

Laws of Her Majesty's Province of Upper Canada, passed in the year 1850. Toronto: Stewart Derbshire & George Desbarats, 1850.

13 & 14 Victoria – Chapter 53

An Act to amend and consolidate the several Acts now in force, regulating the Practice of Division Courts in Upper Canada, and to extend the jurisdiction thereof. 10th August, 1850.

Whereas it is expedient to consolidate and reduce into one Act the several laws now in force regulating the system and practice of certain Courts in Upper Canada established for the recovery of Small Debts, and to make other provisions therefor: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That the Act passed in the Session held in the fourth and fifth years of Her Majesty's Reign, and intituled, *An Act to repeal the laws now in force in that part of this Province formerly Upper Canada, for the recovery of Small Debts, and to make other provisions therefor*,—and the Act passed in the eighth year of Her Majesty's Reign, and intituled, *An Act to amend an Act passed in the fourth and fifth years of the Reign of Her Majesty, intituled, 'An Act to repeal the laws now in force in that part of this Province formerly Upper Canada, for the recovery of Small Debts, and to make other provisions therefor'*,—and the Act passed in the twelfth year of the Reign of Her Majesty, intituled, *An Act to authorize attachments against personal property for sums of ten pounds and under in certain cases in Upper Canada*, shall be and the same are hereby repealed, upon, from and after the day upon which this Act shall come into force.

II. Provided always, and be it enacted, That the several Division Courts now established and in existence in each County of Upper Canada, and the limits and extent of the same respectively, shall be and remain as they are now, until altered as hereinafter mentioned: and provided also, that all proceedings had under any Act hereby repealed, shall remain good and valid, and all suits, actions or proceedings commenced under any such Act, shall be continued and completed under this Act, as if commenced under the same.

III. And be it enacted, That the number of the said Courts in each County or union of Counties, shall at no time be less than three, nor more than twelve, and that there shall be one Division Court held in each City and County Town, and that a Court shall be holden under this Act once in every two months in such Division, or oftener, in the discretion of the Judge thereof, and that it shall and may be lawful for the Judge of the said Court to affix and appoint the times and the places within such Divisions when and at which such Courts shall be holden, and in like manner from time to time to alter the same.

IV. And be it enacted, That it shall and may be lawful for the Justices of the Peace in each County now or hereafter to be erected in Upper Canada, in General Quarter Sessions assembled, to

declare and appoint the number, limits and extent of every such Division, within their respective Counties, subject to the restrictions in this Act contained; and such Justices may from time to time alter the number, limits and extent of such Divisions: Provided always, that a less number of Justices shall have no power to rescind or alter any Resolution or Order made by a greater number at any previous Session.

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

VI. And be it enacted, That the Justices so assembled as aforesaid, shall be required to number the said Divisions, beginning at number one; and that the Court to be held in each Division shall be known by the name and style of the—The First (or other, as the case may be) Division Court for the County of _____

VII. And be it enacted, That the Judges of the County Courts of the several Counties in Upper Canada, shall preside over the Division Courts within their respective Counties, and no such Judge, shall, during the continuance of his appointment, be capable of being elected or of sitting as a Member of the Legislature of this Province, or of practising as an Attorney, a Notary Public, or Solicitor or Counsel, in any of Her Majesty's Courts of Law or Equity.

VIII. And be it enacted, That in case of the illness or unavoidable absence of the Judge of any such County Court, it shall be lawful for the Judge of any County Court for any other County to hold the Court and to act in the place of the Judge so absent and with the same powers, or for such Judge to appoint some Barrister duly admitted as such to act as his deputy; and every person so appointed shall, during the time for which he shall be so appointed, have all the powers and privileges, and be subject to all the duties vested in or imposed by this Act or by Law on the Judge by whom he shall have been so appointed as Judge of the Division Court, and notice of every such appointment shall be forthwith sent by the Judge or Deputy Judge to the Governor of this Province, and such notice shall specify the name, residence and profession of the Deputy Judge, and the cause of his appointment; and no such appointment shall be continued for more than one calendar month without a renewal of the like notice, and it shall be lawful for the Governor to annul any such appointment of which he shall disapprove: Provided always, that whenever from illness of the Judge or Deputy Judge, or from any casualty, it may happen that he shall not arrive in time, or shall not be able to open any Court to be held under this Act on the day appointed for that purpose, it shall and may be lawful for the Clerk or Deputy Clerk of such Court, after the hour of eight o'clock in the afternoon of such day, to adjourn by proclamation any Court which shall be appointed to be opened on that day to an earlier hour on the following day, not being Sunday or a legal holiday, to be by him named, and so from day to day, adjourning over any Sunday or holiday, until the Judge or Deputy Judge shall arrive to open the same, or until he shall receive other direction from such Judge or Deputy Judge.

IX. And be it enacted, That for every Court holden under the authority of this Act, there shall be a Clerk and one or more Bailiffs: and the Judge of the County Court shall from time to time appoint, and at his pleasure remove, the Clerks and Bailiffs of the Courts holden by him: Provided always, that no person other than a subject of Her Majesty shall be so appointed: And provided also, that no practising Barrister, Attorney or Solicitor shall hereafter be appointed to the Office of Clerk of any Division Court.

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

XI. And be it enacted, That the Clerk or Deputy Clerk shall have full power and authority to administer oaths and take affidavits of service of process, notices or other papers, and also of the execution of Cognovits, and all other oaths required or authorized by this Act, in all suits, actions and proceedings, commenced in his own or in any other Division Court in Upper Canada.

XII. And be it enacted, That the Treasurer of every County shall be the Receiver General of fees of the several Division Courts within his County; and every such Treasurer shall be paid a per centage of four pounds, on every hundred pounds of the gross produce of the fees of the Courts of which he is Receiver General; and every Judge shall be paid by a certain salary, the salary of a Judge being in no case more than Five Hundred Pounds, nor less than Two Hundred and Fifty Pounds; and the Clerk and the Bailiffs of the Court, shall be paid by fees hereby allowed to them; and the Governor in Council shall fix the remuneration to be paid to the Judges, having due regard to the population and other circumstances of the several Counties and Divisions, and the remuneration to be paid to the Judges may within the limits aforesaid be increased, or diminished by the said authority: Provided always, that the salaries of the said Judges, as at present established, shall remain the same, unless otherwise altered by law, or unless vacancies shall occur.

XIII. And be it enacted, That the Clerk of each Division Court shall issue all summonses and furnish copies thereof, with the notice thereon, in the form given in the Schedule to this Act annexed marked B, and particulars of the Plaintiff's claim or demand and copy thereof, and of the defendant's sett-off, which copy of demand, particulars or sett-off, are to be furnished to the Clerk by the Plaintiff and Defendant, respectively, and also shall issue all warrants, precepts, and writs of execution, tax costs, subject to the revision of the Judge, and register all orders and judgments of the Court, and keep an account of all Court fees and fines payable or paid into and out of Court, and of all suitor's money paid into and out of Court, and shall enter an account of all such fees, fines and moneys in a book to be kept by him for that purpose, which book shall at all times be accessible to the Judge of the said Division Court whose duty it shall be to inspect and examine the same, quarterly, or oftener, and to compare the accounts hereinafter mentioned with the said

book required to be kept by the Clerk, and such Judge shall certify on each such account, that he has examined the same, and believes it to be correct, or if he does not believe it to be correct, he shall state his objections thereto, and the Clerk shall thereupon forward the account with such certificate to the Treasurer, and such book shall also be open to all persons desirous of searching the same, and shall in addition from time to time, at such times as shall be directed and appointed by the Governor, submit his said accounts to be audited or settled by the Treasurer of his County; and all papers, processes, proceedings, accounts, moneys, books and all matters whatsoever in the possession of the said Clerk by virtue of or appertaining to his office, shall upon his resignation, removal or death, immediately become the property of the Treasurer of the County in which the Division for which he was Clerk is situate, who shall hold the same for the benefit of the public until the appointment of another Clerk to whom the same shall be respectively delivered over by the said Treasurer: Provided always, that it shall not be lawful for the said Treasurer so to deliver over the same until such Clerk and his sureties shall have executed the covenant hereinafter mentioned: And it is hereby declared, that any person or persons whosoever wrongfully holding or getting possession of such papers, processes, proceedings, accounts, moneys, books and matters aforesaid, or any of them, shall be guilty of a misdemeanor, and that upon the declaration in writing of the Judge presiding over the Division Court for the time being in which such wrongful holding or getting possession as aforesaid shall take place, that any person has obtained or holds such wrongful possession thereof as aforesaid, and upon the order of a Judge of any of Her Majesty's Superior Courts of Law in Upper Canada, founded thereon, such person may be arrested by the Sheriff of any County in which such person shall be found, and be by him committed to the Common Gaol of his County, there to remain without bail or mainprize until one of such Superior Courts or a Judge thereof shall be satisfied that such person has not and never had nor held any such matters or moneys he may have been charged with wrongfully holding or obtaining, or that he has fully accounted for the same or delivered up the same to such Treasurer, or until he shall be otherwise discharged by due course of Law, and the Bailiffs of the Court shall serve all summonses, and execute all such orders, warrants, precepts and writs; and each of such Bailiffs shall also exercise the power and authority of a Constable and Peace Officer during the actual holding of the Division Court of which he is a Bailiff, with full power to prevent all breaches of the peace, riots or disturbances within the Court Room or building wherever the said Court is held, or in the public streets, squares, or other places within the heaving of the said Court, and to arrest, with or without any warrant, all parties engaged therein or offending against the meaning of this clause, and to bring such offenders before the nearest Justice of the Peace, or any other Judicial Officer having power to investigate the matter or adjudicate thereupon.

XIV. And be it enacted, That there shall be payable on every proceeding in the Division Courts holden in pursuance of this Act, and to the Clerks and Bailiffs of the Courts, such fees as are set down in the Schedule to this Act annexed marked A. or which shall be set down in any Schedule of reduced fees, under the power hereinafter given for that purpose, and none other; and a table of such fees shall be hung up in some conspicuous place in the offices of the several Clerks of Division Courts; and the fees upon every proceeding shall be paid in the first instance by the Plaintiff, or Defendant, on or before such proceeding, and the Bailiff's fees upon executions shall be paid to the Clerk of the Court, at the time of the issue of the warrant of execution, and shall be paid over by such Clerk to the Bailiff, upon the return of the warrant of execution, and not before: Provided

always, that if the Bailiff shall neglect to make a return within the time required by law, of any summons, process or execution, he shall, for each such neglect, forfeit his fees on such summons, process or execution, and all fees so forfeited shall be held to have been received by the Clerk of the Court, and shall be accounted for and paid over by him to the Treasurer of the County, to form part of the General Fee Fund, in like manner as other moneys received by him, and he shall keep a special account of all moneys so forfeited by Bailiffs.

XV. And be it enacted, That the Clerk of each Division Court shall, from time to time, and as often as he shall be required so to do by the Treasurer of his County, and at least once in every three months, deliver to him a full account in writing of the fees received in such Court, under the authority of this Act, or of any Act hereby repealed, and a like account of all fines levied by the Court, (accounting for and deducting the reasonable expenses of levying the same, and any allowance which the Judge may have made out of any such fine, in pursuance of the power hereinafter given,) and when required by the Judge shall from time to time furnish him a like account of the moneys paid into and received out of the Court, by the Defendants and Plaintiffs in the said Court, under any orders and decrees of the Court, or under process of the Court, and of the balance then remaining in Court, belonging to the Plaintiffs or Defendants in the Court, and the amount of such fees payable to the General Fee Fund, from time to time received by such Clerk, shall be paid over from time to time to the Treasurer, (such payment being made, at least, once in every three months,) and shall form part of a fund, to be called the General Fee Fund of the Division Courts, which fund shall be applied towards the payment of the salaries of the Judges of such Courts: Provided always, that each of the accounts to be rendered by the Clerk, as in this section required, shall be verified by such Clerk on oath, before the said Judge or a Justice of the Peace.

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

XVII. And be it enacted, That in case the amount of fees received in the Division Courts in any County shall not be sufficient to repay the disbursements required on account of such Courts, during the period comprised in the said account, it shall be lawful for the Governor of this Province forthwith to issue his warrant on the Receiver General of this Province, in favour of the County Treasurer, for the amount which shall be required to make up the deficiency, and the amount of such warrant shall be charged upon the Consolidated Revenue Fund of this Province.

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

XIX. And be it enacted, That if any person having resigned or having been removed from the office of Treasurer, or of Clerk of a Division Court, shall neglect, after twenty-one days' notice to such person, to account for and pay to the Treasurer of the County for the time being, or to such person as he shall appoint to receive the same, all such sums as shall remain in his hands of moneys received under the authority of this Act, it shall be lawful for such Treasurer, for the time being, in addition to any other proceeding in this Act contained, in his own proper name only, or by his name and description of office, to sue for and recover the same from such person and his sureties with costs of suit, in any Court of Record in this Province having competent jurisdiction, by action of debt; in which action it shall be sufficient for such Treasurer to declare as for money had and received to the use of such Treasurer for the purposes of this Act; and the Court in which the action shall be brought, may, at the instance of either of the parties, refer the account in dispute in a summary manner, to be audited by any officer of the Court or other fit person, who shall have power to examine all parties interested in the subject matter upon oath; and upon the report of the referee, (unless either of the parties shall shew good cause to the contrary,) the Court may make a rule either for the payment of such sum as upon the report shall appear to be due, or for staying the proceedings in the action, and upon such terms and conditions as to the Court shall appear reasonable; or the Court may order judgment to be entered up as by confession for such sum as upon the report shall appear to be due.

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

XXI. And be it enacted, That in all actions to be brought, as well as in all proceedings whatsoever to be instituted or carried on by any Treasurer by virtue of this Act, proof of his acting in the execution of the office of Treasurer shall be sufficient evidence of his holding such office, unless

the contrary shall be shown in evidence by the defendants in such actions or the parties against whom such proceedings shall be instituted or carried on.

XXII. And be it enacted, That the Treasurer of every County shall give security for such sum, and with so many sureties, and in such manner and form as the Governor of this Province shall see reason to direct, for the due performance of his office, and for the due payment of all moneys received by him under any provision of this Act, and that every Clerk and Bailiff whose duty it shall be to receive moneys or who shall be appointed under this Act, shall give security for such sum, and with so many sureties as the Judge for the Division Court for which they act shall see reason to direct, by entering into a covenant under their hand and seal, joint and several, according to the form given in the Schedule to this Act annexed marked C, or in words to the same effect, which covenant shall be available to and may be sued upon, by any person suffering damages by the default, breach of duty, or misconduct of such Clerks and Bailiffs respectively in any Court of competent jurisdiction in Upper Canada; and every such Clerk or Bailiff appointed before this Act shall come into effect, shall, immediately after it shall come into effect, and before he shall perform any duty after that time, give security in the manner hereby required, but his so doing shall not in any wise impair or affect any bond or recognizance or covenant theretofore entered into by him, as such Clerk or Bailiff, but the same shall remain in full force as against him and his sureties, as regards any thing done or omitted to be done by him in breach of the conditions thereof, before this Act shall come into effect: Provided always, that such covenants shall not be accepted until the sureties therein mentioned shall have been approved of under the hand of such Judge, and declared sufficient for the sums for which they shall have respectively become bound to such covenants, and which said covenants, together with such approval, shall, before any such Clerk or Bailiff shall enter upon the duties of his office under this Act, be filed in the office of the Clerk of the Peace in the County in which the Division Court in respect of which such covenants were given is situate, for which filing and granting a certificate thereof the said Clerk of the Peace shall be entitled to demand and receive from such Clerk or Bailiff the sum of five shillings, and no more; and if any person who shall have become surety in any such covenant shall die, become resident out of Upper Canada, or insolvent, such Clerk and Bailiff shall, within one month after being notified by such Judge (whose duty it shall be to notify the same) of such death, departure or insolvency, give anew the like security, and in the same manner as hereinbefore provided, or forfeit his said office of Clerk or Bailiff under this Act: Provided always, that nothing herein contained shall extend or be construed to extend to discharge or exonerate all or any of the parties to such former covenants from their liability on account of any matter or thing which shall have been done or omitted before the renewal of the covenant as herein directed: And provided also, that a copy of such covenant, certified by the Clerk of the Peace, shall be received in all Courts as sufficient evidence of the due execution and of the contents thereof without any proof whatever; And provided that such sureties shall be freeholders and resident within the County in which the Court is held.

XXIII. And be it enacted, That the Judge of every such Division Court shall have power, jurisdiction and authority to hold plea of all claims and demands whatsoever for or against any person or persons, bodies corporate or otherwise, of debt, account, or breach of contract, or covenant, or money demand, whether payable in money or otherwise, where the amount or balance claimed

shall not exceed the sum of twenty-five pounds, and in all torts to personal chattels, to and including the amount of ten pounds, and the Judge of the said Court shall hear and determine the same in a summary way; and every such Judge shall have power to make, such orders, judgments and decrees thereupon as shall appear to him to be just and agreeable to equity and good conscience; and that upon any contract for the payment of a sum certain in labour or in any kind of goods or commodities, or in any manner otherwise than in money, that is to say, upon any contract for the delivery of goods or commodities, or the doing of work or labour for value received, or for or upon a past or executed consideration, it shall be lawful for the Judge, after the day has passed on which the goods or commodities ought to have been delivered, or the labour or other things performed, to give judgment for the amount in money as if the contract had been so originally expressed: Provided always, that no action shall be brought or tried in any such Division Court for any gambling debt, nor for any spirituous or malt liquors drunk in a tavern or ale-house, nor for any cause involving the right or title to real estate or involving any right to any custom or toll: Provided also, that nothing contained in this Act shall be construed to constitute and create the said Division Courts, Courts of Record.

XXIV. And be it enacted, That the Plaintiff in any suit brought in any Division Court, shall enter a copy, and if necessary, copies of his account or demand in writing, in detail, and the particulars of his demand in any case of tort or trespass, which shall be numbered according to the order in which it shall be entered, and thereupon a summons, bearing the number of the account or demand on the margin thereof, shall be issued which shall be in substance in the form of the Schedule to this Act annexed, marked B, according to the nature of the demand or claim for tort or trespass; and a copy of such summons, to which shall be attached a copy of the Plaintiff's account, or of the particulars of his demand, as the case may be, and the notice in the said Schedule of such demand, or account, or claim for each tort or trespass, shall be served on the Defendant ten days at least before the day on which the Division Court shall be holden at which the cause shall be tried: and delivery of such copies of summons and account or demand to the Defendant, or delivery thereof to his wife or servant, or any grown person being an inmate of his dwelling-house or usual place of abode, trading or dealing, shall be deemed a good service of such summons, account or demand; Provided always, that personal service of such summons on the debtor shall be necessary in all cases where the amount or damages sued for exceed the sum of forty shillings.

XXV. And be it enacted, That all suits brought under this Act shall be tried at the Court holden for the Division wherein the Defendant, or where there shall be more than one Defendant, wherein any one of the Defendants shall dwell or carry on his business at the time of entering the account or demand, or at the Court holden for the Division within which the debt was contracted, or the tort or trespass committed, unless otherwise specially ordered by the Judge.

XXVI. And be it enacted, That it shall not be lawful for any Plaintiff to divide any cause of action into two or more suits, for the purpose of bringing the same within the jurisdiction of a Division Court, but any Plaintiff, having a cause of action above Twenty-five Pounds, in which a suit might be brought under this Act, if the same were not above that sum, whenever he shall claim or demand only the balance, or sum of Twenty-five Pounds, may, on proving his case, recover to that amount only: Provided always, that no unsettled account to a greater amount than Fifty Pounds

shall be sued for in any Division Court; and the judgment of the Court upon such suit shall be in full discharge of all demands in respect of such cause of action, and the entry of judgment shall be made accordingly.

XXVII. And be it enacted, That it shall be lawful for any one under the age of twenty-one years to prosecute any suit in any Division Court under this Act, for any 6um of money not exceeding Twenty-five Pounds which may be due to him or her for wages, in the same manner as if he or she were of full age.

XXVIII. And be it enacted, That no privilege of any description whatsoever shall be allowed to any person to exempt him from suing and being sued in the said Division Courts upon any cause of action within the jurisdiction of the said Courts.

XXIX. And be it enacted, That where any Plaintiff shall have any debt or demand recoverable under this Act, against two or more persons, partners in trade, or otherwise jointly answerable, but residing in different Divisions, or one or more of whom cannot be found, it shall be sufficient if any one or more of such persons be served with the process as hereinbefore directed, and the judgment may be obtained, and execution issued against such person, notwithstanding others jointly liable may not have been served or sued, reserving always to the person against whom execution may issue, any right which he may have to demand contribution from any other person jointly liable with him: Provided always, that whenever judgment is obtained against any person, being partner of a firm, and the Judge shall certify that the demand proved was strictly a partnership transaction, the Bailiff may seize and sell the property of such firm, as well as that of the Defendant or Defendants, who has or have been served, to satisfy such judgment, together with all lawful costs and charges thereon.

XXX. And be it enacted, That the Judge of the County Court, or his Deputy, as aforesaid, shall be the sole Judge to determine all actions brought in the said Division Courts, in the summary manner authorized by this Act, and all matters and questions of fact relating thereto unless the amount claimed shall in cases of tort or trespass exceed Two Pounds Ten Shillings, in other cases where the same shall exceed Five Pounds and where either of the parties shall require a jury to be summoned as hereafter mentioned.

XXXI. And be it enacted, That in any suit brought in any Division Court for any debt or demand not exceeding the sum of Five Pounds, the Judge, in his discretion, may receive the affidavit of any party or witness in the said suit, resident without the jurisdiction of the Judge of such Court, as testimony in the cause, if such affidavit shall be made and sworn to before a Judge of a Division Court, or a Commissioner for taking affidavits in any of the Superior Courts in Upper Canada: Provided that the Judge, in his discretion, before he shall be required to pronounce judgment, may require any such witness, or any party in a cause, to answer any interrogatories that may be filed in the said cause, which answers may in like manner be sworn to before any Judge or Commissioner.

XXXII. And be it enacted, That in all actions of tort or trespass, where the sum of money sought to be recovered shall exceed Two Pounds Ten Shillings, and in all other cases where such sum shall exceed Five Pounds, it shall be lawful for the plaintiff or defendant to require a Jury to be summoned to try the said action, and in any such case a Jury shall be summoned according to the provisions hereinafter contained to try such action: Provided always, that if the plaintiff require a Jury to be summoned, he shall give notice in writing to the Clerk of the Court at the time when he shall enter his account, demand or claim as aforesaid, and if the defendant shall require a Jury to be summoned, he shall give to the said Clerk, or leave at the office of the said Clerk, the like notice in writing within five days after the day of service of the summons on the said defendant.

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

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

XXXV. And be it enacted, That all male persons being subjects of Her Majesty by birth or naturalization above the age of twenty-one years, and not above the age of sixty years assessed upon the Collector's Roll and resident in the several divisions respectively, shall be jurors for the Division Courts in such Divisions, and the jurors to be summoned to serve at any Division Court shall be taken from the Collector's Rolls of the preceding year, for the Townships and places wholly or partly within the Division, and shall be summoned in rotation beginning with the first of such persons on such Roll; and if there be more than one such Township or place within the Division beginning with the Roll for that within which the Court is held, and then proceeding to that one of the other Rolls which shall contain the greatest number of such persons names, and so on until all the Rolls be gone through; after which, if necessary, they may be again gone through wholly or partly in the same order, and so on to *toties quoties*; and for the purposes of this section, it shall be the duty of the Collector for each place wholly or partly within any division, to furnish the Clerk of the Division Court thereof with correct lists of the names of all persons liable to serve as jurors at such Court in the order in which they stand upon the Rolls, and the Clerk of each Division Court shall cause not less than fifteen of the persons liable to serve as aforesaid to be summoned at each Session of the Court, (giving them at least three days notice,) to attend the Court at the time and place to be mentioned in the summons serving such notice personally, or leaving it with a grown-up person at the residence of the juror; Provided always, that either of the parties to any such cause shall be entitled to his lawful challenge against any of the said jury in like manner as he would in any other Court; and any jurymen who, after being duly summoned for that purpose as aforesaid, shall wilfully neglect or refuse to attend the Court in obedience to such summons shall

be liable to a fine not exceeding twenty shillings, to be set on him by the Judge, which fine shall be levied and collected with costs, as other fines are hereinafter directed to be levied and collected, and shall form part of the general fee fund; and such fine may be levied by the same process as any debt or judgment recovered in the said Court: Provided always, that service as juror at any Division Court shall not exempt such juror from serving as juror in any of the Superior Courts of civil or criminal jurisdiction or in any County Court, under any law now in force or to be passed during this present Session of Parliament respecting jurors.

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

XXXVII. And be it enacted, That from time to time, as occasion shall require, five Jurors shall be empannelled and sworn to do justice between the parties whose cause they shall be required to try, according to the best of their skill and ability, and to give a true verdict according to the evidence, and each cause shall be decided by the unanimous verdict of any such Jury, and no other finding shall be received.

XXXVIII. And be it enacted, That whenever the Judge holding any Division Court shall be satisfied that a Jury sworn in any cause before him cannot agree upon their verdict after having been out a reasonable time, he may discharge them, and shall then adjourn the cause until the next Court and order the Clerk to summon a new Jury for the next sitting of the Court to be held in that Division, unless the parties shall have consented that the Judge may render judgment on the evidence already taken before him, in which case he is hereby authorized to give judgment accordingly.

XXXIX. And be it enacted, That every decision of the Judge, in any case heard before him, shall be openly pronounced in Court as soon as may be after the hearing thereof, save and except that in any case where the Judge may not be prepared to pronounce a decision instanter, he may postpone judgment and name a subsequent day and hour for the delivery thereof at the Clerk's Office in writing; and at such day and hour it shall be lawful for the Clerk to read the judgment to the parties or their agents if present, and if not, then to enter the said judgment in their absence, and such judgment shall be as effectual as if rendered in Court at the trial.

XL. And be it enacted, That every summons and writ of execution issued by a Clerk of any Division Court shall be entirely filled up, and shall have no blank either in the date or otherwise at the time of its delivery to a Bailiff or any other person, to be executed.

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

XLII. And be it enacted, That no evidence shall be given by the Plaintiff or Defendant on the trial of any such cause as aforesaid, of any cause of action, claim or sett-off, except such as shall be stated and contained in the demand, claim, account or sett-off, entered as hereinbefore directed.

XLIII. And be it enacted, That any defendant may avail himself of the law of sett-off and the Statute of Limitations, and of any other relief or discharge under any statute or law in Upper Canada; and if the Defendant's demand exceed that of the Plaintiff, the Court may non-suit the Plaintiff; or if the Defendant's demand, after remitting any portion of it he may please, do not exceed Twenty-five Pounds, the Court may give judgment for the Defendant for the balance found in his favour: Provided always, that no statutory defence shall be admitted, unless notice thereof in writing and a copy of such debt or demand by way of set-off, shall have been delivered to the Plaintiff, or left at his usual place of abode, if within the Division, or if living without the Division, to the Clerk of the said Court, at least six days before the trial or bearing: And provided also, that whenever any judgment shall be given in any case where a sett-off is set up, the judgment of the Court on such sett-off, shall be a full discharge, as well of the amount allowed to be sett-off as the amount by which such claim of the Defendant exceeded Twenty-five pounds, and such judgment shall be so entered accordingly.

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

XLV. And be it enacted, That if on the day named in the summons the Defendant shall not appear as aforesaid, or sufficiently excuse his absence, or shall neglect to answer, the Judge, on proof of due service of the summons and copy of the Plaintiff's account, claim or demand, may proceed to the hearing or trial of the cause on the part of the Plaintiff only, and the order, verdict or judgment thereupon which shall be given, made or rendered after hearing the evidence to be adduced on the part of the Plaintiff, shall be final and absolute, and as valid as if both parties had attended; and in case of the personal service of the summons, and. detailed particulars of the Plaintiff's claim, except in actions of tort or trespass, the Judge may, in his discretion, give judgment without further proof: Provided always, that the Judge may make any order for granting any time to the Plaintiff or Defendant to proceed in the prosecution or defence of the suit.

XLVI. And be it enacted, That it shall be lawful for the Defendant in any action brought under the provisions of this Act, at any time not less than six days before the day appointed for the trial thereof, to pay into Court such sum of money as he shall think a full satisfaction for the demand of the Plaintiff, together with the costs incurred by the Plaintiff up to the time of such payment; and

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

XLVII. And be it enacted, That every person who in any examination, shall wilfully or corruptly give false evidence, or shall wilfully swear (or affirm, when by law affirmation is allowed,) falsely in any matter where an oath, affirmation, or affidavit in writing is required and allowed in this Act, shall be liable to the penalties of wilful and corrupt perjury.

XLVIII. And be it enacted, That either of the parties to the suit may obtain from the Clerk of any Division Court a summons requiring the attendance of a witness resident within the County or served with the subpoena therein with or without a clause requiring the production of books, papers and writings in his possession or control; and in any such summons any number of names may be inserted, and service of a copy of any such summons by any literate person shall be as valid and effectual as if the same had been served by a Bailiff of the Court in which the suit is pending, and proof of the due service thereof, together with the tender of payment of expenses, may be received by the several Judges of the said Courts by written affidavits sworn before any Judge of a Division Court or before any person authorized by law to take affidavits in the Superior Courts in Upper Canada: and every, person on whom any such copy of summons shall have been served, either personally or at his or her usual place of abode, and to whom at the same time a tender of payment of his or her expenses shall have been made on such scale of allowance as has been heretofore or shall from time to time be settled by the Judge, and approved of by the Judges of the Court of Queen's Bench or Court of Common Pleas as aforesaid, and who shall refuse or neglect without sufficient cause to appear or to produce any books, papers or writings required by such summons to be produced, and also every person in Court called upon to give evidence, who shall refuse to be sworn or affirm where affirmation is by law allowed and give evidence, shall forfeit and pay such fine not exceeding two pounds, as the Judge shall set on him or her, and shall moreover be liable to imprisonment by verbal or written order of such Judge for any time not exceeding ten days; and such fine shall be levied and collected with costs in the same manner as fines imposed on Jurymen for non-attendance, and the whole or any part of such fine, in the discretion of the Judge, after deducting the costs shall be applicable towards indemnifying the party injured by such refusal or neglect, and the remainder thereof shall form part of the General Fee Fund before mentioned; Provided always, that either party may obtain from either of the Superior Courts of Common Law for Upper Canada, a subpoena requiring the attendance of a witness residing or served with such subpoena in any part of Upper Canada, at the Division Court,

and at the time mentioned in such subpoena, which such witness shall obey, provided the allowance for his expenses shall, at the time of service, be tendered to him according to the scale settled in the said Superior Courts.

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

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

LI. And be it enacted, That if there be cross-judgments between the parties, execution shall be taken out by the party only who shall have obtained judgment for the larger sum, and for so much only as shall remain after deducting the smaller sum, and satisfaction for the remainder shall be entered as well as satisfaction on the judgment for the smaller sum; and if both sums shall be equal, satisfaction shall be entered upon both judgments.

LII. And be it enacted, That in any suit brought in any Court for the recovery of any sum awarded by any judgment in a Division Court held under this Act, no costs shall be recoverable without the order of the Judge, on sufficient cause being shewn.

LIII. And be it enacted, That whenever the Judge of any Division Court shall make an order for the payment of money, it shall be lawful for the party in whose favor such order shall be made, in case of default or failure of payment thereof at the times and in the manner thereby directed, to sue out execution against the goods and chattels of the party against whom such order shall be made; and thereupon the Clerk of the Court, at the request of the party prosecuting such order for the payment of money, shall issue under the seal of the Court a precept in the nature of *feri facias* to one of the Bailiffs of the Court, who by virtue of such precept shall levy by distress and sale of the goods and chattels of such party, being within the County within which the said Court was holden, such sum of money and costs (together with interest thereon from the date of the entry of the judgment) as shall be so ordered, and past due, and shall pay the same over to the said Clerk.

LIV. And be it enacted, That it shall and may be lawful for any Bailiff or Clerk of the said Courts to accept and take a confession or acknowledgment of debt from any debtor or debtors desirous of executing the same before any suit commenced for the claim or demand, or from the defendant

in any suit hereafter to be brought in any Division Court who may be desirous of making the same, and such confession or acknowledgment shall be in writing and witnessed by the Bailiff or Clerk at the time of the taking thereof; and upon the production of such confession or acknowledgment to the Judge, and its being proved by the oath of the said Bailiff or Clerk, judgment may be entered thereon; and such oath or affidavit shall state that the party making it has not received and is not to receive any thing from the plaintiff or defendant, or any other person, except his lawful fees, for taking such acknowledgment, and that he has no interest in the demand sought to be recovered.

LV. And be it enacted, That if any person against whom a judgment shall or may have been entered up in any Division Court in any County in Upper Canada, shall remove to another County therein without satisfying the said judgment, it shall be lawful for the Judge of the Division Court of the County to which the said party has removed to order an execution for the debt and costs, for which judgment has been rendered in another County against such party, to issue against such party, upon the production of a copy of such judgment duly certified by the Judge of the County for which the judgment has been entered: Provided always, that if the party against whom such execution shall be awarded, shall, before an actual sale of the goods and chattels, pay or cause to be paid or tendered, unto the Clerk or Bailiff of the Division Court out of which such execution has issued, such sum of money as aforesaid, or such part thereof as the said Plaintiff shall agree to accept in full of his debt, together with the fees to be levied, the execution shall be superseded, and the goods shall be released and restored to the said party.

LVI. And be it enacted, That every writ of execution issued by the Clerk of any Division Court shall be dated on the day when it shall actually issue, and shall be returnable within thirty days from the date thereof.

LVII. And whereas it is expedient that judgments exceeding ten pounds in the said Courts shall in certain cases affect lands, and that execution should issue in certain cases against lands on judgments obtained in any Division Court, Be it enacted, That whenever judgment is rendered in favour of any Plaintiff or Defendant in any Division Court under this or any former Act hereby repealed, and any execution therein issued shall or may have been returned *nulla bona*, it shall be lawful for such plaintiff or defendant to obtain a transcript of such judgment from the Clerk of such Court, under his hand and sealed with the seal of the said Court, which transcript shall set forth the proceedings in the cause, the date of issuing execution against the Defendant's or Plaintiff's goods and chattels, and the Bailiff's return of *nulla bona* thereon, as to the whole or a part, and upon filing such transcript in the Office of the Clerk of the County Court in the County where such judgment shall have been obtained, or in the County wherein the Defendant's or Plaintiff's lands are situate, the same shall become and is hereby declared to be a judgment of the said County Court, and the said Clerk of the County Court is hereby required to file the said transcript of Judgment on the day of the month on which he receives the same, and to enter a memorandum thereof in a book to be by him provided for that purpose, which memorandum shall contain the names of the Plaintiff and Defendant, the amount of the judgment, the amount remaining unsatisfied thereon, and the date of filing, for which services the said Clerk of the County Court shall be entitled to demand and receive from the person filing the same the sum of two shillings and six pence, and no more; and such book shall at all reasonable hours be accessible to any

person desirous of examining the same, upon the payment to the said Clerk of six pence, and upon such filing and entry as aforesaid, the Plaintiff or Defendant shall, until the judgment is fully paid and satisfied, be entitled, to pursue the same remedy for the recovery of the same or the balance due thereon, as if the judgment had been originally obtained from the County Court: Provided always, that no person shall be entitled to file a transcript of any such judgment in any County Court, unless the sum remaining unsatisfied on such judgment, and on the execution to be issued thereon, shall amount to the sum of ten pounds.

LVIII. And be it enacted, That it shall be lawful for any party obtaining judgment in any Division Court exceeding ten pounds at any time after fourteen days from the day of giving judgment, to obtain a certificate of any such judgment from the Clerk of such Division Court, in the form used in the Superior Courts as near as circumstances will permit, which certificate shall on the request of the party obtaining the same be registered in the same manner, and on payment of the same fees to the Register as are paid upon certificates of the judgments of the Superior Courts, and on such registry shall bind lands to the same extent as they would have been bound had the judgment been rendered in any of the Superior Courts.

LIX. And be it enacted, That if any Bailiff shall neglect to return any writ of execution within three days after the return day thereof, or shall make a false return thereto, the party having sued out such writ may maintain an action on the covenant aforesaid against such Bailiff and his sureties in any Court having competent jurisdiction in Upper Canada aforesaid, and shall recover therein the amount for which the execution issued, with interest from the date of the judgment upon which such execution was issued, or such less sum as in the discretion of the Judge, or Jury the Plaintiff under the circumstances may be justly entitled to recover; and if a judgment be obtained in such suit against the Bailiff and his sureties, execution shall immediately issue thereon; any thing in this Act or in any other Act or law to the contrary notwithstanding; and in case of the departure or removal from the limits of the County, of such Bailiff, the action may be commenced and carried on against his sureties alone, or against any one or more of them.

LX. And be it enacted, That no sale of any goods which shall be taken in execution shall be had until after the end of eight days at least, next following the day on which such goods shall have been so taken, unless upon the request in writing, under the hand of the party whose goods shall have been taken; and the Bailiff after taking goods and chattels into his custody by virtue of a writ of execution, shall indorse thereon the date of the seizure; and shall immediately give public notice by advertisement signed by himself, and put up at three of the most public places in the Division, where such goods and chattels shall be taken, of the time and place within such Division when and where they will be exposed to sale; which notice shall describe the goods and chattels taken, and shall be so put up at least eight days before the time appointed for the sale.

LXI. And be it enacted, That no Bailiff or other officer of any Division Court, shall, directly or indirectly, purchase any goods or chattels at any sale made by him under execution, and every purchase made in contravention of this enactment shall be absolutely void.

LXII. And be it enacted, That when any Clerk or Bailiff of any Division Court, either by himself or jointly with any other person or persons, is liable to be sued, or may sue any other person or persons, for a debt or demand within the jurisdiction of the Division Court of which he shall be a Clerk or Bailiff, then and in every such case such Clerk or Bailiff may sue, and shall be liable to be sued for any debt due to or by him, separately or jointly with any other person or persons, in the Court of any next adjoining Division in the same County, in the same manner, to all intents and purposes, as if the cause of action for which any such suit shall be brought, had arisen within such next adjoining Division, or the defendant or defendants were resident therein.

LXIII. And be it enacted, That it shall and may be lawful for the judge of the said Court, at any time after the giving and recording of any judgment, upon application being made to him by the party in whose favour such judgment shall be given, upon oath or other sufficient testimony to the satisfaction of the said Judge, that the party will be in danger of losing the amount of such judgment, if he be compelled to wait till the day of payment thereof before any execution can issue thereon, to order the issue of an execution at such time as he shall think fit.

LXIV. And be it enacted, That if any person or persons in any County of Upper Canada, being indebted in any sum not exceeding twenty-five pounds, nor less than twenty shillings, for any debt or damages arising upon any contract, express or implied, or upon any judgment, shall abscond from this Province, leaving personal property liable to seizure under execution for debt, in any County in Upper Canada, or shall attempt to remove his, her or their personal property of the description above mentioned, either out of Upper Canada or from one County to another therein, or from Upper to Lower Canada, or shall keep concealed in any County of Upper Canada to avoid service of process, it shall and may be lawful for any creditor or creditors of such person or persons, his, her or their servant or agent, to make application to the Clerk of any Division Court of the County wherein the debtor or debtors were or was last domiciled, or where the debt was contracted, or to the Judge of the County Court therein, or to any Justice of the Peace in any County of Upper Canada, and upon making or producing an affidavit or affirmation to the purport of that in the Schedule to this Act annexed, marked D, (which affidavit or affirmation the said Clerks, Judges and Justices of the Peace are respectively hereby authorized to administer,) and upon then and there filing the said affidavit or affirmation with such Clerk or Judge, or if taken before a Justice of the Peace, with such Justice of the Peace (whose duty it shall be to transmit the same forthwith to the Clerk of the Division Court, within whose Division the same was so made or taken, to be filed and kept among the papers in the cause), it shall be lawful for such Clerk, Judge or Justice of the Peace forthwith to issue a warrant under his hand and seal, directed to the Bailiff of the Division Court, within which the same was issued, or to any Constable of the County, commanding such Bailiff or Constable to attach, seize, take and safely keep all the personal estate and effects of the absconding, removing or concealed person or persons, of what nature and kind soever, liable to seizure under execution for debt within such County, or a sufficient portion thereof, to secure the sum mentioned in the warrant, with the costs of the action, and to return the same forthwith to the Division Court of the Division wherein such warrant was issued, upon receipt of which warrant the Bailiff or Constable to whom the same may be directed, shall upon being paid his lawful fees for levy, mileage and otherwise thereupon, including the fees of appraisement, forthwith execute the same, and make a just and true inventory of all such

personal estate and effects, as he shall seize and take by virtue thereof, and such Bailiff or Constable shall within twenty-four hours thereafter call to his aid two Freeholders, who shall first be sworn by such Bailiff or Constable, to appraise the said personal estate and effects so seized; and such Bailiff or Constable shall forthwith return the said Inventory which shall be attached to such appraisal to the Clerk of the Division Court of the Division within which such warrant was issued, and which warrant may be in the form of that in the Schedule to this Act annexed, marked E: Provided always, that the said appraisers shall be entitled to receive for each day they may be employed in carrying its enactments into effect, the sum of two shillings and six pence each, to be paid in the first instance by the plaintiff or plaintiffs and allowed in the costs of the cause: Provided always, that proceedings may be conducted to judgment and execution in any case commenced by attachment under the provisions of this section, in the Division Court of the Division within which the warrant of attachment shall issue; and that when proceedings shall be commenced in any case before the issuing of an attachment under the provisions of this section, such proceedings may be continued to judgment and execution in the Division Court within which such proceedings may have been commenced; and the property seized upon any such attachment shall be liable to seizure and sale under the execution to be issued upon such judgment, or the proceeds thereof, in case such property shall have been sold as perishable, shall be applied in satisfaction of such judgment: Provided further, that it shall not be lawful for any plaintiff to divide any cause of action into two or more suits for the purpose of bringing the same within the provision of this section, but any plaintiff having a cause of action above the value of twenty-five pounds, for which an attachment might be issued under this section, if the same were not above the value of twenty-five pounds, may abandon the excess, and upon proving his case, shall and may recover to an amount not exceeding twenty-five pounds, and the judgment of the Court in such case shall be in full discharge of all demands in respect of such cause of action, and the entry of judgment therein shall be made accordingly.

LXV. And be it enacted, That whenever several attachments shall be issued against any party, as authorized by the next preceding section of this Act, the proceeds of the goods and chattels which shall have been attached, shall not be paid over to such attaching creditor or creditors according to priority, but they shall be rateably distributed among such of the creditors suing out the said attachments as shall obtain judgment against the debtor, in proportion to the amount of the sums really due upon such judgments; and no distribution shall take place until reasonable time, in the opinion of the Judge, has been allowed to the several creditors to proceed to judgment: Provided always, that when such goods and chattels shall not be sufficient to satisfy the claims of all the attaching creditors, none shall be allowed to share, unless he shall have sued out his attachment, and given notice thereof to the Clerk of the Division Court out of which the first attachment shall have issued or shall be returnable, within one month from the issuing of such first attachment.

LXVI. And be it enacted, That all property seized under the provisions of the next preceding section, shall be forthwith handed over to the custody and possession of the Clerk of the Division Court of the Division within which the warrant was issued, who shall take the same into his charge and keeping, and shall be allowed all necessary disbursements for keeping the same.

LXVII. And be it enacted, That if any person or persons against whose estate or effects such warrant or warrants as aforesaid, may have been issued, or any person or persons on his, her or their behalf, shall at any time prior to the recovery or judgment in the cause, execute and tender to the creditor or creditors, who sued out such warrant or warrants as aforesaid, and shall file in the Division Court to which the warrant or warrants of attachment shall have been returned, a bond with good and sufficient sureties, to be approved of by the Judge or Clerk of the Division Court, binding the obligors, jointly and severally, in double the amount of the sum claimed, with condition that the debtor or debtors (naming him, her or them) shall in the event of the claim being proved and judgment being recovered thereon, as in other cases where proceedings have been commenced against the person, pay the same, or the value of the property so taken and seized, to the claimant or claimants, or shall produce such property whenever thereunto required to satisfy such judgment, it shall and may be lawful for such Clerk to supersede such warrant, and all and singular the property which may have been attached, shall then be restored.

LXVIII. And be it enacted, That if after the period of one month from the seizure aforesaid, the party against whom the warrant issued, or some one on his behalf, do not appear and give such bond with sureties conditioned as above mentioned, whenever and as soon as judgment shall have been obtained upon such claim or claims, execution thereupon may immediately issue and the property seized upon such attachment or attachments, or enough of such property to satisfy the same, may be sold thereon to satisfy the same according to law, or enough of the proceeds thereof may be applied to satisfy the judgment and costs, if the same shall have been previously sold under the provisions hereinafter made, as perishable property: Provided always, that when a summons has been personally served on the party whose property shall have been seized as aforesaid, and before such seizure, then the trial of the cause shall be proceeded with, as if no such attachment had issued, and execution shall forthwith be awarded after judgment, unless otherwise ordered by the Judge.

LXIX. And be it enacted, That in order to proceed in the recovery of any debt due by the person or persons against whose property a warrant shall have issued under this Act, where process shall not have been previously served, the same may be served either personally or by leaving, a copy at the last place of abode, trade or dealing of the defendant, with any person or persons there dwelling, or by leaving the same at the said dwelling if no person be there found; and in every case, all subsequent proceedings shall and may be conducted according to the usual course of practice and proceedings in the Division Court aforesaid: Provided always, that if it shall appear to the satisfaction of the Judge in the trial of any cause, upon affidavit, sworn to in manner authorized by this Act with regard to other affidavits or other sufficient proof, that the creditor or creditors suing out an attachment under the provisions of this Act, had not reasonable or probable cause for taking such proceedings, then it shall be the duty of the Judge to order that no costs whatever shall be allowed to such creditor or creditors, plaintiff or plaintiffs therein, and no costs in such case shall be recovered in the cause.

LXX. And be it enacted, That in case any horses, cattle, sheep or other perishable goods or chattels, shall be taken upon any warrant to be issued as aforesaid, it shall be lawful for the Clerk of the Court in whose custody or keeping the same shall be, the same having been first appraised

as aforesaid and at the request of the plaintiff suing out the warrant, to expose and sell the same at public auction, to the highest bidder, giving at least eight days' notice at the office of the Clerk of the said Division Court, and at two other public places within such Division, of the time and place of such sale, if the articles seized will admit of being so long kept, otherwise to sell the same at his discretion: Provided always, that it shall not be compulsory upon the Bailiff or Constable to seize, or upon the Clerk to sell such perishable articles, until the party suing out the warrant shall have given a bond to the defendant or defendants therein, with good and sufficient sureties in double the amount of the appraised value thereof (to be ascertained as aforesaid) conditioned that the party directing such seizure and sale will repay the value thereof, together with all costs and damages that may be incurred in consequence of such seizure and sale, in case judgment be not obtained for such party suing out such attachment, which bond shall also be filed with the papers in the cause: Provided always, that any bond given in the course of any proceeding under this Act, may be sued in any Division Court of the County wherein the same shall have been executed, and proceedings may be thereupon carried on to judgment and execution in such Court, notwithstanding the penalty contained in such bond may exceed the sum of twenty-five pounds: And provided further, that every bond shall and may be delivered up to the party entitled to the same, by the order and at the discretion of the Judge of such Court, to be enforced or cancelled, as the case may require.

LXXI. And be it enacted, That any residue which may remain after satisfying such judgments with the costs thereupon, shall be delivered to the defendant, or to the Agent of the defendant, or to any person in whose custody the goods were found,—whereupon the responsibility of the Clerk, as respects such property, shall cease.

LXXII. And be it enacted, That the Judges of the said Courts upon proof of and being satisfied with the general correctness of the plaintiff's books, may receive the same in evidence, and give judgment to the amount of five pounds in any cause within the said Courts, except in tort or trespass, and that it shall be lawful for the Judge of any such Division Court in his discretion to grant a new trial upon application of either party within fourteen days after the trial of any cause therein.

LXXIII. And whereas it is desirable that judgments in the said Division Courts, and in the Courts of Requests for the trial of Small Causes in Upper Canada should be recovered by and against the personal representatives of the parties thereto; Be it therefore enacted, that in the event of the death of either or both of the parties to any such judgment, it shall and may be lawful for the party in whose favor such judgment may have been entered, or his personal representatives in case of his death, to revive such judgment against the other party or his personal representatives, in case of his death, and to issue Execution thereon as may be provided and established by the Judges of the said Courts respectively.

LXXIV. And whereas under the former Act relative to the Court of Requests, various Clerks were appointed for Townships and other localities under the Commissioners; And whereas when the Division Court Act was passed, no provisions were therein, contained for the delivery up of the books, papers, and documents connected with the business and with the claims of suitors; And

whereas it has been found inconvenient that such books, papers and documents should remain elsewhere than with the Clerks of the different Division Courts: Be it therefore enacted, That it shall and may be lawful for the Judge of the County Court, by writing under his hand, to require any person or persons in whose possession or custody any such books, papers or documents shall or may be, to deliver the same or all, or any, or either thereof, as he shall see fit, over to such Division Court Clerk as he shall name, and in the event of the same not being delivered in compliance with such order or requisition, it shall and may be lawful for Her said Majesty's Court of Queen's Bench, or Court of Common Pleas, or for any Judge thereof in vacation, to proceed against such person or persons in the like manner as provided for in any of the foregoing sections of this Act.

LXXV. And be it enacted, That if any person shall wilfully insult the Judge or any Officer of any Division Court, during his sitting or attendance in Court, or shall wilfully interrupt the proceedings of such Court, it shall be lawful for any Bailiff or officer of the Court, with or without the assistance of any other person, by order of the Judge, to take such offender into custody, and the Judge may impose upon any such offender a fine not exceeding the sum of five pounds, and in default of immediate payment thereof, it shall be lawful for the said Judge, by warrant under his hand and seal, to commit the offender to the Common Gaol of the County for any period not exceeding one calendar month, unless such fine and costs, with the expenses attending the commitment, be sooner paid.

LXXVI. And be it enacted, That if any Bailiff or Officer of any Division Court, acting under colour or pretence of the process of such Court, shall be guilty of extortion or misconduct, or shall not duly pay or account for any money levied or received by him under the authority of this Act, it shall be lawful for the Judge at any sitting of the Court, if the party aggrieved shall think fit to complain to him, in writing, 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 any such damages and costs to the parties aggrieved as the Judge shall think just; and in default of payment of any money so ordered to be paid by such Bailiff within the time specified for the payment thereof in such order, it shall be lawful for the Judge, by warrant under his hand and seal, to cause such sum to be levied by distress and sale of the goods of the offender, together with the reasonable charges of such distress and sale, and in default of such distress (or summarily in the first instance.) to commit the offender to the Common Gaol of the County for any period not exceeding three calendar months.

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

LXXVIII. And be it enacted, That in case any action shall be prosecuted after the commencement of this Act, in any County or Superior Court of Record, for any cause which might have been entered in a Division Court under this Act, and the Plaintiff shall obtain judgment for a sum not exceeding the respective sums to which the jurisdiction of a Division Court is by this Act limited, no more costs shall be taxed against the Defendant than would have been incurred in the Division Court in carrying on the same action, unless the Judge who presides at the trial of such action shall certify in open Court immediately after the verdict is recorded, that it was a fit cause to be withdrawn from the Division Court, and to be commenced in such County or Superior Court; provided also that so much of the costs of the Defendant to be taxed as between Attorney and Client in any such suit wherein the Judge shall not certify as aforesaid, as shall exceed the costs of defence, taxable and which would have been incurred in the Division Court in defending the same action, shall be set off and allowed by the taxing officer, on entering judgment, against the costs to be taxed for the plaintiff and recoverable from the defendant, who shall be entitled to execution, with the costs thereof, against the plaintiff, when the amount of the costs so set off shall exceed the plaintiff's verdict and taxable costs: And provided also, that no execution on such suit shall issue against lands, unless the amount of such judgment shall equal the sum for which execution against lands are authorized by this Act.

LXXIX. And be it enacted, That when any levy or distress shall be made for any sum of money to be levied by virtue of this Act, the distress itself shall not be deemed unlawful, nor the party or parties making the same be deemed a trespasser or trespassers, on account of any defect or want of form in the information, summons, conviction, warrant, precept or other proceeding relating thereto; nor shall the party or parties distraining, be deemed a trespasser or trespassers from the beginning on account of any irregularity which shall afterwards be committed by the party or parties so distraining, but the person or persons aggrieved by such irregularity shall and may recover full satisfaction for the special damage.

LXXX. And be it enacted, That it shall and may be lawful for any executor or administrator to sue and be sued in any Courts holden under the authority of this Act in like manner as if he were a party in his own right, and the judgment and execution shall be such as in the like cases would be given or issued in any Superior Court.

LXXXI. And be it enacted, That on the hearing or trial of any action or in any other proceeding in the said Division Courts holden under this Act, the parties thereto, and all other persons may be summoned as witnesses and examined either on behalf of the Plaintiff or Defendant, upon oath, (of solemn affirmation, in those cases in which persons are allowed to make affirmation instead of taking an oath,) to be administered by the proper officer of the Court: Provided always, that no party to the suit shall be summoned or examined, except at the instance of the opposite party or the Judge.

LXXXII. And be it enacted, That payment of any fine imposed by any Court under the authority of this Act, may be enforced upon the order of the Judge, in like manner as judgment for any sum adjudged in the said Court, and shall be accounted for as herein provided.

LXXXIII. And be it enacted, That all the costs of any action or proceeding in any Division Court not otherwise provided for, shall be paid by or apportioned between the parties in such manner as the Judge shall think fit, and in cases where the plaintiff shall not appear in person or by some person on his behalf, or appearing shall not make proof of his demand to the satisfaction of the Judge, it shall be lawful for the Judge, if he shall think fit, to award to the defendant such costs and such further sum of money by way of satisfaction for his trouble and attendance as he in his discretion may think proper, to be recovered as provided for in other cases under this Act, and in default of any special direction, the costs shall abide the event of the action, and execution may issue for the recovery of such costs in like manner as for any debt adjudged in the said Court.

LXXXIV. And be it enacted, That every order and judgment of any Division Court holden under this Act, except as herein provided, shall be final and conclusive between the parties, but the Judge shall have power to non-suit the plaintiff in any case in which satisfactory proof shall not be given to him entitling either the plaintiff or the defendant; to the judgment of the Court, and any plaintiff may elect to be non-suited by the Judge and insist thereon, and the Judge shall also in every case whatever have the power, if he shall think fit, to order a new trial to be had upon such terms as he shall think reasonable, and in the meantime to stay the proceedings: Provided such new trial be applied for, at furthest, within fourteen days, and good grounds be shewn therefor by the party so applying.

LXXXV. And be it enacted, That any suit brought in any Division Court holden under this Act may be removed or removable from the said Court into Her Majesty's Court of Queen's Bench, or Court of Common Pleas in Upper Canada, by any writ of *certiorari*, provided the debt or damage claimed shall amount to ten pounds and upwards, and provided leave be obtained of one of the Judges of the said Court of Queen's Bench, or Court of Common Pleas, in cases which shall appear to the said Judge fit to be tried in either of the said Superior Courts, and not otherwise, and upon such terms as to payment of costs or such other terms as he shall think lit.

LXXXVI. And be it enacted, That for every Court holden under the authority of this Act there shall be made a seal of the Court to be paid for out of the Fee Fund, and all summonses and other process issuing out of the said Court shall be sealed or stamped with the seal of the Court; and every person who shall forge the seal or any process of the Court, or who shall serve or enforce any such forged process, knowing the same to be forged, or deliver or cause to be delivered to any person any paper falsely purporting to be a copy of any summons or other process of the said Court, knowing the same to be false, or who shall act or profess to act under any false color or pretence of the process of the said Court, shall be guilty of felony.

LXXXVII. And be it enacted, That any summons or other process which under this Act shall be required to be served out of the division of the Court from which the same shall have issued, may be served by the Bailiff of such or any other division Court in Upper Canada holden under this Act, and such service shall be as valid as if the same had been made by a Bailiff of the Court out of which the summons or process shall have been issued, within the jurisdiction of the Court for which he acts.

LXXXVIII. And be it enacted, That service of any summons or other process of any Division Court which shall require to be served out of the division of the said Court may be proved by affidavit purporting to be sworn before any Judge or Clerk of a Division Court, or before any person authorized by Law to take affidavits in the Superior Courts of Common Law in Upper Canada; and the fee for drawing such affidavit, by whomsoever done, shall be six pence, and for administering the Oath by a duly qualified person, six pence, and no more in either case, and shall be, together with the postages on the papers if transmitted by mail, costs in the cause; and in every case of the unavoidable absence of the Bailiff by whom any summons or other process of a Court holden under this Act shall have been served, the service of such summons or other process may be proved, if the Judge shall think fit, in the same manner as a summons served out of the Division of the Court, but without additional charge to either of the parties of the suit.

LXXXIX. And be it enacted, That every Bailiff or Officer executing any process of execution issuing out of any Division Court in Upper Canada, against the goods and chattels of any person, may by virtue thereof seize and take any of the goods and chattels of such person (excepting the wearing apparel and bedding of such person or his family, and the tools and implements of his trade to the value of five pounds, which shall to that extent be protected from such seizure,) and may also seize and take any money or bank notes and any cheques, bills of exchange, promissory notes, bonds, specialties or securities for money, belonging to any such person against whom any such execution shall have issued as aforesaid.

XC. And be it enacted, That the Bailiff of every such Division Court shall hold any cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money which shall have been so seized or taken as aforesaid, as a security or securities for the amount directed to be levied by such execution, or so much thereof as shall not have been otherwise levied or raised for the benefit of the plaintiff, and the plaintiff may sue in the name of the defendant, or in the name of any person in whose name the defendant might have sued, for the recovery of the sum or sums secured or made payable thereby when the time of payment thereof shall have arrived; and it shall not be competent for the defendant in the original cause to discharge such suit in any way without the consent of the plaintiff or of the Judge: Provided always, that the party who desires to sue for any such amount, shall in the first place pay or secure all costs that may attend the proceeding, and the moneys realized, or a sufficient part thereof, shall be paid over by the officer receiving the same to apply on the plaintiff's demand, and the overplus, if any, shall be forthwith paid to the defendant in the original suit, under the direction of the Judge.

XCI. And be it enacted, That it shall be lawful for any party who has obtained any unsatisfied judgment or order in any Division Court, for the payment of any debt or damages or costs, to obtain a summons from any Division Court within the limits of which the defendant in any such suit shall then dwell or carry on his business, such summons to be in such form as the Judge of such Court shall from time to time direct, and to be served personally upon the person to whom it is directed, requiring him to appear at such time and place as shall be directed in such summons, to answer such things as are named in such summons, and if he shall appear in pursuance of such summons, he may be examined upon oath, touching his estate and effects, and the manner and

circumstances under which he contracted the debt or incurred the damages or liability which is the subject of the action in which judgment has been obtained against him, and as to the means and expectation he then had, and as to the property and means he still hath, of discharging the said debt or damages or liability, and as to the disposal he may have made of any property, and the person obtaining such summons as aforesaid and all other witnesses whom the Judge shall think requisite, may be examined upon oath, touching the enquiries authorized to be made as aforesaid; and the costs of such summonses and of all proceedings thereon, shall be deemed costs in the cause, unless the Judge shall otherwise order and direct.

XCII. And be it enacted, That if the party so summoned shall not attend as required by such summons, and shall not allege a sufficient reason for not attending, or shall, if attending, refuse to be sworn or to declare any of the things aforesaid, or if he shall not make answer touching the same to the satisfaction of such Judge, or if it shall appear to such Judge either by the examination of the party or by any other evidence, that such party in incurring the debt or liability which is the subject of the action in which judgment has been obtained, has obtained credit from the plaintiff under false pretences or by means of fraud or breach of trust, or has wilfully contracted such debt or liability without having had at the same time a reasonable expectation of being able to pay or discharge the same, or shall have made or caused to be made any gift, delivery or transfer of any property, or shall have removed or concealed the same with intent to defraud his creditors or any of them, or if it shall appear to the satisfaction of the Judge that the said party so summoned has then or has had since the judgment obtained against him, sufficient means and ability to pay the debt or damages, or costs so recovered against him, either altogether or by any instalment or instalments which the Court in which the judgment was obtained shall have ordered, and if he shall refuse or neglect to pay the same as shall have been so ordered, or as shall be ordered pursuant to the power hereinafter provided, it shall be lawful for such Judge, if he shall think fit, to order that any such party may be committed to the Common Gaol of the County in which the party summoned is resident, for any period not exceeding forty days.

XCIII. And be it enacted, That it shall be lawful for the Judge of any Division Court before whom such summons shall be heard, if he shall think fit, whether or not he shall make any order for the committal of the defendant, to rescind or alter any order that shall have been previously made against any defendant so summoned before him for the payment, by instalments or otherwise, of any debt or damages recovered, and to make any further or other order, either for the payment of the whole of such debt or damages and costs forthwith, or by any instalments, or in any other manner, as such Judge may think reasonable and just.

XCIV. And be it enacted, That in every case where the defendant in any suit brought in any Division Court shall have been personally served with the summons to appear, or shall personally appear at the trial of the same, the Judge, at the hearing of the cause or at any adjournment thereof, if judgment shall be given against the defendant, shall have the same power and authority of examining the defendant and the plaintiff and other parties, touching the several things hereinbefore mentioned, and of committing the defendant to prison, and of making an order, as he might have and exercise under the provisions hereinbefore contained in case the plaintiff had obtained a summons for that purpose after the judgment obtained as hereinbefore mentioned.

XCV. And be it enacted, That whenever any order of commitment shall have been made as aforesaid, the Clerk of the said Court shall issue under the seal of the Court, a warrant of commitment directed to the Bailiff of any Division Court within the County, who by such warrant shall be empowered to take the body of the person against whom such order shall be made; and all Constables and other Peace Officers within their respective jurisdictions shall aid in the execution of every such warrant, and the gaoler or keeper of the Gaol of the County in which such warrant shall issue, shall be bound to receive and keep the defendant therein until discharged under the provisions of this Act or otherwise by due course of law; and no protection, order or certificate granted by any Court of Bankruptcy, or for the relief of insolvent debtors, shall be available to discharge any defendant from any commitment under such last mentioned order.

XCVI. And be it enacted, That no imprisonment under this Act shall in any wise operate as a satisfaction or extinguishment of the debt or other cause of action on which a judgment has been obtained, or protect the defendant from being anew summoned and imprisoned for any new fraud or other default rendering him liable to be imprisoned under this Act, or deprive the plaintiff of any right to take out execution against the defendant, in the same manner as if such imprisonment had not taken place.

XCVII. And be it enacted, That in all cases where, a warrant of execution shall have issued against the goods and chattels of any party, or an order for his commitment shall have been made under this Act, and such party or his goods and chattels shall be out of the County, it shall be lawful for the Bailiff of the Court either to execute such warrant of execution or of commitment himself, in any County or place where such party or his goods may be, or to send the same to the Clerk of any other Division Court constituted under this Act, within the jurisdiction of which such party or his goods and chattels shall then be or be believed to be, with a warrant thereto annexed under the hand of a Bailiff of the Court and seal of the Court from which the original warrant issued, requiring execution of the same, and the Clerk of the Court to which the same shall be sent shall seal or stamp the same with the seal of his Court, and issue the same to a Bailiff of his Court, and thereupon such last mentioned Bailiff shall be authorized to act in all respects as if the original warrant of execution or commitment had been directed to him by the Court of which he is a Bailiff, and shall within such time as this Act directs, return to the Bailiff of the Court from which the same originally issued, what he shall have done in the execution of such process, and in case a levy shall have been made, shall within such time as this Act directs, pay over all moneys received in pursuance of the warrant to the Bailiff of the Court from which the same shall have originally issued, retaining the fees for execution of the process; and where any order of commitment shall have been made and the person apprehended, he shall be forthwith conveyed, in custody of the Bailiff or Officer apprehending him, to the Gaol of the County in which he shall have been apprehended, and kept therein for the time mentioned in the warrant of commitment, unless sooner discharged under the provisions of this Act, and all Constables and other Peace Officers shall be aiding and assisting within their respective Counties in the execution of such warrant.

XCVIII. And be it enacted, That if it shall at any time appear to the satisfaction of the Judge, by the oath or affirmation of any person or otherwise, that any defendant is unable, from sickness or

other sufficient cause, to pay and discharge the debt and damages recovered against him, or any instalment thereof ordered to be paid as aforesaid, it shall be lawful for the Judge in his discretion to suspend or stay any judgment, order or execution given, made or issued in such action, for such time and on such terms as the Judge shall think fit, and so from time to time until it shall appear by the like proof as aforesaid, that such temporary cause of disability has ceased.

XCIX. And be it enacted, That any person imprisoned under this Act, who shall have paid or satisfied the debt or demand or the instalment thereof payable, and the costs remaining due at the time of the order of imprisonment being made, together with the costs of obtaining such order, and all subsequent costs, shall be discharged out of custody, upon the certificate of such payment or satisfaction, signed by the Clerk of the Court, or by leave of the Judge of the Court in which the order of imprisonment was made.

C. And be it enacted, That if any Officer or Bailiff of any Court holden under this Act, (or his Deputy or Assistant,) shall be assaulted while in the execution of his duty, or if any rescue shall be made or attempted to be made, of any goods and chattels or other property seized under a process of the Court, the person so offending shall be liable to a fine not exceeding five pounds, to be recovered by order of the Court, or before a Justice of the Peace of the County in which such Court is situate, as hereinafter provided, (and to be imprisoned for any term not exceeding three calendar months;) and it shall be lawful for the Bailiff of the Court, or any peace officer in any such case, to take the offender into custody, (with or without warrant,) and bring him before such Court or Justice accordingly.

CI. And be it enacted, That in case any Bailiff of any Division Court holden under this Act, who shall be employed to levy any execution against goods and chattels, shall, by neglect or connivance or omission, lose the opportunity of levying any such execution, then upon complaint of the party aggrieved by reason of such neglect, connivance or omission, if he shall think fit so to do, (and the fact alleged being proved to the satisfaction of the Court, on the oath of any credible witness,) the Judge shall order such Bailiff to pay such damages as it shall appear the plaintiff has sustained thereby, not exceeding in any case the sum of money for which the said execution issued, and the Bailiff shall be liable thereto; and upon demand made thereof, and on his refusal so to pay and satisfy the same, payment thereof shall be enforced by such ways and means as are herein provided for enforcing judgments recovered in the said Court.

CII. And be it enacted, That if any claim shall be made to or in respect to any goods or chattels, property or security, taken in execution or attachment under the process of any Court holden under this Act, or by any person not being the party against whom such process has issued, it shall be lawful for the Clerk of the Court, upon application of the officer charged with the execution of such process, or for the officer himself, as well before as after any action brought against such officer, to issue a summons calling before the said Court, at the next sitting thereof for the Division, as well the party issuing such process as the party making such claim, and thereupon any action which shall have been brought in any of Her Majesty's Superior Courts of Record, or in a Local or Inferior Court in respect of such claim, shall be stayed, and the Court in which such action shall have been brought, or any Judge thereof, on proof of the issue of such summons, and that the

goods and chattels or other property were so taken in execution or upon attachment, may order the party bringing such action to pay the costs of all proceedings had upon such action after the issue of such summons out of the Division Court, and the Judge of the Division Court at such next sitting, or as soon after Court as convenient, shall adjudicate upon such claim, and make such order between the parties in respect thereof, and of the costs of the proceedings, as to him shall seem fit, and such order shall be enforced in like manner as any order made in any suit brought in such Court, and such order shall be final and conclusive between the parties.

CIII. And be it enacted, That the moneys arising from any penalties, forfeitures and fines imposed by this Act, when paid and levied, shall (if not by this Act directed to be otherwise applied,) from time to time be paid to the Clerk of the Court by which the same shall be imposed, and shall be paid by him into the hands of the Treasurer of the County to be accounted for as part of the Fee Fund.

CIV. And be it enacted, That in all cases in which by this Act any penalty or forfeiture is made recoverable before a Justice of the Peace, it shall be lawful for such Justice to summon before him the party complained against, and on such summons to hear and determine the matter of such complaint, and on proof of the offence to convict the offender, and to adjudge him to pay the penalty or forfeiture incurred, and to proceed to recover the same, although no information in writing shall have been exhibited before him, and all such proceeding by summons without information in writing, shall be as valid and effectual to all intents and purposes, as if an information in writing had been exhibited.

CV. And be it enacted, That in all cases where any conviction shall be had for any offence committed against this Act, the form of conviction may be in the words or to the effect following, that is to say:

Be it remembered, That on this _____ day of _____ in the year of our Lord _____ A. B. is convicted before _____ one of Her Majesty's Justices of the Peace for the County of _____ or before a Judge acting under an Act passed in the year of the _____ Reign of Her Majesty Queen Victoria, intituled, An Act, &c. (insert the title of this Act,) of having (note the offence); and I, (or we) _____ the said _____ do adjudge the said _____ to forfeit and pay for the same the sum of _____ or to be committed to the Common Gaol of the County of _____ for the space of _____: Given under _____ hand and seal, the day and year aforesaid.

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

CVII. And for protection of persons acting in the execution of this Act, Be it enacted, That all actions and prosecutions to be commenced against any person for any thing done in pursuance of this Act, shall be laid and tried in the County where the fact was committed, and shall be commenced within six calendar months after the fact was committed, and not afterwards or otherwise; and notice in writing of such action and of the cause thereof shall be given to the

Defendant, one calendar month at least, before the commencement of the action; and no Plaintiff shall recover in any such action, if tender of sufficient amends shall have been made before such action brought, or if after action brought, a sufficient sum of money shall have been paid into Court with costs, by or on behalf of the defendant, and it shall be lawful in any such action for the defendant to plead the general issue, and to give any special matter arising under this Act under such plea.

CVIII. And be it enacted, That if any person shall bring any suit in any of Her Majesty's Superior Courts of Record in respect of any grievances committed by any Clerk, Bailiff or Officer of any Court holden under this Act, under colour or pretence of the process of the said Court, and the Jury upon the trial of the action shall not find greater damages for the Plaintiff than the sum of Two Pounds Ten Shillings, no costs shall be awarded to the Plaintiff in such action, unless the Judge shall certify in Court upon the back of the record, that the action was fit to be brought on in such Superior Court.

CIX. And whereas the amount of business in certain Divisions is not so great as to require the holding of Courts therein once in every two months, while from the remoteness and inaccessibility of the same, the holding of the said Courts therein is, especially at certain seasons of the year, attended with great difficulty: Be it therefore enacted, That if it shall be certified to the Governor in Council, by the Magistrates of any County in Quarter Sessions assembled, that in any Division of such County, it is expedient for the above causes that such Courts should be held there less frequently than once in every two months, it shall and may be lawful for the Governor in Council to order such Courts to be held therein, at such periods as to him shall seem meet r Provided always, that such Courts shall be held' in any such Division at least once in every six months, and that it shall be lawful for the Governor in Council to revoke any such order at pleasure.

CX. And be it enacted, That it shall be the duty of the Judge of each County Court to require from the respective Clerks within his County, at least semi-annually, a detailed statement, to be verified on Oath before such Judge, of all fees and emoluments, which statement shall be filed by such Judge, with the said Treasurer: Provided always, that after this Act shall come into force it shall not be lawful for any County Court Clerk to be appointed or execute the office of Clerk of any Division Court.

CXI. And be it enacted, That in construing this Act, the word "County" shall include any two or more Counties united for judicial purposes, and in any form or proceeding, the words "United Counties" shall and may be introduced according to law, and circumstances rendering the same necessary.

CXII. Provided always, and be it enacted, That all proceedings in the execution of the said Acts in the Preamble to this Act recited, or any of them, commenced before the passing of this Act, or before the day appointed for its going into operation, shall be as valid to all intents and purposes as if this Act had not been passed, and may be continued, executed and enforced against all persons liable thereto in the same manner as if they had been commenced under the authority of this Act.

CXIII. And be it enacted, That this Act shall come into force on the first day of January next, and not before.

Schedule A.

Table of Fees.

Fee Fund.	Not exceeding £2.		Exceeding £2, and not exceeding £5.		Exceeding £5, and not exceeding £10.		Exceeding £10, and not exceeding £15.		Exceeding £15.	
	S.	D.	S.	D.	S.	D.	S.	D.	S.	D.
Entering account and issuing summons	0	4	0	6	1	3	2	0	3	0
Hearing an undefended cause	0	6	0	9	1	3	3	0	3	0
Hearing a defended cause	1	0	2	0	3	9	5	0	7	6
Every order or judgment, (not to be charged when the Defendant has given a confession of judgment,)	0	3	0	9	0	9	1	3	2	0
On every conviction of judgment	0	3	0	3	0	3	0	6	0	6
Clerk's Fees.										
Entering every account and issuing Summons	0	6	0	3	1	0	1	3	1	6
Copy of Summons, particulars of demand or set-off, when not furnished by Plaintiff or Defendant, each	0	3	0	6	0	6	0	6	0	6
Every summons to Witness, in which any number of names may be included	0	3	0	3	0	3	0	3	0	3
Adjournment of any cause	0	3	0	6	0	9	0	9	0	9
Entering set-off or other defence requiring notice to the Plaintiff	0	6	0	9	1	0	1	0	1	0
Entering every judgment	0	6	0	6	0	9	1	0	1	0
Every search into a proceeding over a year old	0	6	0	6	0	6	0	6	0	6
Taking confession of judgment	0	6	0	6	0	6	0	9	1	0
Every Warrant, Attachment or Execution	0	6	1	0	1	6	1	6	1	6
To the Clerk for taking charge of and keeping the property seized, such sum as the Judge may order in each particular case.										
For every copy or Certificate of Judgment to another County	1	3	1	3	1	3	1	3	1	3
Deposit to be paid by party requiring Jury . . . . .	..	..	5	0	5	0	5	0	5	0
Entering and giving notice of Jury being required . . . . .	..	..	0	9	0	6	1	0	1	6
Making out Summons for the fifteen Jurors, to be apportioned between and paid in the first instance by parties applying for Juries . . . . .	..	..	2	6	2	6	5	0	5	0
The Bailiff's Fees.										
Service of Summons, or other proceeding, except Subpœna, on each person	0	4	0	6	0	9	0	9	1	0
Service of Subpœna on each Witness	0	4	0	4	0	4	0	4	0	4
For taking Confession of judgment	0	4	0	6	0	6	0	9	1	0

Drawing and attending to swear to every affidavit of service of Summons, when served out of the Division	1	0	1	0	1	0	1	0	1	0
Enforcing every Warrant, Execution or Attachment, against the goods or body	1	6	1	6	2	0	3	0	3	9
For every mile necessarily travelled from the Clerk's Office, to serve Summons or Subpœna, and in going to seize on execution or Attachment where money made or case settled after the levy, 4d.										
For every Jury trial . . . . .	..	..	0	6	0	9	1	0	1	6
For carrying delinquent to prison, including all expenses and assistance, per mile, 1s.										
Every Schedule of property seized, return, including affidavit of appraisal . . . . .	..	..	2	6	2	6	2	6	5	0
Every Bond, including affidavit of justification . . . . .	..	..	2	6	2	6	2	6		
Every notice of sale not exceeding three, under execution, on attachment, 6c. each										
That there be allowed to the Bailiff upon the sale of property under any execution the sum of two and a half per cent upon the amount realised, and not to apply to any overplus on the said execution.										

Schedule B.

Form of Summons.

Between { A. B., Plaintiff,
 and
 C. D., Defendant.

To C. D., the above named Defendant.

You are hereby summoned to be and appear at the next sittings of the first (or, as the case may be) Division Court in and for the County of (or United Counties of as the case may be) to be holden at _____ in the Township of _____ on _____ the _____ day of _____ 18_____, to answer the above named Plaintiff for the causes set forth in the Plaintiffs statement of claim hereunto annexed, numbered _____, and that in the event of your not so appearing the Plaintiff may proceed to obtain judgment against you by default.

Dated this _____ day of _____ 18_____,

By the Court,

Clerk.

Notice.

Take notice that if the Defendant desires to set off any demand against the Plaintiff at the trial or hearing of the cause, notice thereof containing the particulars of such demand must be left with the Plaintiff or at his usual place of abode if living within the Division, or with the Clerk of the said Court if the Plaintiff resides without the Division, at least six days before the said trial or hearing, and that if the Plaintiff or Defendant desire to take the benefit of any Statute of Limitation or other Statute, notice thereof must be left in like manner with the said Plaintiff or the Clerk at least six days before the said trial or hearing.

(Indorsement to be made on the Summons after the service thereof.)

This Summons was served by me, X. Y., on _____ the _____ day of
_____ 18_____.

X. Y.

Schedule C.

Covenant by the Clerk or Bailiff.

Know all men by these presents, that we J. B., Clerk (or Bailiff, as the case may be) of the Division Court number _____ in the County of _____ S. S., of _____ in the said County of _____, and P. M., of _____ in the said County of _____ do hereby jointly and severally for ourselves, and for each of our heirs, executors and administrators, covenant and promise that J. B., Clerk (or Bailiff) of the said Division Court (as the case may be) shall duly pay over to such person or persons entitled to the same, all such moneys as he shall receive by virtue of the said Office of Clerk (or Bailiff, as the case may be) and shall and will well and faithfully do and perform the duties imposed upon him as such Clerk (or Bailiff) by Law, and shall not misconduct himself in the said Office to the damage of any person being a party in any legal proceeding; nevertheless, it is hereby declared that no greater sum shall be recovered under this covenant against the several parties thereunto than as follows, that is to say:

Against the said J. B. in the whole,
Against the said S. S.
Against the said P. M.

In witness whereof, we have to these presents set our hands and seals, this _____ day of
_____ in the year of Our Lord one thousand eight hundred and _____

Signed, sealed and delivered, }
in the presence of _____ }

Schedule D.

County of _____ }

A. B. of _____ in the County of (hire stare the County) the Plaintiff (or Agent, as the ease may be) maketh oath and saith that C. D., (the debtor's name) is (or are) justly and truly indebted to (the creditor's name) in the sum of _____ of lawful money of Canada, for (here state the anise of action briefly); and this Deponent further saith, that he hath good reason to believe, and verily doth believe, that the said C. D. hath absconded from this Province, and hath left personal property liable to seizure under execution for debt within the County of _____; or that the said C. D., is (or are) about to abscond from this Province, or to leave the County of

_____ with intent and design to defraud the said _____ (the creditor) of the said debt, taking away personal estate liable to seizure under execution for debt; or that the said C. D. is concealed within the County of _____ to avoid being served with Process, with intent and design to defraud the said _____ (the creditor) of his said debt; and this Deponent further saith, that this affidavit (or affirmation, as the case may be,) is not made, nor the Process thereon to be issued, from any vexatious or malicious motive whatever.

A. B.
Signature of Deponent.

Sworn (or affirmed as the case may be) before me, the _____ day of _____ one thousand eight hundred and _____

Schedule. E.

County of _____ }
(here insert the County.) }

To A. B., Bailiff of the Division Court of the said County of _____
(or to A. B., a Constable of the County of _____
as the case may be).

You are hereby commanded to attach, seize, take and safely keep all the personal estate and effects of C. D., (naming the debtor,) an absconding, removing or concealed debtor, of what nature or kind soever, liable to seizure under execution for debt within the County of (here name the County) or a sufficient portion thereof to secure A. B. (here name the creditor) for the sum of (here state the amount sworn to be due) together with the costs of his suit thereupon, and to return this warrant with what you shall have taken thereupon, to the Clerk of the (here state the number of the Division) Division Court of the County aforesaid forthwith: and herein fail not.

Witness my hand and seal, the _____ day of _____ 18_____
E. F. (L. S.)

Judge, Clerk, or Justice of the Peace, (as the case may be).