases from the persons so becoming sureties: Provided always, that if the party

appealing shall, within the same delay of fifteen days after the rendering of the judgment, agree and declare in writing at the office of the Clerk or Prothonotary of the Court appealed to, or at the office of the Clerk or Prothonotary of the said Court appealed from, that he does not object to the judgment being carried into effect according to law, or shall pay into the hands of either of the said Clerks or Prothonotaries, the amount, in capital, interest and costs, of the said judgment, and shall at the same time declare in writing his intention to appeal, (which amount, when so paid, the respondent shall be entitled to have and receive from the said Clerk or Prothonotary,) then and in that case, the party so appealing, in lieu of the security above required, shall give security only for such costs and damages as shall be awarded by the Court appealed to, in case the appeal be dismissed: And provided also, that when only such last mentioned security shall have been given, the respondent, if the judgment appealed from be reversed, shall not be bound to return to the appellant more than the amount of money so paid by the latter into the bands of the said Clerk or Prothonotary, with the legal interest thereon from the day of the payment of the same to the said Clerk or Prothonotary, or more than the sum levied under the execution sued out upon such judgment, with the legal interest upon such sum from the day of its being so levied, or more than the restitution of the real property whereof the respondent shall have been put in possession by virtue of the said judgment, and the net value of the produce and revenues thereof, to be computed from the day the respondent shall have been put in possession of such real property, until perfect restitution is made with the costs of such appellant as well in the Court appealed to, as in the Court below, but without any damages, in any of the said cases, against the respondent by reason of the said judgment or of the said execution; any law, custom or usage to the contrary notwithstanding.

XLV. And for the purpose of obviating delay and expense in the prosecution of appeals from judgments rendered by the Circuit Courts, or by the Courts of Queen's Bench in Inferior Term, be it enacted, that such appeals shall be prosecuted and proceedings thereon had in a summary manner, by petition of the appellant to the Court to which such appeal shall be as aforesaid, setting forth succinctly the grounds of appeal, and praying for the reversal of the judgment appealed from, and the rendering of such judgment as by the Court below ought to have been rendered; a copy of which petition, with a notice of the time at which it is to be presented to the Court of Queen's Bench sitting in Superior Term, shall be served on the adverse party personally or at domicile, or on his Attorney, ad litem, within twenty days from the rendering of the judgment appealed from; and such petition shall be so presented on any of the first ten days of the Superior Term of the Court appealed to, next succeeding the rendering of the judgment, if there shall be an interval of twenty-five days between the rendering of such judgment and the last of the said ten first days of the said Term, and if there shall not be such an interval, then on the first juridical day of the second Superior Term of the Court appealed to, next succeeding the rendering of such judgment: Provided always, that neither the day of the rendering of the judgment appealed from, nor the day of the presenting of the said petition to the Court appealed to, shall be considered as forming part of the said interval of twenty-five days; And provided also, that a true copy of the appeal bond given by the party appealing, certified as such by the Clerk or Prothonotary in whose office it shall have been deposited, shall be annexed to the original of the petition presented to the Court appealed to, and that a copy or copies of the same, certified as such by the party appealing,

or his Attorney, shall be served, with the petition and notice hereinbefore mentioned, upon the party respondent.

XLVI. And be it enacted, that within the same delay of twenty days after the rendering of the judgment appealed from as aforesaid, the party appealing shall also cause a copy of the said petition and notice only, to be served upon the Clerk or Prothonotary in the office and custody of whom the record of the suit or action appealed from shall be, with a certificate from the Clerk or Prothonotary of the Court appealed to, that security in appeal has been given, if the appeal bond shall not be deposited in the office of the Court appealed from; and thereupon it shall be the duty of the said Clerk or Prothonotary, of the last mentioned Court without waiting for the presenting of the said petition to the Court appealed to, forthwith to certify under his hand and the seal of the Court, to the Court to which such appeal may lie, and to cause to be transmitted to the Justices of the said Court, (to be filed among the records of the Superior Term thereof,) the judgment, record, notes of evidence, and proceedings to which such appeal shall relate; and after the transmission of the said judgment, record, notes of evidence, and proceedings, and the filing of the said petition of appeal by and on the part of the appellant as aforesaid, the appeal shall, without any further formality, be summarily heard, and judgment thereon rendered by the said Court of Queen's Bench, sitting in Superior Term, as to law and justice may appertain: Provided always, that the Justice by whom the judgment appealed from may have been rendered, shall not sit on the hearing and judgment of the cause upon such appeal; and if the Court be equally divided on the question whether the judgment appealed ought or ought not to be affirmed, it shall stand and be affirmed: And provided also, that any appellant who shall neglect to cause a copy of such petition and notice of appeal to be served as aforesaid, or who, after, having caused the same to be served, shall neglect to prosecute effectually the said appeal in the manner hereinbefore prescribed, shall be considered to have abandoned the said appeal, and upon the application of the respondent the Court appealed to shall declare all right and claim founded on such appeal to be forfeited, and shall grant costs to the respondent, and order the record (if transmitted) to be remitted to the Court below.

XLVII. And be it enacted, that in every case where judgment shall be rendered in any Court of Queen's Bench in Inferior Term, or in any Circuit Court, awarding or adjudging the payment of any sum of money, it shall and may be lawful for the Clerk or Prothonotary of the Court, at the expiration of fifteen days after the rendering of the judgment, to issue under the seal of the Court, a writ of *feri facias* against goods and chattels; which writ shall be signed by him, and made returnable to the Court, and shall be directed to any of the Bailiffs of the Court of Queen's Bench in and for the District in 'which the judgment shall have been rendered, who is hereby authorized to levy the sum of money mentioned in such writ, and the costs of execution, upon and from the goods and chattels of the party against whom such judgment shall have been rendered which shall be found within the District, in the same manner, and according to the same rules and regulations of law, by and under which any Sheriff may levy money by virtue of a writ of *feri facias* issuing out of any of Her Majesty's Courts of civil jurisdiction in Lower Canada; but the said Bailiff shall not be entitled, out of the monies so levied by him, to the commission of two and a half per cent, in such case allowed by law to Sheriffs, or to any commission whatever; and the said writ, on or before the day fixed for the return thereof, shall be by the said Bailiff returned into the Court

from which it shall have issued, with his proceedings thereon: Provided always, that for the satisfaction of any such judgment, execution shall (except in hypothecary actions) go only against the moveable property of the party condemned, in cases where the sum of money awarded by the judgment shall not exceed ten pounds, currency; and that in cases where the said sum of money so awarded shall exceed ten pounds currency, execution shall go not only against the moveable but also against the immoveable property of the party condemned; as it; shall also in all hypothecary actions against the immoveable property declared by the judgment to be hypothecated for the payment of the sum for which such judgment shall have been rendered, whatever be the amount demanded or recovered in the suit: and when execution upon any such judgment shall be sued out against the immoveable property, a writ of *fieri facias de terris* shall be issued from the Court in which the judgment shall have been rendered, under the seal of the said Court, and signed by the Clerk or Prothonotary thereof, and such writ shall be made returnable to the Court of Queen's Bench in and for the District in which the judgment shall have been rendered, at a Superior Term thereof, and shall be directed to the Sheriff of the said District who is hereby authorized to levy the sum of money mentioned in such writ, and the costs of execution upon and from the immoveable property of the party against whom such judgment shall have been rendered, or upon and from the immoveable property declared by the judgment to be so hypothecated as aforesaid, (as the case may be,) in the manner and according to the rules and regulations of law, by and under which any Sheriff may levy money by virtue of a writ of *fieri facias de terris* issuing out of any of Her Majesty's Courts of civil jurisdiction in Lower Canada; and the said writ, on or before the day fixed for the return thereof, shall be by the said Sheriff returned into the Court of Queen's Bench in Superior Term, with his proceedings thereupon, in the same manner as if such writ had issued from such Superior Term of the said Court; and all ulterior proceedings of what kind soever, consequent upon the issuing of such writ, or necessary for the execution thereof, as well with regard to the plaintiff and defendant, as with regard to other parties, who, according to law, may have intervened in the cause by opposition or otherwise, shall be had in said Court of Queen's Bench in Superior Term, as effectually and in the same manner as if the cause in which such writ shall have issued had been originally brought and determined in the said Court in Superior Term.

XLVIII. And be it enacted, that when the party against whom judgment shall have been rendered, either in any Circuit Court, or in the Inferior Term of any Court of Queen's Bench, shall not have, within the District in which such judgment shall have been rendered, sufficient goods, chattels, lands or tenements, to satisfy the said judgment in capital, interest and costs, but shall have goods, chattels, lands or tenements within any other District in Lower Canada, an *alias* writ *de bonis* or *de terris*, as the case may be, shall issue from the Court in which the judgment shall have been rendered, under the seal of the said Court, and signed by the Clerk or Prothonotary thereof; which *alias* writ shall be made returnable to the Court out of which it shall issue, if it be a writ *de bonis*, and to the Court of Queen's Bench, in and for the District in which the judgment shall have been rendered, at a Superior Term thereof, if it be a writ *de terris*, and shall be directed to the Sheriff of such other District; which said *alias* writ, after having been endorsed by one of the Justices of the Court of Queen's Bench in and for such other District, shall be executed in the latter District by the Sheriff thereof, as if it were a writ of execution issued from the Superior Term of the said Court of Queen's Bench in and for his own District, and in the same manner and according to the same

rules and regulations of law; and the said writ shall be, by the said last mentioned Sheriff, with his proceedings thereon, duly returned into the Court from which it shall have been issued, if it be a writ *de bonis*, or into the Superior Term of the said Court of Queen's Bench in and for the District in which the said judgment shall have been rendered, if it be a writ *de terris*; and in the latter case, all ulterior proceedings of what kind soever, consequent upon the issuing of such writ *de terris*, or necessary for the execution thereof, as well with regard to the plaintiff and defendant, as with regard to other parties who, in due course of law, may have intervened in the cause by opposition or otherwise, shall be had in the Court last above mentioned, in Superior Term, as effectually and in the same manner as if the cause in which such writ shall have issued had been originally brought and determined in such last mentioned Court, in Superior Term; Provided always, that in all cases where execution may issue in any hypothecary action against any immoveable property declared by the judgment to be hypothecated for the payment of the money to be levied under such execution and *délaissé* under such judgment, and situate in a District other than that in which the writ shall issue, such writ shall be issued, executed and returned, and the subsequent proceedings relative to the same shall be had as herein provided with regard to *alias* writs *de terris*, without its being necessary that any other writ should previously issue.

XLIX. And be it enacted, that when any such writ *de terris*, issuing from any Circuit Court, or from the Inferior Term of any Court of Queen's Bench, shall have been, in the manner hereinbefore provided, returned into the said last, named Court in Superior Term, it shall be lawful for the said last named Court, in its discretion, to direct the record of the cause in which such writ of execution shall have issued, to be removed into the said Superior Term, and such removal shall be made (on an order made by the said Court, and addressed to the Clerk or Prothonotary of the Court from which the record is to be removed,) in the same manner and according to the same regulations as are hereinbefore provided for the removal, on the order of a Justice or Circuit Judge, of suits or actions instituted before any Circuit Court, or Court of Queen's Bench in Inferior Term, into the said Court in Superior Term.

L. And be it enacted, that the Courts of Queen's Bench in Inferior Term, and the said Circuit Courts, may respectively, if they think proper, order the debt to be levied by instalments: Provided the delay allowed for the payment of the last instalment shall not exceed the space of three months from the day of the Judgment: And provided also, that in default of payment of any one such instalment, at the time it shall become due, execution may issue in satisfaction of the Judgment, as if such delay had not been granted.

LI. And be it enacted, that the certificate of the Clerk or Prothonotary of any Court of Queen's Bench or Circuit Court, that the costs in any suit or action or proceeding in the Inferior Term of such Court of Queen's Bench, or in such Circuit Court, amount to a sum named in such certificate (the sums allowed to witnesses having been previously approved by a Justice or Circuit Judge, as the case may be,) shall be sufficient proof of the amount of such costs, provided, a detailed bill or account of the same, signed by the said Clerk or Prothonotary, be annexed to such certificate, and execution may issue accordingly for such costs, without any other or further taxation thereof, nor shall it be necessary that any writ of execution issuing out of any such Inferior Term or Circuit Court

be signed or indorsed by any Justice or Circuit Judge; any law, usage or custom to the contrary notwithstanding.

LII. And be it enacted, that if any opposition be made to the execution of any writ *de bonis* issued from any Circuit Court, such opposition shall be made returnable either to the same Circuit Court at the then next term thereof, or to the Court of Queen's Bench for the District at the Inferior Term thereof, next after the day on which the opposition shall have been allowed, if such Inferior Term be nearer to the said day, there to be heard and determined: and when such opposition shall have been made returnable into the said Court of Queen's Bench in Inferior Term, the said Court shall have power, if it deem it necessary, to order the removal of the record in the original suit or action from the Circuit Court, into the Court of Queen's Bench, and such removal shall be made in the manner hereinbefore provided for the removal of records in similar cases; and the Bailiff charged with the execution of the writ shall, immediately after he shall have been served with a true copy of the said opposition, return the same and the writ with his proceedings thereon, to the Court to which the opposition shall have been so made returnable; and when final Judgment shall have been given on any such opposition in the Inferior Term of the Court of Queen's Bench, the writ of execution and all proceedings thereon, with a true copy of the said Judgment, (and the record in the original suit or action, if it shall have been removed) shall be remitted to the Circuit Court, in which further proceedings shall thereupon be had, as to law may appertain: Provided always, that the *fiat* or order to stay proceedings upon such writ *de bonis* in consequence of any such opposition, and to make such opposition returnable as aforesaid, may be made by any Justice of the Court of Queen's Bench, or Circuit Judge in and for the District, although he be not then within the limits of the Circuit, or by the Clerk or Prothonotary of the Circuit Court, and to that effect, such Justice, Circuit Judge, Clerk or Prothonotary, is hereby authorized to administer all oaths in such cases required by law.

LIII. And be it enacted, that the said Circuit Courts, respectively, and the Chief Justice, Justice or Circuit Judge holding the same, as well in Court as out of Court, in Term or out of Term, or in Vacation, shall have and may exercise within the said Circuits, respectively, the same powers and authority as are vested in any Court of Queen's Bench, and the Justices thereof, in what respects the election and appointment of Tutors and Curators, and the taking of the counsel and opinion of relations and friends in cases where the same are by law required to be taken, the closing of inventories, attestation of accounts, *insinuations*, affixing and taking off seals of safe custody, and other acts of the same nature requiring despatch; and the proceedings in all such cases shall form part of the records of the Circuit Court for the Circuit in which they shall be had; and the Circuit Judges in and for the Districts of Quebec and Montreal, shall have and may exercise in and for the said Districts, respectively, the same powers and authority with regard to the said matters as are vested in the Justices of the Court of Queen's Bench for the same District, and may exercise the same concurrently with such Justices, at the places where the said last named Courts are respectively held, but the proceedings shall then form part of the Records of the Court of Queen's Bench for the District in which they shall be had: Provided always, that the appointments and orders made by any such Chief Justice, Justice, or Circuit Judge, under the authority of this section, shall be liable to be set aside by the Court of Queen's Bench for the District, in the manner and

under the provisions of law, in and under which appointments and orders of like nature made by a single Judge might be set aside, immediately before the time when this Act shall come into force.

LIV. And be it enacted, that in any suitor action to be brought against any person who shall have left his domicile in Lower Canada, or against any person who shall have had no domicile in Lower Canada, but shall have personal or real estate in the same, it shall be lawful for the plaintiff, if no curator he appointed in the ordinary course of law to represent such person, to summon and implead such person, by a writ issued, in the usual way, out of the Court of Queen's Bench, or out of any of the Circuit Courts in and for the District or Circuit wherein such person may have had his domicile, or where such property may be situate; and that upon the return of the Sheriff or of the Bailiff to the writ, that the defendant cannot be found in the said District or Circuit, it shall be lawful for the Court to order that the defendant shall, by an advertisement, to be twice inserted in the English language in any Newspaper published in that language, and twice in the French language in any Newspaper published in that language, in Lower Canada, be notified to appear and answer such suit or action, within two months after the last insertion of such advertisement; and that upon the neglect of the defendant, to appear and answer to such suit or action within the period aforesaid, it shall be lawful for the plaintiff to proceed to trial and judgment as in a case by default.

LV. And be it enacted, that in all cases of the taking of goods and chattels in execution, by virtue of a writ issuing out of any Court of Queen's Bench or Circuit Court, wherein a Lessor may claim a privilege or lien for rent, it shall not be lawful for such Lessor to prevent the sale of such goods and chattels by opposition, but it shall be lawful for him to deliver to or lodge with the Sheriff or the Bailiff who shall have seized such goods and chattels, his opposition *afin de conserver*, either before or after the sale, and if the same be so delivered or lodged before the sale, the Sheriff or Bailiff shall nevertheless proceed to the sale of the goods and chattels by him seized, and make his return thereof; and upon such return, the Lessor shall have his privilege or lien upon the proceeds of the sale of such goods and chattels and be collocated accordingly; any law, usage or custom to the contrary notwithstanding: Provided always, that when any such opposition, or any other opposition *afin de conserver* upon monies levied by virtue of a writ *de bonis*, issued from the Inferior Term of any Court of Queen's Bench, or from any Circuit Court, shall be delivered to and lodged with the Bailiff, before he shall have paid the proceeds of the sale to the party suing out such writ, it shall be the duty of the Bailiff forthwith to make his return of the said writ according to law, and to pay over into the hands of the Clerk or Prothonotary of the Court from which the writ shall have issued the proceeds of the sale, to abide the judgment of the Court.

LVI. And be it enacted, that it shall be lawful for any Chief Justice or Justice of any Court of Queen's Bench, holding any Circuit Court, when and so soon as lists of Jurors shall have been legally made out for that purpose, and the requisite provisions of law in that behalf enacted, to preside during the holding of any such Circuit Court, at the trial of the issue in any suit or action brought before such Court of Queen's Bench, in Superior Term, and by the same ordered, according to law, to be tried before a Jury, and to receive the verdict of such Jury, and to return the same into such Court of Queen's Bench, to be by the said Court proceeded upon according to law.



LVII. And be it enacted, that in all actions and proceedings in the said Circuit Courts, and in the Courts of Queen's Bench, in Inferior Term, respectively, the fees specified in the Schedule (B) to this Act subjoined, shall be deemed and taken to be the lawful fees for the discharge of the several duties therein mentioned; and no other fees or emoluments shall be received or taken upon any pretence whatever, for any act done or service performed under the authority of this Act; and if any officer or person shall receive any other or greater fee, or emolument than is specified in the said Schedule for any of the duties aforesaid, or for any act done or service performed as aforesaid, he shall forfeit the sum of twenty pounds Currency, for each such offence, which penalty shall and may be recovered by civil action, in any Circuit Court, or in any Court of Queen's Bench in Inferior Term; and one half of such penalty shall belong to Her Majesty, Her Heirs and Successors, and the other half thereof to the person who shall sue for the same.

LVIII. And be it enacted, that the Clerk or Prothonotary of any Court of Queen's Bench, or of any Circuit Court, shall cause to be continually and openly posted as well in his office, as in some conspicuous place in the hall or apartment in which such Circuit Court, or the Inferior Term of such Court of Queen's Bench shall be held, a fair and legible copy of the Schedule of fees herein-before mentioned, and a notice of the penalty to which any person will become liable for receiving any other or greater fee than is set forth in the said Schedule; and in default of so doing, shall be deemed and held to be guilty of a misdemeanor, and be liable to be punished accordingly.

LIX. And be it enacted, that it shall be lawful for the Governor of this Province, to appoint from time to time, a Clerk or Prothonotary for each of the said Circuit Courts; and every such Clerk or Prothonotary as well as the Clerk or Prothonotary of any Court of Queen's Bench, appointed or to be hereafter appointed, shall have power, by an instrument under his hand and seal, to appoint a Deputy who shall act as such only in case of the absence or sickness of such Clerk or Prothonotary; and such instrument shall be entered at full length in the Register of the Court; Provided always, that it shall be lawful for the Clerk or Prothonotary, at all times, to remove such Deputy, and to appoint another in his place.

LX. And be it enacted, that no Clerk or Prothonotary of any Court, shall during his continuance in office, nor his Deputy while performing the duties of the office, practice as an Advocate, Proctor, Solicitor or Attorney, or as Counsel in any Court of Law in Lower Canada.

LXI. And be it enacted, that each Clerk or Prothonotary of any Court of Queen's Bench or Circuit Court shall, within three months after his appointment, if he be appointed after this Act shall be in force, and within three months after this Act shall come into force, if he shall have been appointed before it shall be in force, give security for the due performance of the duties of his office, and for duly accounting for and paying all monies which shall come into his hands by virtue of his office, by a bond to be given by him jointly and severally with good and sufficient sureties, which bond shall stand and be as and for a security to the amount thereof, for the damages which may be sustained by any party by reason of the negligence or misconduct of such Clerk or Prothonotary, and the amount for which such bond shall be given, shall be as follows, that is to say: — by the Prothonotary or Clerk of the Court of Queen's Bench for the District of Quebec or of Montreal, and his sureties, for the sum of two thousand pounds currency: by the Clerk or Prothonotary of

the Court of Queen's Bench for the District of Three Rivers or of St. Francis, and his sureties, for the sum of one thousand pounds currency: and by the Clerk or Prothonotary of any Circuit Court, and his sureties for the sum of two hundred and fifty pounds currency.

LXII. And be it enacted, that Bailiffs appointed or to be appointed by the Court of Queen's Bench for any of the Districts before mentioned in Superior Term, shall have power to act as such within the limits of such District, for the service and execution of all writs, orders and process issuing as well from the said Court of Queen's Bench and the said Circuit Courts, as from all other Courts of Law in Lower Canada, which may be lawfully directed to a Bailiff; and such Bailiffs shall be removable by the Justices of the said Courts of Queen's Bench, either in Superior or Inferior Term, or by any Chief Justice, Justice or Circuit Judge when holding any Circuit Court: Provided always, that no Bailiff appointed before the time when this Act shall come into force, shall continue to act as such after the expiration of six months from the said time, unless re-appointed by the Court of Queen's Bench in Superior Term, after this Act shall be in force: And provided also, that any Bailiff who shall have made the service of the writ of summons in any Suit or Action shall not be competent to be examined as a witness in support of the plaintiff's *demande* in such Suit or Action, save and except as to what may relate to the service of the said writ of summons.

LXIII. And be it enacted, that every person who shall be appointed a Bailiff as aforesaid, shall, before acting as such, enter into a Bond with two good and sufficient sureties, who shall justify their sufficiency to the satisfaction of the person before whom the Bond shall be given, unto Her Majesty, Her Heirs and Successors, in the penalty of one hundred pounds currency, conditional for the due performance of the duties of the said Office, and such Bond shall be taken before the Clerk or Prothonotary of the Court of Queen's Bench, in and for the District in which the Bailiff shall have been so appointed, and shall remain of record in the Office of the said Clerk or Prothonotary; and every copy of such Bond, delivered by the Officer last named under his hand and the seal of the Court, shall be deemed and considered an authentic copy to all intents and purposes; and it shall be incumbent on the said Clerk or Prothonotary to inquire and ascertain when such sureties may die, or become insolvent, or resident out of Lower Canada, (in any of which cases it shall also be the express duty of the Bailiff to give notice of the fact to the Clerk or Prothonotary) and in such case or cases to require the Bailiff to give other and further security as aforesaid: and the Bond so given shall stand and be as and for a security to the amount thereof, for the damages which may be sustained by any person or persons by reason of the culpable negligence or misconduct of the Bailiff.

LXIV. And be it enacted, that if any Bailiff or any officer of any Circuit Court, acting under colour or pretence of the process of such Court, shall be guilty of extortion or misconduct, or shall not duly pay or account for any money levied or received by him, under the authority of this Act, it shall be lawful for any Chief Justice, Justice, or Circuit Judge, holding the said Circuit Court, if the party aggrieved shall think fit to complain to him, to inquire into such matter in a summary way, and for that purpose to summon and enforce the attendance of all necessary parties, and to make such order thereupon for the repayment of any money extorted, or for the due payment of any money so levied or received as aforesaid, and for the payment of such costs to the party aggrieved, as such Chief Justice, Justice or Circuit Judge, shall think just; and in default of the immediate

payment of any sum of money so ordered to be paid by such Bailiff or such Officer, to commit the offender to the common gaol of the District, there to be detained until such payment be made in full.

LXV. And be it enacted, that the Records, Registers, Documents and proceedings, of and in the several District Courts and Division Courts hereby abolished, shall forthwith, after the period hereinafter appointed for the commencement of this Act, be transmitted into and make part of the Records, Registers, Documents and proceedings of and in the Inferior Term of the several Courts' of Queen's Bench, for the District in which such District and Division Courts shall have been respectively held.

LXVI. And be it enacted, that no judgment, order, rule, or act, of the said District Courts and Division Courts, respectively, legally pronounced, had or done, before the commencement of this Act, shall be hereby avoided, but shall remain in full force as if this Act had not been passed; nor shall any action, suit, cause or proceeding, depending in the said District Courts and Division Courts, respectively, be abated, discontinued or annulled, but the same shall (although the sum or value of the thing demanded should be above twenty pounds currency.) be transferred in their then present condition respectively to, and shall subsist and depend in the Inferior Term of the Courts of Queen's Bench,' into which the Records, Registers, Documents and proceedings of the said District Courts and Division Courts, respectively, are to be transmitted as aforesaid; and other and further proceedings shall be thereon had in the said Courts of Queen's Bench, respectively, in Inferior Term, to judgment and execution, and as to all matters and proceedings consequent upon such judgment and execution, as might be had in the said Courts of Queen's Bench in Inferior Term, in causes and proceedings therein commenced and depending.

LXVII. And be it enacted, that every writ or process which shall have been made returnable into any of the said District Courts or Division Courts hereby abolished, on any day subsequent to the commencement of this Act, shall be returned into the Inferior Term of the Court of Queen's Bench in and for the District in which the same shall have been issued, and shall be held and considered to be returnable on the first juridical day of the Inferior Term of such Court of Queen's Bench, commencing next after the day on which such writ or process shall have been made returnable.

LXVIII. And be it enacted, that if any person, having been the Clerk or Prothonotary of any District or Division Court hereby abolished, shall refuse or neglect to transmit to the proper Court, and at the time and in manner hereby required, any Record, Register, or Document in his possession, as such Clerk or Prothonotary, at the time this Act shall come into force, the Court to which the same ought to be transmitted may upon the application of the Clerk or Prothonotary of such last mentioned Court, address such order as it may deem expedient in the matter, either to the Clerk or Prothonotary in default, or to any other person having any such Record, Register, or Document in his possession, for the purpose of enforcing the transmission thereof, or of authorizing the seizure thereof by such person as the Court shall appoint; and any wilful disobedience to such order, or any resistance to the execution thereof, shall be a contempt, punishable by fine and imprisonment, in the discretion of the Court.

LXIX. And be it enacted, that the Ordinance of the Governor and Special Council for the affairs of Lower Canada, made and passed in the second year of Her Majesty's Reign, and intituled, *An Ordinance to authorize the Governor or person administering the Government of this Province, to appoint one or more Assistant Judges for the Court of King's Bench for the Districts of Quebec and Montreal, in this Province, and an Assistant Judge for the District of Three Rivers, in the case of sickness, necessary absence, or suspension from office of any of the Justices of the said several Courts of King's Bench, or the Resident Judge for the District of Three Rivers, in the said Province,* — and the Ordinance of the said Governor and Special Council, made and passed in the Session held in the third and fourth years of Her Majesty's Reign, and intituled, *An Ordinance to amend an Ordinance made and passed in the second year of Her Majesty's Reign, and intituled, An Ordinance to authorize the Governor or person administering the Government of this Province, to appoint one or more Assistant Judges for the Courts of King's Bench for the Districts of Quebec and Montreal, in this Province, and an Assistant Judge for the District of Three Rivers, in the case of sickness, necessary absence, or suspension from office, of any of the Justices of the said several Courts of King's Bench, or the Resident Judge for the District of Three Rivers, in the said Province,* — and the Ordinance of the said Governor and Special Council, made and passed in the fourth year of Her Majesty's Reign, and intituled, *An Ordinance to amend a certain Ordinance of the Legislature of this Province, made and passed in the fourth year of Her Majesty's Reign, and intituled, An Ordinance to establish new Territorial Divisions of Lower Canada, and to alter and amend the Judicature, and to provide for the better and more efficient administration of Justice throughout this Province,* — and also a certain other Ordinance of the same Legislature, made and passed in the same year, intituled, *An Ordinance to provide for the more easy and expeditious administration of Justice in civil causes, and matters involving small pecuniary value and interest, throughout this Province,* — and the Ordinance of the said Governor and Special Council, made and passed in the fourth year of Her Majesty's Reign, and intituled, *An Ordinance to amend a certain Ordinance therein mentioned,* — and the Ordinance of the said Governor and Special Council, made and passed in the second year of Her Majesty's Reign, intituled, *An Ordinance to regulate the practice of the Courts of Judicature in this Province, respecting certain proceedings,* — and the Act of the Legislature of Lower Canada, passed in the first year of the Reign of His late Majesty, King William the Fourth, and intituled, *An Act to facilitate the administration of Justice respecting Enquêtes in civil matters, before the Court of King's Bench for the Districts of Quebec, Montreal, Three Rivers, and the Inferior District of St. Francis,* — and the Ordinance of the said Governor and Special Council, made and passed in the Session held in the third and fourth years of Her Majesty's Reign, and intituled, *An Ordinance to amend and render permanent the Act therein mentioned, passed to facilitate the administration of Justice in civil matters, in the Districts of Quebec, Montreal, Three Rivers and St. Francis,* — and so much of any other Act, Ordinance or Law, as may be repugnant to or inconsistent with the provisions of this Act, shall be and are hereby repealed.

LXX. And be it enacted, that the words "Governor of this Province," wherever they occur in the foregoing enactments, are to be understood as meaning and comprehending the Governor, or the person authorize to execute the commission of Governor within this Province, for the time being; and that the words "Lower Canada," wherever they occur in the said enactments, are to be understood as meaning and comprehending that part of this Province of Canada which formerly constituted the Province of Lower Canada; and any word or words importing the singular number,

or the masculine gender only, shall be understood to include several matters of the same kind as well as one matter, and several persons as well as one person, and bodies corporate as well as individuals, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such construction.

LXXI. And be it enacted, that this Act shall commence and have force and effect upon, from and after, the twenty-first day of April, in the year of our Lord one thousand eight hundred and forty-four, and not before.

Schedule A.

Province of Canada,  
District (or Circuit) of \_\_\_\_\_ }  
}

In the Court of Queen's Bench, Inferior Term.  
(or \_\_\_\_\_

In the Circuit Court.)  
day of \_\_\_\_\_ 18 \_\_\_\_\_

A. B. of, &c., Plaintiff,  
and  
C. D. of, &c., Defendant.

The plaintiff demands of the defendant the sum of \_\_\_\_\_ currency, due by him to the plaintiff for (state sufficiently the cause of action) which said sum the defendant refuses to pay. (If the action be to recover a thing wrongfully detained, &c. vary the statement of the cause of action accordingly.) Therefore the plaintiff prays judgment.

{ L. S. }

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to C. D. the defendant in the foregoing (or annexed) declaration mentioned.

You are hereby required to satisfy the demand of A. B. the plaintiff, in his declaration set forth, with costs, or to appear in person, or by your Attorney, before our said Court of Queen's Bench, sitting in Inferior Term, (or before our said Circuit Court) at the Court House, at \_\_\_\_\_ in the said District (or Circuit) at \_\_\_\_\_ o'clock in the forenoon, on the \_\_\_\_\_ day of \_\_\_\_\_ instant, (or next) to answer to the said *demande*; otherwise judgment may be given against you by default.

Witness the Honorable J. S. our Chief Justice of Lower Canada, (or as the case may be) this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord one thousand eight hundred and \_\_\_\_\_ and in the \_\_\_\_\_ year of our reign.

Schedule B.

Table of Fees in the Inferior Terms of the Courts of Queen's Bench, and in the Circuit Courts.

To The Attorney.	First Class Actions, £20 or under, but above £10.			Second Class Actions, £10 and under, but above £6.5.			Third Class Actions, £6.5. or under.			In every case.		
	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
On all proceedings in Actions settled before return, (except those on which additional fees are hereinafter allowed) — to the Plaintiff's Attorney . . .	1	0	0	0	5	0	0	3	4			
On all proceedings (except as aforesaid) in Actions settled after return, and before contestation, or which judgement shall be given on confession or by default, or <i>ex parte</i> , without <i>enquête</i> (that is to say without the examination in Court of any witness or party) — to the Plaintiff's Attorney . . . . .	1	5	0	0	7	6	0	5	2			
And to the Defendant's Attorney . . . . .	0	10	0	0	5	0	0	2	6			
On the same, if judgement be given by default or <i>ex parte</i> , but with <i>enquête</i> — to the Plaintiff's Attorney . . . . .	1	10	0	0	10	0	0	7	6			
And to the Defendant's Attorney . . . . .	0	10	0	0	5	0	0	2	6			
On the same, in Actions discontinued after contestation — to the Plaintiff's Attorney . . . . .	2	0	0	0	10	0	0	5	0			
And to the Defendant's Attorney . . . . .	1	0	0	0	10	0	0	5	0			
On the same, when judgement shall be given after contestation — to the Plaintiff's Attorney . . . . .	3	10	0	0	12	6	0	7	6			
And to the Defendant's Attorney . . . . .	3	0	0	0	10	0	0	5	0			
In all Hypothecary Actions, mixed Actions, or Actions for personal wrongs, the same fees as in first class Actions . . . . .												
On all oppositions (except oppositions <i>a fin de conserver</i> ) inventions, and <i>requetes civiles</i> , when contested, and also on contestations of <i>saisie arrêt</i> after judgement, or of declarations made by garnishees, the same fees as in the original Actions to which the same shall be incident. . . . .												
In all incidental cross <i>demandes</i> , half the fees allowed in original actions for a like sum . . . . .												
Additional Fees on Certain Proceedings.												
On each opposition, <i>a fin de distraire</i> , or <i>a fin d'annuler</i> , intervention or <i>requetes civiles</i> , not contested . . . . .	1	0	0	0	10	0	0	5	0			
On each opposition <i>a fin de conserver</i> . . . . .	1	0	0	0	10	0	0	5	0			
On a <i>saisie arrêt</i> after judgement, when there is no contestation . . . . .	0	10	0	0	5	0	0	2	6			
On suing out any writ of <i>saisie gagerie</i> , <i>saisie revendiction</i> , or <i>saisie arrêt</i> , before judgement, or on any special declaration required by the Court . . . . .	0	7	6	0	5	0	0	2	6			

Table of Fees in the Inferior Terms of the Court of Queen's Bench, &c. — *Continued* .

To The Attorney.	First Class Actions, £20 or under, but above £10.			Second Class Actions, £10 and under, but above £6.5.			Third Class Actions, £6.5. or under.			In every case.		
	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
Additional Fees on Certain Proceedings.												
For each copy, more than one, of any declaration, petition in intervention, or opposition . . . . .	0	2	6	0	2	0	0	1	3			

For each plea in writing ordered by the Court, including copy . . . . .	0	0	0	0	2	6	0	0	0
On each rule to take up the <i>instance</i> or to declare a judgement executory or for <i>contrainte par corps</i> , or other rule of a like nature when declared absolute — to the Attorney prosecuting the same . . . . .	0	15	0	0	10	0	0	5	0
And when over-ruled to the Attorney resisting the application . . . . .	0	10	0	0	5	0	0	2	6
On a <i>commission rogatoire</i> , and all proceedings relative thereto — to the Attorney suing out the same . . . . .	0	10	0	0	5	0	0	2	6
And to the Attorney of the opposite party . . . . .	0	5	0	0	2	6	0	0	0
And the Attorney employed by either party to attend to the execution of such commission . . . . .	0	10	0	0	10	0	0	10	0
For every copy of a rule or order of Court . . . . .	0	1	0	0	0	0	0	0	0
For suing out any writ of execution . . . . .	0	2	6	0	0	0	0	0	0
For bill of costs and attendance at taxation . . . . .	0	2	6	0	0	0	0	0	0
To The Clerk.									
For every writ of summons or attachment, ( <i>saisie arrêt, saisie gagerie, saisie revendication, or capais</i> ) filling the <i>præcipe</i> , and furnishing a copy of such writ . . . . .	0	3	0	0	2	0	0	1	0
For every original <i>subpœna</i> . . . . .	0	1	0	0	1	0	0	0	6
On the entry of any cause, or the filing of any intervention, <i>requête civile</i> , opposition or incidental <i>demande</i> . . . . .	0	5	0	0	2	6	0	1	3
On the contestation of the same — to be paid by the party contesting it . . . . .	0	5	0	0	2	6	0	1	3
For each <i>commission rogatoire</i> , and the proceedings relative thereto . . . . .	0	2	6	0	2	6	0	1	3
For each rule for <i>faits et articles, serment d'écisoire, reprise d'instance</i> , or other rule of like nature . . . . .	0	1	0	0	1	0	0	0	6
For each copy of a <i>subpœna</i> or rule, and for each copy more than one of any writ . . . . .	0	0	6	0	0	6	0	0	3
For any office copy of any document, including the certificate, per hundred words . . . . .	0	0	6	0	0	6	0	0	6
For each appeal bond, and on each evocation, including attendance and the making up and transmission of the record . . . . .	0	10	0	0	10	0	0	10	0
For each writ of execution . . . . .	0	2	0	0	1	6	0	1	0
For each bill of costs and certificate, if demanded . . . . .	0	1	0	0	1	0	0	1	0
On the execution of a <i>commission rogatoire</i> from any other Court . . . . .	0	3	4	0	3	4	0	3	4
On the examination and cross examination (if any) of each witness under such <i>commission rogatoire</i> . . . . .	0	2	0	0	2	0	0	2	0
For a copy of any judgement, whether interlocutory or final, if demanded . . . . .	0	2	0	0	1	6	0	1	0
On each appointment of a Tutor or Curator ( <i>acte de tutelle ou de curatelle</i> ) or other appointment of a like nature, and one copy thereof . . . . .	..	..	..	..	..	..	..	..	0 4 0
On the closing of an inventory, and certificate of the same . . . . .	..	..	..	..	..	..	..	..	0 3 0
On any <i>insinuation</i> . . . . .	..	..	..	..	..	..	..	..	0 1 0
And for each one hundred words of the document registered . . . . .	..	..	..	..	..	..	..	..	0 0 6
Drawing report of distribution . . . . .	0	1	6	0	1	3	0	1	0
To the Crier.									
On every action, opposition or intervention returned into Court . . . . .	0	1	6	0	1	3	0	1	0
To the Tipstaff.									
On every action, opposition or intervention returned into Court . . . . .	..	..	..	..	..	..	..	..	0 0 6
To the Sheriff of Baliffs.									
Milage on the service or execution of a writ or of process of any kind, at the rate of six pence per mile — without any further charge for milage on any other process to be served on the same party then in the hands of the Sheriff or Bailiff, and which shall be or might have been served at the same time, (whether such process shall have been sued out by the same party or by any other) and without any charge for mileage in returning, but exclusive of sums paid at toll gates, ferries or bridges.	..	..	..	..	..	..	..	..	..
For the service, certificate or return, of such writ or process . . . . .	0	1	0	0	1	0	0	1	0
For the seizure of goods and chattels, and all incidental trouble, but exclusive of <i>mileage</i> . . . . .	0	7	6	0	5	0	0	3	9
For his <i>recors</i> . . . . .	0	1	8	0	1	8	0	1	8

For the sale of goods and chattels, exclusive of mileage .....	0	7	6	0	5	0	0	3	9
For publishing the notices of sale .....	0	1	0	0	1	0	0	1	0
For the service of any notice, and the certificate and return .....	0	1	0	0	1	0	0	1	0
If the writ be returnable into the Queen's Bench in Superior Term, the fees to the Sheriff will be the same as if it had issued out of the said Court in Superior Term.									